Chapter 3

Federalism as a Principle – Constitutional Consequences

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Abstract

The aim of this section is to examine federalism from the position of constitutional law and state science. Modern groupings of states are currently pushing the boundaries of traditional statehood in a new direction. This trend reveals new connections with open questions of state law. At the same time, it brings new challenges, the mastery of which presupposes a knowledge of the theoretical contexts and factual pitfalls of the application of federalism. The introduction is therefore essential to define the basic theoretical correlations of federalism as a principle of constitutionalism in relation to the territorial organisation of the state and the form of government. The form of government in the state is largely determined by the structure of its supreme bodies and the mutual relations between them. In addition, by their decisions, federal authorities determine the legal and factual level of relations between federation and member state. In the above context, it is necessary to examine the structure and relations of the main EU decision-making bodies, especially in view of possible federalist tendencies in the European Union.

Keywords: Federalism, Constitutional Law, European Union, Composite states, Unitary states.

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1. Introduction

As a form of state law, federalism is a traditional concept of several interdisciplinary branches. Especially in the field of state science, political science or comparative constitutional law, it is a subject of examination both in theoretical and practical terms. This is also due to the fact that it determines the limits of state compartmentalisation in connection with the redistribution of sovereignty. From the position of states, the way of effective coexistence has been a matter addressed almost since time immemorial.[1] This issue takes on a modern dimension in the current conditions of globalisation and Europeanisation, especially in relation to the growing centralisation tendencies.[2] Historical developments have also brought about various forms of unification of individual states.[3] Despite specific applications in the modern states of the twenty-first century, it has always been about resolving the original essence, namely determining the way of mutual coexistence of several state law formations. This dimension of federalism makes it an important matter of state law, anchored in the standards the nature of which is constitutional. This, on the other hand, also determines the definition of federalism in the structure of constitutional principles.[4]

Federalism has always been associated with the organisation and functioning of certain political institutions. It is an expression of their interconnection and correlation. Therefore, its definition depends on which institutions we base our definition on. According to J. Filip, in terms of the degree of autonomy and participation of the entities of the federation in the performance of their functions, federalism ranges between unitarism (practically zero degree) and confederalism.[5] At least in its basic framework, this aspect presupposes a definition of basic differences on the unitarianism-federalism-confederalism scale. All the more so because the legal framework of the European Union absorbs the features of each of them.

The term "federalism" is derived from the Latin word "foedus", one of the meanings of which is "treaty, agreement".[6] We can also perceive federalism as a

1 Bröstl, 2023, p. 112.
2 Škutova, 2013, p. 85.
3 It can be observed that from the state-law arrangement point of view, several atypical forms of association of states appear in the current period, in which elements characteristic of both the federation and those of the confederation are intertwined.
4 'Given that the constitution does not contain explicit provisions on immutable articles, it is only possible to speak of an implicit material core of the Constitution, the scope of which is determined by the case law of the Constitutional Court. A fundamental decision in this respect was the Finding in Case No. PL. ÚS 7/2017 (the so-called Mečiar amnesties), in which the Constitutional Court stated that the material core of the Constitution consists of the principles of a democratic state governed by the rule of law. As regards these principles, their enumeration is not definitive and is constantly evolving; therefore, it is necessary to assess interference with the material core of the Constitution on a case-by-case basis, taking into account also the intensity of any interference…' – see the Finding of the Constitutional Court of the SR in Case No. PL. ÚS 21/2014 of 30 January 2019.
5 Filip, Svatoň and Zimek, 2006, p. 76.
6 Holländer, 2009, p. 130.

name for the theory of using federal principles to divide competences between the member states and the whole.[7]

Federalism is most closely associated with the existence of a federation, that is, a federal state. In fact, federation is a state of the states that in terms of international law constitute a single entity. At the constitutional level, the basis of federalism as a union is the division of sovereignty between the composite state and the individual member states. However, sovereignty as such cannot be completely divided. In this sense, we understand the division of sovereignty in the spirit of the division of individual areas of social relations between the composite state and the member states, but in these divided areas, sovereignty is already fully exercised either by the member states or the federation. In the outlined context, we can specify the already known vertical definition of competences,[8] determining the position of the member states and of the whole within centralist or decentralist tendencies. Thus, from a seemingly simple construction, several questions arise, the meaning of which may also change during the dynamic development of the federation.

2. Multifacetedness of federalism – a few remarks on the theoretical concept

2.1. Federalism as a way of territorial organisation of the state

Federalism provides the conceptual basis for the federation as a form of a composite state. Therefore, we will also use the term federation as a definition of state designation in terms of the state form. It is natural for each state to divide its territory for the purpose of its effective administration. It is also okay that the state itself determines its territorial units and defines their legal status in a more or less centralised way. If we were to examine a unitary state, the above specification would be definitive in this sense. However, territorial division and the definition of relations between individual levels of territorial and administrative units is also true of federal states, yet this is not always unambiguous.

However, it follows from the nature of the federal state that the essential territorial units of which it is composed are not only administration and government in nature, but that they also have a state law dimension. In the federation, the territory is made up of territorial and political (not administrative) units that have the nature of a state. Thus, at least two state units exist voluntarily next to each other in

7 Simply put, federalism is a method of political organisation that brings together individual states or other political entities within a larger political system, while allowing each entity to maintain its own autonomy.

8 Žofčinová, 2020, pp. 381–392.

one state unit, or the territory of some federations is further divided into the areas of capital cities (districts) or federal (territories), which are directly administered by federal authorities. This is the alpha and omega for any differentiation of composite states. To begin with, we consider it important to emphasise that according to the nature of territorial units in the state, we distinguish:

- Unitary states – their territory is divided into territorial units of an administrative and legal nature, or territorial units of a territorially self-governing nature (e.g., Slovak Republic, Czech Republic, Hungary, Poland), or autonomous territorial units (Italy).
- Composite states – already having territorial units of state law nature in their territory, usually federations (U.S.A., Austria, Germany), but also other forms of composite states (personal union, or real union).

In addition, from the point of view of international law, confederations can be distinguished as unions of states (Switzerland[9]) and other transnational associations, such as the European Union. The nature of the territorial units of the state is thus the dividing line between a unitary and a composite state. However, no less important is voluntary participation. This is because the latter determines the position of relations between the state as a whole and its units (units or internal divisions). At a legal level, these relationships manifest themselves:

- in division of power and competences between the state as a whole and its units, the member states,
- in the legal status and mutual relations of state authorities with the competence of the whole (common bodies of the state as a whole) and the authorities of individual member states.

In federal state units, relations between a member state and its territorial units also arise, which are equally manifested at a legal level by the division of jurisdiction and the competence between the member state as a whole and its territorial units, as well as in the legal status and mutual relations of state authorities with competence in the territory of a member state and the authorities of individual territorial units. Therefore, through the rule of law, the territorial organisation of the federal state operates in a multi-stage manner:

- firstly at the level of federation and territorial units, i.e., the member states;
- subsequently, at the level of the member states and their territorial units, i.e. the self-governing units of the member states;
- but also at the level of federation and territorial self-governing units of the member states within the framework of the application and direct effect of

9 In state theory, Switzerland is referred to as an example of a confederation, the official name of Switzerland is still the "Swiss Confederation" according to the 1999 constitution, but Switzerland is a state unit exhibiting features that meet the definition of a federal state. The United States were also a confederation until the adoption of the 1787 constitution.

federal legislation with respect to these units, which are issued from the position of the centre for the purpose of performing other state functions. Within the framework of EU legal acts, this aspect – direct effect of EU regulations (e.g., GDPR) on self-government bodies – direct intervention in the activities of self-government bodies.

When specifying the organisation of the state as a whole in terms of its territorial organisation, it is also necessary to take into account several fundamental power issues beyond the sphere of territorial self-government. For example, the question of the holder of state power, forms of exercising public power, as well as direct participation of the population in the exercise of public power, which thus take on a three-tier character in the federation.

2.2. Federalism and its place within the principles of constitutionalism

In countries applying a federal state constitution, federalism is, by nature, a constitutional principle. The essential moment in this context is the fact that the federation arises from being enshrined in the constitution, not through an international treaty. It thus becomes a fundamental constitutional principle on which the law of the federation is based and forms the basis for the so-called federal legal standards (federal law).

