

The reforms of the electoral system in the mirror of constitutional principles (considerations in the Czech Republic)

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I. General grounds

The constitutional principles of free and fair elections, which are the instrument for the creation of the state organs and the organs of local self administration are undoubtedly the integral and essential parts of modern democratic state governed by the principle of rule of law. These principles comprise the principle of universal and equal right to vote (and be voted) with secret ballot and usually (as regards of parliamentary elections) also the principle of direct right to vote. For the fulfillment of mentioned principles should correspond also the relevant electoral system. The basic characteristic of relevant electoral system can be vested into constitution and then in detail stipulated in implementing law, or there can be also the existence of the legal order, when is relevant electoral system in no way characterized in the constitution and all the arrangement is vested in implementing law (i. e. is stipulated on under-constitutional level). Due to fact, that each electoral system, from the votes, handed by voters, will make another composition of elected organ, the question of choosing and stipulation of relevant electoral system (and electoral method) is highly political, and in some situations can be also the subject of political contest and endeavors (especially) of the stronger political parties to find (and arrange) the system, which is advantageous for them (that situation happened also in the Czech Republic).

The basic demands (as regards of the respect to above mentioned principles) of the relevant electoral system are well-balanced application of the principles of differentiation and integration, the rightful plural

representation of political subjects in elected body (further will be the attention given only to parliamentary organs), the protection of minority, the equal right to vote, and the stability of political system. In the parliamentary republics (including also the Czech Republic and Slovak republic¹), where (typically) is collegiate executive organ (the government) responsible to legislative organ or its part (to the parliament as whole body or some of its chambers) and depends on the majority of “its” deputies of relevant parliament (or a chamber)², is such balancing particularly important, with regard to necessity of facilitation of making of the parliamentary majority. This majority is searched by the political parties, after the elections, according to the result of the elections: the electoral system with more differentiation elements usually assures the more large-scale political spectrum in parliament, but herewith contemporary makes the problems for the creation of parliamentary majority; the electoral system with more integration elements leads usually to less large-scale political spectrum, but assures and better assists to creating of parliamentary majority and thus also to stability of the government and political situation in general.

The ideal situation in parliamentary republic (for the stability of the government) is, when only one political party creates the majority and the other political parties forms the opposition. Suitable for such ideal situation is majority electoral system (typically its form with relative majority); the proportional system usually leads to coalition majority governments (including of so called great coalition of two strongest political parties) or (in poorer way) to minority government. The majority in parliament depends (excluding the case of one-party majority) on the

¹ Both republics have the same form of government and the same constitutional (i. e. Czechoslovak) root; therefore they are suitable to be compared.

² The government must enjoy a confidence from the side of the parliament (or its chamber), and the parliament (or its chamber) can express to government a veto of non-confidence with the result of demise of the government.

political agreement of political parties. Such agreement can be reached quickly, but often its searching is a complicated process (accompanied by a political non-stability). In case, that in parliamentary state cannot be created an over-half majority coalition, there is a possibility of creation of so called minority government, when some political party (or independent deputies) tolerates the government, but has no ministers in this government. The tolerance can be given openly (by voting for the government in the session of the parliament) or by leaving the session before the voting (i. e. by reduction of the deputies presenting and voting). The tolerance can be given also by refraining for the voting for the veto of non-confidence to government.

The specific type of minority government was in office in the Czech Republic from 1998-2002. Two most powerful political parties (social democrats and conservatives) in lower chamber of the parliament³ was able to create the great coalition, but these parties chose another way: they signed so called “opposition treaty”, when social democrats formed one-party minority government, conservatives (deputies) before the voting for the veto of confidence to the government left the session (for this veto was enough the amount of social democrats) and for all the electoral term conservatives refrained from the proposal to express the veto of non-confidence to government, in exchange of some functions in state organs and the promise of the reform of electoral law more suitable for both political parties. There must be said, that the period of this “opposition treaty” was at last time in the Czech Republic one of the most stable political terms.

In the Czech Republic and also in the Slovak Republic is used for the elections of the chamber of the parliament⁴, to which is responsible the government and on which support (confidence) is the government depend,

³ In the Czech Republic is government responsible to lower chamber of parliament.