This aspect is also the basic dividing line for determining the constitutional nature of a body which is a state. That is, whether the body constituting a state (grouping or union of states) operates on a contractual basis within the rules of international law or whether the body constituting a state is based on the value of classical constitutional law, at the same time explicitly expressed in the standard of the supreme legal force. This differentiating criterion also represents the main difference between federation and confederation. Originally, the forms of federation and confederation as concepts were confused. Their content started to become clearer only in the mid-19th century, when confederations referred to looser connections of sovereign states, or unions of states, based on a foundation which took the form of a treaty.

The fact that the legal basis for the establishment of a confederation is an international treaty results in a strict ratification of the founding international treaty of the confederation from the position of all members of the federation. The setting of the creation of primary law of the European Union takes over this model of functioning, which probably sometimes leads to considerations that the legal form of the European Union could have the character of a confederation. A further misleading assumption comes from another aspect of confederation, namely that it is made up of independent states that retain their status of full international entities in terms of international law. They do not adapt their constitutions to the founding treaty of the confederation, on the contrary, the core of their functioning is the constitution, in which they independently (and not infrequently differently from other confederation entities) regulate their internal organisation of the state. At the same time, only the member states are bearers of sovereignty in the confederation. The founding treaty of a confederation is only a

connecting attribute of independent states and must comply with their constitutions. At this point, however, the functioning of the European Union differs significantly from that of a confederation. On the one hand, this is due to the nature of primary law in terms of the principle of its primacy, and, on the other hand, to the decision-making activity of the Court of Justice of the European Union and its established case-law. Similarly, another sign of confederation cannot be applied to functioning of the European Union. This is because confederation lacks a complete system of its supreme bodies, unlike federation. The confederation creates only those bodies that it needs to exercise its competences. As a rule, these are issues of customs, finance, and alternatively foreign policy or defence. However, unanimity also applies to the functioning and decision-making processes of these bodies, which is reminiscent of the functioning of the European Communities before the introduction of decision-making by majority. Moreover, decisions of confederation bodies are not directly binding on the entities of national law in the territory of the confederation member states, only on the member states themselves. Which is also an element that is different from the functioning of the European Union. Similarly, confederation does not usually establish its own citizenship, which is another difference between the federation and the European Union. From a historical point of view, one more differential aspect is visible, that the confederation has mostly represented the so-called transitional form either to create a stronger union, a federation (e.g., U.S.A., Switzerland), or to its demise and the emergence of unitary states (e.g., the former Yugoslavia, the Czechoslovak Federal Republic).[10]

As a constitutional principle, the principle of federation was incorporated by the US constitution of 1787 in such a way that the central power of the federation was derived from the authority and sovereignty of the people, not from a position of the authority of the member states. The member states had the opportunity to express their positions in the framework of the ratification of the constitution, but this did not change the fact that federal power gained the right of its immediate exercise in relation to all citizens. At the same time however, the member states remained equally sovereign in those areas of competence that the constitution defined for them. Based on the aforementioned premise, based on federalism as a constitutional principle and with some modifications, other composite states have been created.[11]

The principle of federalism as a constitutional foundation is expressed by several signs, regardless of whether the constitution explicitly defines it or not. These features

10 The Constitution of the Slovak Republic was created during the time of the common state with the Czech Republic, during the time of the Czechoslovak Federative Republic. The process of its creation was the result of rather turbulent democratic changes that began with the fall of the totalitarian regime in November 1989. The coexistence of the Czech and Slovak peoples in the common state gradually became more and more problematic. In January 1990, shortly after the November events, the Slovak National Council (the chamber of the federal parliament for the Slovak Republic) adopted a declaration, which became a political decision, on the drafting of three separate constitutions – the federal constitution and the constitutions of two member states – the Czech and Slovak Republics. Unfortunately, it was not possible to synchronise the work on the three constitutions in the course of further development.

11 Orosz, 2021, pp. 55 et seq.

are derived from the already mentioned divided sovereignty, which allows member states to build statehood without restrictions. Thus, a clear sign is the coexistence of the constitutions of member states alongside the federal constitution. The same applies to the dual system of state authorities, citizenship, dual legislative, executive and judicial powers. Nevertheless, the basic feature remains the constitutional division of competences between the federation and the individual member states.

Thus, the definition of federalism in the constitution presupposes the definition of the scope which can be stated exhaustively – that is, by a positive enumeration for one of the entities and a negative enumeration for the other federal. If the federation's competences are explicitly enumerated in the constitution and are enumerative in the case of a member state, it will usually be federalism of a decentralised nature (e.g., the U.S.A.). Otherwise, that is, if the competences of the member states are exhaustively defined and the federation has its competence determined negatively (i.e., the federation acts in all other undefined areas), this may lead to signs of centralised federalism. Similarly, Belgium has its powers defined in the constitution, although it is not possible to talk about the excessive centralisation of federalism there now. A special structure of competences in this regard is contained in the Fundamental Law of the Federal Republic of Germany, which, in addition to explicitly defined competences of the federation and the member states, also enshrines the so-called competing legislation. In accordance with Art. 72 para. 1 of the Fundamental Law of the Federal Republic of Germany, rights of priority of federal bodies is provided for, so the member states may issue legislation only if the federation has not exercised this right. The above division of powers leads to centralisation of federation in favour of federacy.

When splitting powers, it is also appropriate to mention the so-called cooperative federalism. It is based on mutual support, solidarity and rational cooperation. It leaves the power conflict between the whole and the member states behind, it is based on the principle of subsidiarity, according to which it is necessary to entrust the federacy only those powers that the member states cannot exercise purposefully, or often not even realistically.

2.3. Federalism and the Form of Government

The basic features of a federal state are:

- composite state – the federation consists of territorial units that are of a state-legal nature;
- the federation is thus a "state of states" that form a single entity in terms of international law;
- the legal basis of the federation is the constitution, the creation or approval of which is participated in by the member states in various forms (qualified majority voting, requirement of ratification by the member states, approval in a national referendum in conjunction with support by a majority in the member states or in a qualified number of them);

- the common (central) constitution of the federation (usually referred to as the federal constitution) defines the division of competences between the state as a whole and its individual parts;
- member states have their own constitutions, which must be in accordance with the federal constitution;
- there is a dual system of supreme state authorities (the federal system of supreme state authorities and the system of supreme state authorities in each individual member state);
- a bicameral structure of the parliament exists in a composite state, within which the second chamber is of a federal chamber nature, i.e., the chamber representing and protecting the interests of the member states (in the federal chamber, the member states are usually represented equally);[12]
- in some federations, special constitutional bodies formed by representatives of the member states in the constitutionally established ratio are created to protect the member states' interests (e.g., the Federal Council in the FRG, representing a kind of a second chamber of the Federal Parliament);
- dual system of legislation (federal and of the member states) exists;
- dual citizenship (federal and of the member states) exists.[13]

Federalism and the form of government cannot be separated, because they are an essential part of the principles of constitutionalism. In addition, in countries using the federal state system, the form of government is fundamentally influenced by elements of federalism. The direction of the relationship of the supreme state bodies depends on its centralisation or decentralisation, which determines the form of government in a fundamental way. If we approach the definition of the term "form of government" in a broader sense, it will be necessary to specify and define the following questions:

12 From this point of view, such specificity was the Czechoslovak Federation as a two-member federation, within which the parity representation of representatives of both republics was guaranteed in the House of Nations of the Federal Assembly. Moreover, when deciding on matters exhaustively defined by the constitutional law on the Czechoslovak Federation, the Czech part of the House of Nations and its Slovak part voted separately, while the approval of both parts of the House of Nations was required to approve the decision in question (prohibition of majorisation).

13 A frequently discussed issue is the possibility of new member states entering a composite state, which is generally accepted, and in some states also sets the conditions for the entry of new states into the federation. The question of secession of a certain member state from the federation is more complicated. Although the right of secession is theoretically generally admitted (despite the classical federations – the USA and Switzerland - not recognising it), it is not explicitly enshrined in the constitutions of the composite states. The exceptions were socialist federations, e.g., it was enshrined in the Constitution of the USSR, although the implementing federal law to this constitutional provision was adopted only in 1990. Ultimately, referendums on secession from the USSR (or referendums on state independence) were held in several Soviet republics and became the constitutional basis for the constitution of independent states. In a similar disintegration process, the SFRY unravelled. In both cases, however, the holding of referendums was associated with armed riots to a greater or lesser degree, and also open military conflicts. In contrast, the constitutional basis for peaceful division of CSFR originated in the constitutional law of the federal parliament without holding a referendum (despite the fact that this institute formed part of the federal legislation).

– who is the bearer of power, i.e., who the power is vested in,
– in what forms the power is exercised,
– what is the legal status, manner of creation of powers and competences of the supreme constitutional bodies and their mutual relations,

It is the last level that determines the form of government in the narrow sense of the word by defining the structure of the supreme, in this case, federal bodies.

3. Federal bodies – creators of federal power

In standard state formations that enshrine federalism in their constitutions, a system of independent federal bodies is envisaged. The peculiarities of these federal bodies can be specified on several levels:

– federal bodies stand along the line of the supreme authorities of the member states, thus implementing a dual system of power in the state,
– they create a separate structure of supreme bodies, mostly copying the structure of the member states, which, however, does not have to be the rule (e.g., Australia and Malaysia are federal states, and their form of government is a constitutional monarchy),
– the type of form of government is determined by federal state bodies according to the mutual relations among them,
– representation of all members of the federation is required in collective federal bodies, and the manner of representation is either parity (e.g., the US Senate) or proportional (Federal Council in Austria),
– the method of formation of collective federal bodies is predetermined. It usually presupposes the direct participation of the member states' citizens in their creation (by direct elections), but the principle of delegation (Federal Council in Germany) is not excluded,
– changing the form of government is thus a bit more difficult, as it requires consent not only from the position of the federation, but also from the position of the member states.
– federal bodies play an essential role within the federation as a whole – they represent and exercise legislative, executive and judicial powers, thus copying the tripartite separation of powers in the state,
– federal bodies also play an essential role externally, in international relations, as they represent the federation and are often the point of contact between the international level and their member states.

In other words, it is impossible to study federalism without examining its supreme bodies.

3.1. The institutions of the European Union as a federal bodies?

Thus, a specific situation arises in the context of the European Union. There is a long-standing dispute over sovereignty between the Member States and the institutions of the Union in the form of a latent conflict over the relationship of European Union law with the constitutions of the Member States. Here, too, it is obvious that the sovereignty of the Union tends to be implemented through the European Union institutions.

The institutions or bodies of the European Union are the factor that played an important role in its integration. Their position has changed, not only in terms of their composition, but also in terms of their powers. The examination of the bodies of the European Union is also important in relation to the future development of the Union. Pursuant to Article 13 of the Treaty on European Union (hereinafter referred to as the EU Treaty) and Article 223 et seq. of the Treaty on the Functioning of the European Union (TFEU) the bodies of the European Union are considered to be the following: the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, and the Court of Auditors. In addition to their exclusive enumerative listing in the Treaties, a common feature of these bodies is that they apply, in the manner provided for in the Treaty, whether they form the standards of European Union law, regardless of where they are domiciled. In another sense, we can also characterise them as authorities that in some way resemble the authorities of the State in terms of powers or, alternately, creation. In this respect we denote them as fundamental or main bodies of the European Union, which have the opportunity to use subsidiary or auxiliary bodies for their activities.

At the level of federalism (and in composite states), it is the federal authorities that perform essential tasks not only in relation to the law of the federation. Particular attention is paid to those federation bodies that are created directly, as their legitimacy is unquestionable. In the European Union, only the European Parliament is such a body.

3.2. Stages of development of the main EU decision-making bodies

At the same time, the historical development of the European Union went hand in hand with development of its main bodies, not only from a quantitative point of view. Although the founding treaties (of the three communities at that time) did not devote a large space to characterise their main bodies (or institutions) within their texts, as is otherwise customary in federal constitutions,[14] those characteristics have been in fact gradually strengthening. When examining the main bodies of the

14 Many theoretical concepts of federalism point to the significant connection of federal bodies with the development of federalism.

European Union, it is important to point out some historical milestones that have marked a leap in their development.

A significant milestone in the development of the main decision-making bodies was the Merger Treaty of 1965. The concept of the original founding treaties of the three European Communities concerning legislative activity was based on a more prominent position of the Council, which was also often presented as the Council of Ministers. Its status in relation to the European Parliament has been reformed by developments only to a minimal extent in the context of the changes showing the trend of strengthening the powers of the European Parliament. However, this has not made the fact that even after more than half a century it still plays a key role in the legislative activity of the European Union any less significant. Thus, we can conclude that the originally created body (one of four), defined in the ECSC founding treaty, remained closest to the concept and the purpose for which it was created. Its name has also remained unchanged, which was modified only in connection with the creation of the European Union. Simultaneously with the signing of the so-called Treaties of Rome, the Agreement on Joint Bodies was also signed, which became effective upon the Treaties of Rome entering into force (January 1, 1958). On the basis of this Agreement, one Parliamentary Assembly and one Court of Justice were thus presented as bodies carrying out activities for all three Communities. In this sense, the position of the Assembly was adjusted in relation to the new communities, when it began to be perceived as the "European Parliamentary Assembly", and its number was expanded to 142 members. In terms of powers, the line of the consultative and supervisory body was maintained in relation to the executive bodies of all three Communities, which had the power to dismiss the EEC and EURATOM Commission without limitation, in the case of the ECSC High Authority, the dismissal had to be based on an unfavourable assessment of the annual report.

In March 1962, the Assembly was renamed the "European Parliament", but this name was not incorporated into primary law until the Single European Act in 1986. The structure of the institutions of the European Communities was thus as follows:

- ECSC – High Authority, Council, Joint Parliamentary Assembly, Joint Court of Justice.
- EEC – Commission, Council, Joint Parliamentary Assembly, Joint Court of Justice.
- EURATOM – Commission, Council, Joint Parliamentary Assembly, Joint Court of Justice.

The aforementioned structure was streamlined on the basis of the Merger Agreement (signed on April 8, 1965, and effective from January 1, 1967), according to which three Councils were merged into one for the joint exercise of powers. The High Authority of the ECSC and the EEC and EURATOM Commission have been replaced by a single Commission. The European Parliament has acquired the power of scrutiny with the possibility of appeal to the Commission. This created a quartet of authorities exercising powers for all three communities, but consistently guarding

their position with respect to each of the communities. When dealing with its affairs, each of the bodies observed the founding agreement to which the matter related.

3.2.1. Trend of Expansion

Following the expansion of the three communities and subsequently the European Union, the expansion of their bodies (with respect to their competences) is beginning to be perceived in terms of both a quantitative and a qualitative point of view. As the integration and cooperation of the European Communities with neighbouring (non-member, or third nation) countries deepened, the issue of institutional reform became more prominent. According to the so-called Luxembourg compromise, major decision-making in the Council was pushed into the background, causing considerable complications in the adoption of legal acts and indicating a change in the direction of integration by an inconspicuous return to classic international cooperation. In addition, this fact was in favour of modifying the decision-making rules and the structure or mutual relations of the individual main bodies. Due to the nature of the legal basis of the bodies under examination (in primary law), the changes took place wholly within the revision treaties. In this context, we narrow the area of examination mainly to selected aspects following the Single European Act (1986), the Treaty of Amsterdam (signed on October 2, 1997, effective May 1, 1999) and the Treaty of Nice (signed on February 26, 2001, effective February 2, 2003).