⁴ Czech Republic has bicameral, Slovakia unicameral parliament.

the proportional electoral system. This type of electoral system (in comparison with majority system), usually guarantees a rightful representation of political subjects in the parliament (and more large-scale political spectrum in parliament), but leads usually to coalition governments and weaker political stability. In the Czech Republic, which had in the last time some problems with political stability, caused also by used proportional system, are often hold the discussions on the reforms of the electoral system, in favor of more stability of political system (typically by applying more majority elements in the proportional electoral model). Further will be described and studied in comparison the parliamentary elections (concerning the using of proportional system) in the Czech Republic and Slovak Republic in previous twenty years, according to valid legal norms, with the description of used type of electoral system and its evolution and also (as regards of the Czech Republic) the attempts for the electoral reforms. The attention will be given to basic elements of used electoral system, which are in synergistic relations and technically forms the composition of the parliament, i. e. used electoral method, electoral districts, type of candidate list and closing clause (percentage of votes necessary for the political party to get on to scrutiny).

II. Parliamentary elections in federal Czechoslovakia (1990-1992)

In June 1990 were in Czechoslovakia held the first free parliamentary elections from 1946, as a result of democratic reforms after revolution from 1989, when was took out the previous (almost 42 years lasting) totalitarian non-pluralistic regime⁵. From 1969 Czechoslovakia was the federation⁶, comprised from two member states, Czech Republic and Slovak

⁵ From 1948-1989 were held in Czechoslovakia parliamentary elections, but as non-free elections with only one candidate list.

⁶ According to constitutional act No. 143/1968 C. I. on Czechoslovak federation, which, together with the constitution of 1960 formed the base of Czechoslovak constitutional order from 1968-1992. From 1918 to 1968 was Czechoslovakia a unitary state, after

Republic. The legislative organ (parliament) of Czechoslovak federation was the Federal assembly (FA), with two chambers: Chamber of people and Chamber of nations. In the first of them was more deputies from Czech Republic than deputies from Slovakia, according to higher population of Czech Republic; in the second of them was equal number of deputies from both republic – this chamber represented an equality of both republics. The legislative organs (parliaments) of both republics were unicameral national councils (Czech National Council - CNC and Slovak National Council – SNC). The status and competences of federal state organs were vested into federal constitution; its core created two norms, the Constitution from 1960 and Constitutional Act from 1968 on Czechoslovak federation. Both member republics up to 1992 had not own constitutions, the status of their organs and competences were arranged in mentioned Constitutional Act from 1968 (i. e. in federal law).

In February and March 1990 were adopted, as the preparation to above mentioned free elections, the new electoral laws: Federal Assembly adopted the act on the elections of deputies to its both chambers⁷ and both national councils adopted the acts for elections of their deputies⁸. According to these acts were held (on the same day⁹) the elections to all mentioned legislative organs.

At first, as regards of the elections (in 1990) to both chambers of FA: there was elected 150 deputies of Chamber of people (CP) and 150 deputies

1945 with autonomous status of Slovakia; in that period was held free parliamentary elections to both chambers (Chamber of Deputies and the Senate) of Czechoslovak National Assembly (in 1920, 1925, 1929 and 1935) and to unicameral Czechoslovak Constituent National Assembly in 1946. In all these elections (1920-1946) was used proportional electoral system.

⁷ Act of the Federal Assembly No. 47/1990 C. I. on the elections to Federal Assembly; this act was applied for elections only two times, in 1990 and 1992.

⁸ Act of Czech National Council No. 54/1990 C. I. on the elections to Czech National Council and act of Slovak National Council No. 80/1990 C. I. on the elections to Slovak National Council. The former act was applied on elections only two times (in 1990 and 1992), the later act was applied for the elections five times (in 1990, 1992, 1994, 1998 and 2002).

⁹ On June, 8th-9th, 1990.

of Chamber of nations (CN). According to constitutional act on Federation had CN 75 members elected from Czech republic and 75 members from Slovakia. As regards of CP, its 150 members was necessary to distribute, in compliance with mentioned federal electoral act, according to number of citizens of both republics on Jan. 1st of the electoral year: there was used so called state mandate quota (SMQ), as whole amount of citizens of Federation, divided by the number of deputies (150). In each of both republics was elected the amount of deputies corresponding to amount, how many times was SMQ comprised in the amount of citizens of relevant republic¹⁰. The voters were authorized to cast one candidate list for CP and one for CN (for both chambers were used binding candidate lists submitted by political parties); on each of them they were authorized to mark preferences, maximally to four candidates¹¹. For elections of both chambers was used proportional electoral system in stipulated electoral districts. On the territory of Czech Republic (CR) were created eight electoral districts, on the territory of Slovakia four electoral districts (these districts copied the administrative division of both republics).¹²

After the elections the mandates were divided to districts by republic mandate quota (RMQ), which was stipulated as amount of all valid votes of CR and of Slovakia (independently for each chamber) divided by mandates of relevant republic in relevant chamber. The amount of mandates of relevant district was corresponding to amount, how many times was RMQ

¹⁰ In case, that by this method were not distributed all the mandates, remaining mandate was given to republic with higher divisor reminder. In the elections of FA in 1990 was from Czech Republic elected 101 member and from Slovakia were elected 49 members. In the elections of FA in 1992 were elected from Czech Republic 99 members and from Slovakia was elected 51 member. See <http://www.volby.cz/>.