From among the changes in the proceedings of the Council of the European Union, we consider it important to draw particular attention to the following facts. In connection with the vote, the Single European Act definitively broke the Luxembourg compromise when the application of majority voting in the Council was introduced. At first, harmonisation rules necessary for the establishment of the internal market were adopted in this way, and gradually majority decision-making became the normal way of voting for the Council of the European Union. An important fact from among the changes to the Treaty of Amsterdam was the appointment of a new Secretary-General of the Council as High Representative for the European Union's foreign policy. The Treaty of Nice reassessed the ratios of the so-called "weighted vote" in the Council and introduced a system of the so-called "double majority" (voting based on votes and population). Although the perception of the position and powers of the European Parliament has shifted significantly towards emphasising its role in the functioning of communities, and despite representing the legislative power of individual member countries, it nevertheless remained an institution unchanged from the point of view of how it was created - as a delegation of members of national parliaments.

The way the Commission was created has changed, in that the President of the Commission was to be appointed by the governments of the Member States on the basis of a unanimous decision and the subsequent consent of the European Parliament. The appointment of individual members of the Commission was also entrusted to the subsequent scrutiny of the Parliament. In this context, a kind of fictitious relationship

"European Parliament – Commission" emerged with a conspicuous manifestation of the parliament-government relationship in a parliamentary governmental form. Another revision treaty – the Treaty of Nice – continued to strengthen the European Parliament's powers in the legislative field. It modified the status of MEPs and updated their number. It granted Parliament the full right to become a privileged claimant in invalidity proceedings before the Court of Justice. The position of the President of the Commission was strengthened inwardly, and the President was given a sovereign position towards individual members of the Commission (redistribution of the agenda, appointment of the Vice-President with the subsequent consent of the Commission, obligation of the Member of the Commission to resign if invited to do so by the President and the Commission agrees with it, etc.). The way the Commission was created changed - the President was appointed by the Council with the consent of the European Parliament, then the President proposed the other members of the Commission, who were approved by the European Parliament and appointed by the Council, in consultation with the President-designate and after the Member States had submitted their positions. Each Member State was entitled to be a member of the Commission.

3.2.2. Trend of Reform

The European Union, like other non-EU countries, is in the process of reform. Global conditions across societies cause consequences of a diverse and, above all, unpredictable nature. The ongoing changes clearly affect the internal market, but in a subsidiary way, they cause an increase in new aspects in the position of Member States. An attempt at responding to those circumstances was in fact the Lisbon Treaty (signed on December 13, 2007, and effective from December 1, 2009), which itself entered into history with a subtitle of the "Reform Treaty". The reform function in relation to the examined bodies was fulfilled in some way, although the original ambitions indicated a broader scope of changes, which were to be reflected in the impact on the entire area of public administration also in the position of individual Member States. Last but not least, the very activities of the European Union bodies in the so-called border issues implemented[15] a certain latent process of changes from the inside. Changes in the positions of the examined bodies are undoubtedly of a broader nature than those listed here, but in the context of this chapter and in accordance with the examined attributes, we consider it important to draw particular attention to the following. The Council of the European Union remained the main legislative body of the European Union, which, even though having undergone some changes in its development, remained fundamentally unmarked by them in terms of its powers or composition. The changes were implemented only for the purpose of improving operations and streamlining decision-making processes. The six-month rotating presidency of the Council was preserved with the modification of the coordination of

15 Žofčinová, 2016, pp. 45–53.

three consecutive states (the so-called "troika formation"). The High Representative for Foreign Affairs and Security Policy was appointed to the Foreign Affairs Council as its Permanent President.

Substantial changes were introduced by the Treaty in relation to the European Parliament, which extended its powers in the field of legislation, the Union budget and international treaties. In terms of the European Parliament creation, it is rightly denoted as the "legitimately elected body". The power of the legitimate process of direct elections is unquestionable; the handing over of a mandate from the source of power (the citizens) should obviously result in a real possibility to exercise that power. Its role also changed by the fact that it gained the right to take a position on (and subsequently to approve or not to approve) the issue of admission of new Member States to the Community. The legislative process of cooperation was enshrined in secondary legislation, and it also affected the position of the European Parliament. From the original advisory – consultative power, the Parliament was granted a substantive share in the area of legislation, the Union budget and international treaties in the ordinary legislative procedure.

The powers of the Commission to issue implementing rules for legal acts adopted by the Council were partially expanded. According to the original version of the Lisbon Treaty, the number of members of the Commission was to be reduced. Based on the so-called "Irish Protocol" the principle that each Member State would have one representative in the Commission was retained. The European Parliament's relationship with the Commission was strengthened, in that the President of the Commission was elected by Parliament on the basis of a proposal from the European Council in accordance with the results of the parliamentary elections.

At present, it is difficult to predict in which direction developments in the area under examination will take us. In connection with global events (war conflicts), no revision of the founding treaties is planned, but it is also not possible to exclude the factual strengthening of the main bodies of the European Union.

3.3. The European Parliament

Elections to the European Parliament will take place in all Member States in 2024. At the same time, the European Parliament is the body whose transformational development is the most pronounced among the bodies of the European Union. I will mention some of its historical milestones:

The predecessor of the European Parliament was the Parliamentary Assembly (hereinafter referred to as the "Assembly"), which was established under the Treaty of the European Coal and Steel Community (1951) and consisted of 78 representatives, delegates from the national parliaments of the six founding countries (France, Germany, Italy, the Netherlands, Belgium, and Luxembourg). Thus, it was in the position of an indirectly created body, from members of the parliaments of the Member States, i.e., from representatives of the legislative power within individual Member States. The powers initially conferred did not indicate that the Assembly was planned

as a fundamental legislative body, and most likely not as the only law-making body. In accordance with the founding agreement, it was vested with mainly consultative (in budgetary matters) and supervisory powers. Its task was also to supervise the activities of the High Office, evaluate its annual report, or divest it of full powers in justified cases permissible by the treaty. The first Assembly conceived in this way convened on September 10, 1952 in Strasbourg.

In March 1962, the Assembly was renamed the "European Parliament", but this name was not incorporated into primary law until the Single European Act in 1986.

The first direct elections to the Parliament were held in June 1979, in July of the same year the European Parliament began to operate with 410 Members from nine Member States at its headquarters in Strasbourg. The transnationality of the European Parliament was supported by the fact that its members, namely deputies, lost their dependence on national parliaments and, from the point of view of creation, presented direct legitimacy in the sense of the legitimation chain through direct elections. The Single European Act once again extended the role of the European Parliament, which gained the right to express its opinion on the issue of admitting new Member States to the Community and subsequently to either authorise or not authorise their entry. The legislative process of cooperation was enshrined in secondary legislation and it also affected the position of the European Parliament. From the original advisory, consultative power, the Parliament was granted a substantive share in the creation of some legal acts. In practice, this meant that the Council could only adopt the common position after hearing the opinion of the European Parliament, but still without the need for its consent. The Maastricht Treaty significantly strengthened the role of the European Parliament in both legislative and supervisory work. For example, the introduction of the co-decision procedure strengthened its participation in the creation of secondary legal acts. It was granted the so-called budgetary power (in the process of creating the European Union budget). In relation to the Commission, Parliament has acquired the right to request legislative action (the so-called indirect legislative initiative) and its power to appoint the Commission has been strengthened. At the request of at least a quarter of its Members, it was allowed to set up "inquiry committees" to investigate offences or misconduct in the implementation of Community law before the Court of Justice. The extension of the powers of the European Parliament was renewed in the legislative area under the Treaty of Amsterdam, when the number of sectoral policies in which the co-decision principle was applied to the adoption of legal acts was increased. The number of Members of the European Parliament also increased, with the Treaty introducing the principle that it must not exceed 700 Members. The amendment to the Lisbon Treaty, amended by the "Irish Protocol", provided for a maximum of 751 Members, with each State needing to have at least six and no more than ninety-six Members. The current European Council Decision (EU) 2023/2061 of 22 September 2023 establishing the composition of the European Parliament, changed the number of Members of Parliament to 720.

On the basis of a brief historical excursion, we can see that the European Union made efforts to strengthen sovereignty and increase legitimacy precisely by

strengthening the position and powers of the Parliament. As already mentioned, 2024 is an election year for the European Parliament. The elections in individual countries will take place between June 6 and 9, 2024, with more than 400 million eligible voters in the 27 Member States. The Charter of Fundamental Rights of the European Union (hereinafter referred to as the "Charter"), which became legally binding upon the Treaty of Lisbon entering into force on 1 December 2009, regulates the right to vote in its fifth title entitled "Civil Rights". The right to vote is specified by the Charter in Title V in Articles 39 and 40. The above-mentioned articles deal only with electoral law at the supranational and municipal level, which is a logical procedure for not interfering with the national level in the area under examination. In relation to the transnational level, Article 39 touches on the active and passive electoral rights of the European Parliament, namely the specification of entities entitled to vote in elections. It also lays down the principle or principles of the exercise of suffrage, which are already the traditional universality, directness, secrecy, and freedom of elections. The above-mentioned level of the regulation completes the general provisions of the electoral law in connection with the fact that citizens of the European Union have the right to elect their representatives, i.e., directly create a representative body on the basis of the legitimation chain.

The regulation on how elections are carried out is the exclusive competence of the Member States. Although there are some common rules on elections, some aspects may vary from country to country, such as whether it is possible to vote by mail or from abroad. The days on which elections are held also vary. Universally, they start on a Thursday (the day when elections are usually held in the Netherlands) and end on Sunday (when elections are held in most countries). Equally, the conditions for candidacy for the European Parliament are set by the states themselves. In the elections, national political parties compete for votes, some of which are affiliated with a pan-European political party. The European dimension comes only after the elections, when elected deputies can become part of transnational political groups.

In this case, the civic dimension is of a specific nature, as it grants rights to entities and citizens of the Union, explicitly specified in the "Civil Rights" section. These rights, and that also means the right to vote, may be held by entities that are entitled to the status of "citizen of the European Union". An EU citizen is any natural person who holds the citizenship of any of the Member States. Due to the nature of citizenship of the Union, the citizenship principle is reduced to citizenship of a group of Member States. Here we identify one of the basic limits of European integration – the clash of state sovereignty with the personification of citizenship. On the one hand, the fact that EU citizenship is linked to the citizenship of a Member State makes it de facto uncontrollable for EU citizenship holders. At the same time, it is impossible for the European Union to interfere in the relationship of "Euro-citizenship", the conditions for its acquisition or loss are in the hands of the Member State. With the withdrawal of a member state, the European Union also loses voters to the European Parliament, for example. These facts negate the basic principle on which sovereign states stand – the existence of their own population, the bearer of

legitimacy and the creator of state power. Thus, Euro-citizenship does not play an important role in relation to the creation of the European Parliament, the citizenship of a Member State is crucial in this respect. The non-existence of the European peoples can be considered a "democratic deficit of the EU", but on the other hand, it cannot be overlooked that EU membership, by its very nature, extends democratic institutes in the Member States in a not insignificant way, given that

- in the vast majority of Member States the key issues of EU membership are decided in a referendum,
- citizens of the Member States directly elect their representatives in the European Parliament
- citizens of the Member States can participate in European petitions addressed to EU bodies and turn to the European Ombudsman with their initiatives,
- citizens of the Member States become the bearers of the fundamental rights enshrined in the Charter of Fundamental Rights of the EU, respect for which is guaranteed both by national courts and by the EU judiciary.[16] If we look at statistical indicators, the area of countries whose borders form the external borders of the EU (sometimes not very correctly referred to as the EU area) is more than 4 million km^2. The population accounted for by the Member States is approximately 448.4 million km^2. So far, elections for the European Parliament have been held a total of 9 times. The electoral turnout of citizens of all Member States oscillates around 50%. The highest turnout was in 1979, when parliament was elected for the first time and elections were held in nine Member States. Conversely, the lowest turnout was in 2004, when 10 new Member States took part in the elections for the first time. So far, the Slovak Republic has the first place in the lowest participation of all Member States. According to statistical indicators, we can perceive that only half of the possible voters exercise the sovereignty of their power in relation to the EU, which distorts the idea of four million European citizenship. However, statistical indicators also indicate a significant polarisation of society, which is also visible on a European scale. These are the challenges that the European Union will have to face in the future, and even when organising relations with Member States, it will have to reflect on the personnel substrate behind it.

4. Federalism and political issues

Federalism and the political scene cannot be separated. Federalism and politics are intertwined and the former also constitute a research topic in political sciences. In a broader sense, it also refers to the process of association (or integration) of

16 Orosz, 2021, pp. 56–67.

several units into a certain whole or a union. Such a whole can take various forms – it can be an association of the territory, an association of a political entity, a society, states, and the like. The political interconnection is then apparent both in the institutional and the functional aspect, i.e., in the special functioning of political and state institutions. Similarly, the institutions of the European Union arise from the political basis. Primary political interconnection is inherent in the European Council and the Council of the EU. The only EU body having a direct political mandate from the citizens of the EU Member States is the European Parliament. However, secondary political interconnectedness can be found in all major EU bodies.

The aim of this paper is to examine the interconnectedness of the political sphere and federalism (as a result of integration) in selected, and in some way borderline aspects of the constitutional level, with an emphasis on the supranational framework of the European Union. The examined level is definitely wide-ranging, that is why attention shall be focussed only on those aspects that piqued our interest especially in connection with the Slovak Republic's experience with federalism. If generalised to a certain extent, a parallel with the current political situation in the European Union can be discerned.

The basic question in this context is then the determination of the degree of influence of the political elite on federalism, the answer to which necessitates exploration of the topic at several levels. Namely:

1) Influence of the political scene at the birth of federalism
2) Influence of the political scene during the life of federalism
3) Influence of the political scene upon the demise of federalism

Drawing from examples of individual stages experienced in the Slovak Republic, we want to point out the danger of underestimating the impact of political context in the European Union. The unsuccessful ratification of the Treaty establishing a Constitution for Europe in 2004, or the so-called "Brexit", which began with a referendum in 2016, showed that the political elite in a state can have a very significant impact on decision-making processes related to state law issues.

Under the political elite, we mean representatives of the political spectrum, especially from the ruling, but also from the opposition political parties, as long as they are in a position to actually influence public opinion. The position of political parties is far from stable. It has undergone development in the same way as the states have evolved themselves. What is certain, however, is that the promoted values of the ruling political parties have a significant influence both at the birth and during the course of the functioning of federalism.

4.1. Nationalism versus Functionality – Premises of Federalism

As a part of the federal state, the Slovak Republic's history is not long. From Czechoslovakia's founding in 1918, it was part of a unitary state. The constitutional existence of two independent nations (although in a way close to each other) in

the form of a unitary statehood brought subsequent problems. On the other hand, it must be said that this historical journey together enriched, developed, and helped to overcome the obstacles of historical development in Europe.

The disintegration of Austria-Hungary proved to be a good starting point for the emergence of independent states. Just as a few decades later, the disintegration of the socialist bloc posed a good opportunity for the preparation of a relatively large number of states from behind the former iron curtain for the enlargement of the European Union. Both events were the result of the regrouping of forces of the political spectrum and the changes made to the continental political grouping.
The first Constitution of Czechoslovakia of 1920 was internationally recognised and considered one of the best constitutions of its time. However, the political spectrum that constituted it dealt with the question of the legal arrangement of the state in a special way. Despite several indications in favour of a composite state, the Constitution of the Czechoslovak Republic of 1920 introduced a unitary one. Although it built on the dualism of the legal arrangement of Austria-Hungary, it gradually planned to replace it with a uniform legal arrangement. Originally, territorial units (the Czech Republic, Slovakia, and the Carpathian Ruthenia) were to be equal, which was reflected in the symbols of the state (especially in the state coat of arms, in the national anthem). The bearer of the sovereignty of the new state became the united "Czechoslovak nation". State citizenship in the Czechoslovak Republic was conceived as the only one and uniform (§4 of the 1920 Constitution).

Very clear political positions that were of practical importance in the concept of a common Czecho-Slovak state began to be realistically manifested earlier, already in the years of the First World War. The concept of independent Czechoslovak statehood, as determined by the Czechoslovak Foreign Resistance represented by T.G. Masaryk, E. Beneš and M.R. Štefánik, began to apply.[17] Based on the Martin Declaration of October 30, 1918, representatives of Slovak political parties declared that the Slovak nation was part of a linguistically and culturally historically united Czech-Slovak nation.[18]

17 However, many socio-political events indicate that the idea of a Czechoslovak state (the constitution and integrity of the nation state) was gradually being conceived even earlier. Largely involved in the process was T.G. Masaryk, who began to combine the Czech and Slovak issues into a common Czechoslovak idea. He formulated it in his work 'New Europe: Slavic Opinion', which was also published in the so-called Washington Declaration.