¹¹ The same amount of preferences was possible to use also in elections of FA in 1992.

¹² These districts were not, a regards of the number of inhabitants, equal. In CR was on average about 9 mandates on one district for CN and 12 mandates on district for CP, in Slovakia 18 mandates on district for CN and 12 mandates on district for CP. The same situation (together with the same districts) was also as regards the next elections to FA in 1992.

comprised in the amount of votes of relevant district.¹³ For the distribution of mandates to political parties were used two scrutinies: for the entering of the 1st scrutiny was necessary at least 5 % of votes of relevant party¹⁴. The 1st scrutiny was held for electoral districts with Hagenbach-Bischoff's method of electoral quota.¹⁵ In the second scrutiny were distributed remaining mandates and remaining votes from CR and Slovakia according to "technical" lists created by parties after the 1st scrutiny¹⁶. Also in the 2nd scrutiny was used Hagenbach-Bischoff's electoral quota.¹⁷ The candidates obtained the mandates according to their sequence on the "technical" list.

The very similar system was used also for the elections of FA in 1992¹⁸: with the same electoral districts and the same electoral method in both scrutinies. Newly were stipulated the closing clauses: for independently

¹³ In case, that by this method were not distributed all mandates, remaining mandates was given subsequently to the districts of relevant republic, with the highest divisor reminder. In case of equality of reminders was used a lot.

¹⁴ In case, that relevant party submitted a candidate lists in both republic, there was enough 5 % votes in one republic.

¹⁵ The mandates were distributed to candidates according to their sequence on candidate list; only in case, that at least 1/10 of voters of relevant party in relevant district used preference voting, at first was given the mandate to candidate with more than 50 % of such preferences. In case, that such candidates were more, their obtained the mandates according the sequence of the amount of their preferences (from higher to lower). In case of equality of preferences were given the mandates according the sequence on candidate list. For the elections of FA in 1992 was stipulated instead of more than 50 % of preferences at least 3 %.

For the elections of FA (1992) was later newly stipulated, that in case, that in the 1st scrutiny was divided one more mandate (then was stipulated), remaining mandate was taken of party with the smallest divisor reminder. In case of equal reminder to party, which obtained in relevant district lesser amount of votes; in case of equality was used a lot.

¹⁶ There was possible to give on such list only the candidates from district candidate lists and those, who were not successful in the first scrutiny.

¹⁷ In case, that by this method were not distributed all mandates, remaining mandates were given subsequently to parties with the highest divisor reminder. In case of equality of reminders was relevant the higher amount of remaining votes in the 2nd scrutiny; in case of that equality was relevant the higher number of party-votes in republics; in case of that equality was used a lot. In case, that by such methods was given one more mandate (then was stipulated), this mandate taken away of party with the smallest divisor reminder in the 2nd scrutiny (in case of equality was relevant smaller amount of votes in electoral districts of the republic; in case of equality was used a lot).

¹⁸ On the same days (June, 5th and 6th, 1992) were elected both chambers of FA and CNC and SNC.

candidate parties was stipulated at least 5 % of votes, for coalitions of two or three parties 7 % and for coalitions of four or more parties 10 %.¹⁹

As regards the elections to CNC in 1990 and 1992: to CNC was at these years elected 200 members. According to mentioned CNC-electoral act was stipulated for these elections the system very similar to system for the elections of FA. Also in these elections were used the binding candidates lists (the voter was authorized to use only one list with max. 4 preferences); and also there was used the same (only Czech) 8 electoral districts²⁰ (with the same method of RMQ) and the same electoral method used in the 1st and 2nd scrutiny. For the elections in 1990 was stipulated for the parties closing clause at least 5 % of votes; for elections in 1992 were newly stipulated these closing clauses: for independently candidate parties was stipulated at least 5 % of votes, for coalitions of two parties 7 %, for coalitions of three parties 9 % and for coalitions of four or more parties 11 %. For applying of preferences was used the same arrangement like in case of elections of FA, with more than 50 % of necessary preferences in 1990 and at least 15 % in 1992.