18 Originally, an important manifestation of the idea of the joint statehood of the Czechs and the Slovaks was the signing of the Cleveland Agreement by representatives of the Slovak League and the Czech National Association in the USA on October 22-23, 1915. (On behalf of the Slovak League it was signed by its chairman Albert Mamatej and the secretary Ivan Daxner). The agreement set out an agenda for the union of the Czech lands and Slovakia in the form of a federative union with the full autonomy of Slovakia, which envisaged the establishment of its own parliament for Slovakia, its own state administration with the state language being Slovak. The state was to be democratic with universal and direct suffrage via secret ballot. Subsequently, the Pittsburgh Agreement (May 30, 1918), which was signed by representatives of the Czech National Association, the Union of Czech Catholics and the Slovak League, already marked a retreat from previous positions. Notably, the strengthening of the Czecho-Slovakism idea, and the fiction of a united Czecho-Slovak nation as a state-forming factor

The constitutional enshrining of the fiction of a united Czechoslovak nation and the centralist exercise of "power from Prague" in practical life undermined relations on the Slovak part. Tension was increasing together with a deepening sense of non-recognition of Slovaks as a distinct nation. This resulted in escalation of requests for Slovakia's autonomy. The unequal status of both parts of the Republic was also exacerbated by the economic policy of the state, which meant an increase in unemployment in Slovakia and emigration.

Throughout the entire existence of the pre-Munich Republic (1918–1938), relations between these two nations were not resolved at the state law level, and the demands of the Slovaks were regularly dismissed as unjustified. The small share of Slovak representation in central government and the lack of institutional guarantees (no national state bodies were established) led to tension and the destabilisation of the state. Attempts at change soon followed. Already in the summer of 1921, the Slovak People's Party submitted three specific bills on autonomy, justified as efforts to implement the Pittsburgh Agreement (1918), according to which Slovakia was to have its own assembly, administration, and courts in the common state. However, neither of the bills were addressed in the Parliament. The most famous of the bills drafted by Dr. Vojtech Tuka was the Draft Union Charter of the Czech - Slovak Federal Republic (the so-called Tuka's Constitution). Although it was not an official document, it established the confederal symbols of the Czechoslovak state.

Based on the assessment of historical facts, it can be documented that the issues of Slovakia's position were a secondary problem in the Czech policy promoting the creation of a new state formation.[19] Ultimately, when the Czechoslovak state was es-

were introduced. It no longer spoke of a federative union of the future state. According to the text of the agreement, 'Slovakia shall have its own administration, its own assembly and its own courts. Slovak will be the official language at the school, at the office and in public life'. It can, therefore, be concluded that this was to be an arrangement analogous to autonomy. This agreement had no political or legal significance. Only the constitutional bodies of the new state could decide on the future shape and form of the Czechoslovak state. See: Palúš and Somorová, 2010, pp. 26 et seq.

19 Two days after the National Committee in Prague declared an independent Czechoslovak state (October 28, 1918), representatives of the Slovak public and cultural life met in Turčiansky Svätý Martin with the aim of discussing the post-war development of Slovakia, officially establishing the Slovak National Council as a representative body and on its behalf endorsing to the idea of the right to self-determination and the creation of a common state with the Czechs. History then played one of its paradoxical stories. Slovak politicians negotiating in Martin did not know that the Czechoslovak state had already been declared in Prague. So they elected the National Council and adopted the Declaration of the Slovak Nation. When the text of the Declaration was brought to Prague on November 1, 1918, it received a warm welcome by the National Committee. The Committee considered it a sufficiently clear declaration of the Slovaks on the common state. From the point of view of state law, it was undoubtedly a fundamental document that can be included among those that laid the formal foundations of the Czechoslovak state. According to the Declaration, representatives of all Slovak political parties assembled on November 30, 1918, in Turčiansky Svätý Martin, organised at the National Council of the Slovak branch of the united Czechoslovak nation, insisted on the principle of self-determination adopted by the whole world. At the same time, the National Council embraced the fact that 'the Slovak nation is a part of the Czechoslovak nation unified through speech, culture and history'. See: Palúš and Somorová, 2010, pp. 30 et seq.

tablished, the Slovak representation accepted the ideas and program of the Czech political representation.[20] The subsequent development of Czechoslovakia in relation to the state system was characterised by a recurring question of the legal arrangement of relations between Czechs and Slovaks on the principle of equality. The constitutions of 1948 and 1960 were shaped by the socialist regime, and the political spectrum was represented by a single communist party. Any changes were only possible in the spirit of the leading party's policy line, and changing the unitary state was not one of its priorities.

As part of the adoption of the constitution in 1948 in the post-war period, a process of centralisation began, marked by the suppression of any federalist tendencies. In terms of the state legal arrangement, the Constitution defined the Czechoslovak Republic as a united (unitary) state of two equal nations of Czechs and Slovaks. Although it declared the autonomy of the Slovak nation (autonomy sui generis), institutionally the model of a unitary state with an asymmetrical arrangement was confirmed. This meant that, in addition to the Czechoslovak authorities, it anchored the existence of Slovak national authorities with limited autonomy, but it did not anchor any Czech national authorities. The Slovak national authorities (the Slovak National Council – as a legislative body and the Trustees Corps – as an executive body) had only very limited competence and were essentially fully dependent on the Czechoslovak authorities, in particular the Czechoslovak government. This model formally persisted until the adoption of the Constitutional law no. 143/1968 Statutes on the Czechoslovak Federation.

With respect to the political spectrum, the relationship between the legal constitution and the de facto constitution was significantly bound to the political regime at a specific historical stage. The political regime either more or less respected the constitution, or ignored it either to a certain extent, or completely. In the period from 1920 to 1938, the constitution was principally respected and was the basis of a pluralistic democracy; on the contrary, in the period from 1948 to 1989, the reality was political dominance over the authority of the constitution. Nevertheless, in neither period was the state law arrangement issue able to be resolved to the satisfaction of both nations.

The 1960 Constitution was centralist in the matter of the state law arrangement with only formal remnants of the asymmetric model. As part of the attempt to find a new solution for the executive bodies of the Slovak National Council, the Trustees Corps was dissolved. The Slovak National Council was described as a "national body of state power and administration in Slovakia", but its competence was only symbolic. Neither did the "efforts" to partially improve the activities of the Slovak authorities in 1963-1964 turn out to be positive. This confirmed a newly learned fact that the asymmetric model proved to be inappropriate and incapable of implementing the equal-with-equal principle in the conditions of Czech and Slovak coexistence. Subsequently, on October 27, the National Assembly adopted a constitutional law no. 143/1968 Statutes on the Czechoslovak Federation, which established the so-called dual-entity federation on a

20 See: Posluch and Cibulka, 2009, p. 53.

national basis. The foundation of the federation stemmed from the recognition of the national sovereignty of the Slovak and Czech nations, which was a significant contribution to the already curtailed reform process. This resulted in the transformation of the Czechoslovak unitary state into a composite federal state. As the federation's entities, two national republics were created, the Czech Socialist Republic (CSR) and the Slovak Socialist Republic (SSR), which reflected the proclaimed principle of two equals now at the institutional level. The reason for the creation of the federation was a renewed dissatisfaction of Slovakia in a unitary state, but the political spectrum of Slovakia was already strong enough to try implementing the changes in question in the spirit of socialist internationalism. The system of federal bodies (bicameral Federal Assembly, President, Federal Government, Federal Departments, Office of Attorney-General, Supreme Court and Constitutional Court of the Federation) and the system of the two republics' bodies were constituted (Czech National Council and Slovak National Council, Republics' Governments, Departments, Supreme Courts in the respective Republics and the Constitutional Courts of the National Republics were also to be established). The competence between the federation and the republics was divided into three groups: the exclusive competence of the federation, the joint competence of the federation and the republics, and the exclusive competence of the republics. The exclusive competence of the federation and the competence of the federation in common matters was explicitly enumerated in the constitutional law. The republics were given competence over other matters.

4.2. Political Context in the Functioning of the Federation

The process of federation formation was greatly influenced by the political events of August 21, 1968. The territory of Czechoslovakia was occupied by Soviet troops and other allied armies, which ended the ongoing process of reform. Although the representatives of the former USSR also expressed reservations about the federal arrangement of the Czechoslovak Socialist Republic, the process of adopting a federation constitutional law came to fruition in October when it passed in the parliament. However, the political situation in the country was not conducive to a genuine practice of federalism, so the process of the so-called "normalisation" began, the main feature of which was significant centralisation of political and state power. As soon as December 1970, the Federal Assembly passed a set of laws that substantially changed and distorted the content of the federation. These changes, which substantially limited the powers of the republics in favour of the centre, were part of the overall normalisation tendencies launched in April 1969.[21] Federalism was only

21 For example, constitutional law no. 125/1970 Statutes, amending the constitutional law no. 143/1968 Statutes on the Czechoslovak Federation, which, in accordance with the political objectives of the Communist Party of Czechoslovakia and the escalating "normalisation", enforced centralist elements, especially in matters of competence, so that the republics were deprived of the opportunity to influence the fundamental economic issues of the state by their authorities.

a matter of a formal statement, the constitutions of the republics, required by the constitutional law on the Czechoslovak Federation, were not adopted. Federalisation elements were increasingly weakened by both legal and factual means, which translated into a strongly unitarised federation. While each of the two republics had its own legislative body (the national council), and its own government,[22] the specific principle of prohibition of forming a majority nonetheless applied. It consisted of the fact that when voting on certain laws, the consent of the majority or the constitutional majority (of three-fifths) of representatives elected in the CSR, and the majority of representatives elected in the SSR was required.

The political influence of that time was very strong. The Czecho-Slovak Federation was established at a time when it could not rely on satisfactory internal and external political and democratic conditions and found itself more or less alone in the midst of other suspended reform actions. This was coupled with Moscow's negative international political pressure. In fact, acting on the principle of democratic centralism, the power monopoly of the Communist Party decided that its priority was the political-state unity of the state in the spirit of the idea of a united Czechoslovak statehood.

4.3. Political Influences in the Demise of the Federation

Fundamental changes in the context of dysfunctional federalism occurred after the events of the so-called "Velvet Revolution" in November 1989. It was a transition from a totalitarian socialist statehood model to the formation of a modern democratic state governed by the rule of law. Yet the issues of the state law arrangement continued to resonate, especially on the part of Slovak representatives. It was mainly a new division of competences between the federation and the republics, which would otherwise determine the degree of political and state law independence of the republics. In connection with addressing this problem, several official meetings of the heads of both the federal and the republics' governments were held with the participation of other representatives of political life, including the President of the Republic, V. Havel, in the second half of 1990. The result was the so-called "competence law", which redefined the competences between the federation and the republics in a new way.[23] It strengthened the position of the national republics in the area of foreign policy, defence and other important economic areas and extended the power of the republics' authorities in adopting federal laws. Crucial decisions remained in the hands of the federal authorities.

Still, the expected release of tension in the relations between the federation and the Republics failed to materialise. On the contrary, its adoption raised considerations about the inflexibility and dysfunction of such a federation on the part of federal authorities, meaning the competence law can be described as a missed opportunity.

22 The Czech National Council had 200 deputies, the Slovak National Council 150 deputies.

23 Constitutional law no. 556/1990 Statutes, amending constitutional law no. 143/1968 Statutes on the Czechoslovak Federation.

Initiated by the President of the Republic in the first half of 1991, several meetings of official representatives of the federation and the Republics and representatives of the coalition, later also the most important opposition political parties, were held in order to resolve the fundamental question of the constitutional system of the Czechoslovak Republic, i.e., the question of the state law arrangement. Many concepts have been put forward, ranging from completely unitarian on the one hand, through the concepts of federalism, federation, and confederation to the concepts of complete sovereignty and independence of the Republics on the other. This only confirmed the complexity of the issue raised and the diversity of competing views on its resolution.

In these negotiations, it was principally agreed that the new constitutional system should be built from the grassroots upon the initiative of the Republics. Formally, this fact was to be reflected in the application of the so-called contractual and ratification principle, according to which the basis of the new constitutional system was to be a treaty (agreement) between the Republics or between the CNC and the SNC, subsequently approved by the Federal Assembly, with the new constitution of the CSFR being subject to the approval (ratification) of national (Republics') parliaments.[24] This cleared some space for the preparation and conclusion of a state (state-law) treaty on mutual coexistence between the Republics.

In the second half of 1991 and at the beginning of 1992, a number of complex negotiations took place between the leaderships of the CNC and the SNC and their expert groups, which eventually resulted in a draft Treaty on the Principles of the State Law Arrangement of the Common State in Milovy in February 1992.[25] Nonetheless, some issues in the content of the draft treaty remained contentious.[26]

Due to the fact that the most contentious issues in the draft treaty could not be removed because of upcoming parliamentary elections, negotiations between the CNC and the SNC leaderships were suspended. The rivalry became apparent in the relations between political partners in connection with the upcoming elections. This essentially ended the talks on the possible adoption of the basic postulates of the new regulation of the common state, exhausting the political possibilities of finding a consensus on the mode of coexistence in the common state.

The political parties – the Movement for Democratic Slovakia (HZDS) in Slovakia and the Civic Democratic Party (ODS) in the Czech Republic won in the parliamentary

24 More details: Palúš and Somorová, 2010, pp. 47 et seq.

25 The SNC leadership did not pass this bill (February 12, 1992) (the vote ended at 10:10). On March 5, 1992, the leadership of the Czech National Council declared that there was nothing left to negotiate about. More details: Orosz, 2009, p. 27.

26 The disputed issues in the draft treaty were, in particular, the legal nature of the treaty (agreement), its entities and it being legally binding; the succession (procedure) of steps in the creation of a new constitutional system of Czechoslovak Federative Republic, the Czech Republic and the Slovak Republic; the method of ratification of federal constitutional standards, the division of competences between the Federation and the Republic, especially in the field of foreign relations, finance, transport and communications, etc.

elections held on June 5 and 6, 1992. Neither of these political parties had the split of the federation on their election agenda. Their election agendas only contained proposals for changes within the existing form of the state law arrangement. ODS proposed that the competences of the federation should be clearly defined, advocated a federation with strong competences of the centre, inclined toward the so-called functional federation. HZDS favoured the loosening of the federal union in favour of the confederative elements or confederation assuming the international sovereignty of each of the two Republics.[27]

Divergent views on the state law arrangement proved irreconcilable. Negotiations to maintain a common state have not been resumed by these political parties and they have not been able to find a recourse for agreement. Space for the concept of constituting separate sovereign Republics emerged. In the above case, the influence of political elites on the split of federation is apparent. This happened despite the fact that through their respective election agendas, they did not receive a mandate from voters to decide on the issue.

It can be said that the initiated process of dissolution of CSFR was the result of an objective situation created by the elections, which escalated also as a result of uncompromising ambitions of the winning election entities in both republics. Despite the predominance of political negotiations and agreements on the method of splitting the CSFR, there was a clear effort to make the division cultivated and peaceful, as well as to make this procedure constitutional. The purpose of these efforts was to create a constitutional space (framework) for a constitutional decision on division of the federation.

Thus, an original way of dividing a federation consisting of two entities was implemented in Czechoslovakia in a constitutional way. It consisted of gradual decentralisation of the federation and the transformation of the then constitutional system in a manner which enabled its division.

Significant in this process were the negotiations of the HZDS and the ODS on August 26 and 27, 1992 in Brno, where both parties agreed on a detailed schedule for the subsequent division procedure. For the first time, the date of January 1, 1993 was set as the date on which the division would actually occur.[28] Thus, federal state power disintegrated.

The constitutional basis for the division of Czechoslovakia was not a referendum, although it was a constitutional option. At that time, the referendum was regulated by constitutional law no. 327/1991 Statutes on Referendum. This law envisaged the use of a referendum on fundamental issues of the state law arrangement of the Czechoslovak Federation (an optional referendum) and on the issue of the withdrawal of the Czech Republic or the Slovak Republic from Czechoslovakia (an obligatory referendum). The referendum was not declared because the representatives of the political parties could not agree on the issue thereof. They gave priority to the

27 See, e.g., Stein, 2000, pp. 48–54, 159 et seq.
28 Orosz, 2009, pp. 25 et seq.

agreement of political leaderships in the federal parliament expressed in the adoption of the constitutional law.

Thus, the dissolution of Czechoslovakia and the creation of two successor states took place in a constitutional (legal) manner under the following constitutional regulations:

- constitutional law no. 541/1992 Statutes on Division of Property of the Czechoslovak Federative Republic between the Czech Republic and the Slovak Republic and the transfer of title thereto to the Czech Republic and the Slovak Republic (of November 13, 1992)
- constitutional law no. 542/1992 Statutes on Dissolution of the Czechoslovak Federative Republic (of November 25, 1992)
- constitutional law no. 624/1992 Statutes on the Termination of the Tenure of Judges and on the Termination of Public Service Employment in Connection with Dissolution of the Czechoslovak Federative Republic (of December 17, 1992)
- Constitution of the Slovak Republic no. 460/1992 Statutes (of September 1, 1992, specifically Articles 152 to 156 of the Constitution).

With respect to the Czech Republic also:

- Constitution of the Czech Republic, constitutional law no. 1/1993 Statutes (of December 16, 1992)
- constitutional law of the Czech National council no. 4/1993 Statutes on measures related to the dissolution of the Czechoslovak Federative Republic (of December 17, 1992).

From a historical perspective, it is noteworthy that the Federal Assembly elected as the parliament of the Czechoslovak Federation decided on the dissolution of this federation and of itself. From a political point of view, it undoubtedly exceeded the legitimacy of the election agendas of political parties, on the basis of which elections were held in 1992 and in which, barring one exception (the agenda of the Slovak National Party), the dissolution of Czechoslovakia was not mentioned at all.[29]

4.4. European Consequences (in place of a conclusion)

The European Union is not a typical textbook example of federalism.[30] First of all, it lacks a state law basis, as international treaties continue to be its primary law.

29 See: Klíma, 2003, p. 162.

30 The fundamental legal limit is the very delimitation of the form of the European Union as a supranational international organisation - an integration grouping. Legislative limits are defined by the Lisbon Treaty in its Art. 3a, para. 2: 'The Union shall respect the equality of Member States before treaties, as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order, and safeguarding national security. In particular, national security remains the sole responsibility of

Also absent is the voluntary component of the Member States that established the international organisation and entrusted it sovereignty only to this limited extent. In fact, it shows signs that give rise to controversy in the area of state law. Examining the political context, it can be stated that the tendencies towards federalism will be directly proportional to the political representatives of individual states. In the simplest of terms, the political spectrum of the EU can be explained as being from barely identifiable to unidentifiable. When work began on the Treaty establishing a Constitution for Europe in 2001, which was to create the so-called Constitution of the European Union, the political elite of the EU envisaged this Treaty a success. On the other hand, the political spectrum also has its own political life in the European Union. This, however, is the case only in the context of the composition of the European Parliament, and even then to a limited extent. The upcoming European Parliament elections in 2024, even with increased mandates, may change this political spectrum, which, however, can never be created solely from the position of the European Union itself. It will always be a reflection of the political forces of individual states, although the subsequent formulation in political fractions is already modifiable in a way. However, the fundamental power of the political spectrum lies in the representatives of the executive power in the Member States, mainly through the European Council and the Council of the EU. The current political arena in individual Member States may consist of several levels – the so-called three-component system in the case of federal Member States (e.g., Germany, Austria)[31] or the two-component system in the case of unitary Member States. Of the policy instruments, a referendum may play an important role, which in the case of federal Member States can be implemented at three levels, federal, state and local. A certain proportion between the exercise of political power in the state and increasing centralisation has the possibility to hinder any undesirable efforts that would threaten the current position of the Member State. Clear signals of satisfaction or dissatisfaction unambiguously manifest themselves in, for example, unexpected non-acceptance of documents of a fundamental nature (Treaty establishing a Constitution for Europe).

Despite the above, I consider it important to draw attention to the danger of the factual level of federation, which has no support in the legal system, both in the negative sense of the word on the above-mentioned example of the Czechoslovak Federation from 1968, when the federation did legally exist, except that on a real level it did not. Still the same, if not greater, danger is identifiable in the opposite case, namely if there is no federation from a legal point of view, but real elements of federalism are exhibited. In conclusion, I would like to point out that all the characteristic features of a federation (divided sovereignty, dual constitution, dual citizenship, dual system

each Member State.' Similarly, in Art. 263 of the Treaty on the Functioning of the European Union, it is added that 'The European Union is a Union based on the rule of law that has established a complete system of legal remedies and procedures designed to enable the Court of Justice of the European Union (CJEU) to review the legality of the EU institutions' acts.'

31 At federal, Member State and local level.

of state bodies, etc.) are always perceived in correlation with the current political system of the federation. Thus, for example the long-term dominant position of one or more parties without appropriate dialogue leads, over time, to the de facto emptying of the institutes of the federation. (e.g., Czechoslovak Federative Republic, Russia, Mexico). If the leading political parties promote the centralisation of a federation, it results in the weakening of the member states' autonomy, regardless of the number of powers entrusted to them by the federal constitution. Strengthening the federation does not have to be implemented directly by changing the federal constitution, it can take place through judicial interpretation, but also in a latent way – by promoting cooperation between the two levels in all areas. This leads to an increase in bureaucratisation, a loss of clarity of competences and, ultimately, the strengthening of centralisation tendencies. This actually deepens grassroots integration, in a factual way.

The broader context of the historical interpretation of constitutional sciences shows that some models of constitutional relations are repeated. Therefore, it is necessary to examine the experiences of the past because they can be instructive and useful in the present as well. The possibility of a Member State leaving the European Union can also be perceived in this context. Legal relations from the past, which were considered done deals, have been reopened due to the impact of Brexit, for example, and require updating.

Therefore, continuing with the outlined considerations, it can be stated that the European Union is neither a confederation nor a federation, but an association of states sui generis. The legal consequence of each state's accession to the EU (on a voluntary basis and by exercising its competence) is undoubtedly also the fact that the Member State loses its monopoly of sovereignty on matters transferred to the EU. The modern existence of the European Union as a supranational organisation provides room for a specific perception of traditional contexts and relationships in almost every area of social life that is more or less affected by the legal system of the European Union. The specificity and, in some way, the uniqueness of this legal system is indisputable, as well as the fact that it is a uniqueness acquired by the spontaneous development in the spirit of the objectives set out in the founding treaties. As already mentioned, one of the essential features of this type of international organisation is the existence of decision-making bodies. Decision-making, because in the founding treaties, they were also entrusted with the legal basis to bind all Member States with their decisions. As the European Union or its legal system has evolved, its bodies have also evolved, mapping the changes in social life in the Union. From another point of view, we can also characterise it in a way that it was the activities of the institutions of the European Union that caused fundamental changes in the Union itself. The European Union has been linked to the previous European Communities for seven decades now. Its main decision-making bodies have also been functioning all along, so it is clear that they must have undergone development.

However, perceiving the above-mentioned context, we consider it essential to be reminded of one more fact, namely that the sequence of steps to transform the legal system of the European Union at each step was approved primarily by the Member

States, through their representatives, who sat on its individual bodies. Any further shift (e.g., also towards a state formation) can be determined again only by the Member States and that must be done unanimously. It is also true that the position of power of individual Member States of the European Union is not the same. It is influenced by a number of changing factors, such as the social situation in individual countries, the strength of nationalism in the country, coping with migration processes or unemployment, but also the size or geopolitical location of the state, which also determine (or at least affect) the limits of integration.

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