As regards the elections to SNC in 1990 and 1992: to SNC was at these years elected 150 members. Also electoral system stipulated in mentioned SNC-electoral act was very similar to system for the elections of FA. Also in these elections were used the binding candidates lists (the voter was authorized to use only one list with max. 4 preferences); and also there was used the same (only Slovak) 4 electoral districts²¹ (with the same method of RMQ). In 1990 was in the 1st scrutiny used Hare's electoral quota and in the

¹⁹ In case, that party (or coalition) submitted the candidate list in both republics, there was enough to reach stipulated percentage in one republic.

²⁰ For elections of CNC (200 mandates and 8 districts) was on average 25 mandates on one district.

²¹ For elections of SNC (150 mandates and 4 districts) was on average about 37 mandates on one district.

2nd scrutiny was used Hagenbach-Bischoff's electoral quota.²² In the elections in 1992 was used in both scrutinies only Hagenbach-Bischoff's quota²³. For the elections in 1990 was stipulated for the parties closing clause at least 3 % of votes; for elections in 1992 were newly stipulated the closing clauses: for independently candidate parties was stipulated at least 5 % of votes, for coalitions of two or three parties 7 %, for coalitions of four and more parties 10 %. For applying of preferences was used the same arrangement like in case of elections of FA, with more than 50 % of necessary preferences in 1990 and at least 10 % in 1992.

By the comparison of above mentioned data we can make a conclusion, that the arrangement of the electoral systems to FA, CNC and SNC was very similar (using of several electoral districts, using of electoral quota and basic closing clauses were the same); there were the distinctions in some details, especially as regards of the amount of necessary preferences for the obtaining of the mandate. Equal closing clause from 1990 was in 1992 supplemented by variable (progressive) closing clause. The larger distinction was using of Hare's quota for the 1st scrutiny in Slovakia, which was later, for the elections in 1992 supplemented by Hagenbach-Bischoff's quota, so this latter quota was used in both scrutinies. The type and characteristics of electoral system, used for pluralistic elections during Czechoslovak federation were later used from 1993 by independent Czech Republic and Slovak Republic.²⁴

²² This electoral system, i. e. Hare's quota in the 1st scrutiny and Hagenbach-Bischoff's quota in the 2nd scrutiny was applied, according to relevant electoral acts, also for parliamentary elections in Czechoslovakia in 1920, 1925, 1929 and 1935 to both chambers of Czechoslovak National Assembly and in 1946 to unicameral Czechoslovak Constituent National Assembly.

²³ Hare's quota has a disadvantage, that to the 2nd scrutiny is transferred a plenty of remaining votes in comparison with Hagenbach-Bischoff's quota, where is the amount of transferred remaining votes lesser.

²⁴ On Dec. 31st, 1992, according to constitutional act of FA No. 542/1992 C. I. on the extinction of Czech and Slovak Federative Republic, became extinct Czechoslovak federation and from Jan. 1st, 1993 its former members continued in existence as independent states.

In both states were adopted during fall of 1992 their own constitutions. The Constitution of Slovak Republic²⁵ was adopted by SNC, elected in June 1992, and was fully in effect was from Jan., 1st, 1993. According to this constitution mentioned SNC “performs its competences as National Council of Slovak Republic according to this constitution” and its electoral term was calculated from the day of elections of SNC. National Council of Slovak Republic (NCSR) is the unicameral legislative organ of Slovak Republic.

The Constitution of Czech Republic was adopted by CNC, elected in June 1992, in effect is from Jan., 1st. 1993. According to this constitution mentioned CNC: “on the day this Constitution enters into force, the Czech National Council shall become the Chamber of Deputies, the electoral term of which shall conclude on the sixth of June 1996”²⁶. Mentioned Chamber of Deputies (CD) is one of the chambers of bicameral legislative organ of Czech Republic, the Parliament of the Czech Republic. The second chamber is the Senate; this organ was created in the elections in fall of 1996; up to its elections, its competences was performed by CD.

III. Parliamentary elections in the Czech Republic (1993-2010)

III.1. Constitutional background

According to Constitution of CR, “the legislative power in the Czech Republic is vested in the Parliament”, which “consists of two chambers, the Chamber of Deputies and the Senate”. CD has 200 members, who are elected for a term of four years. The Senate has 81 senators, who are elected for the term of six years. “Every second year elections for one-third of the senators shall be held”²⁷. Elections to both chambers „shall be held

²⁵ The Constitution of the Slovak Republic No. 460/1992 C. I.

²⁶ I. e. four years from the elections of CNC. See Constitutional act of CNC No. 1/1993 C .I., the Constitution of the Czech Republic.

²⁷ For the fulfillment of this stipulation, in the 1st elections of the Senate (1996), was 1/3 of senators elected for 2 years, one 1/3 for 4 years and 1/3 for 6 years.

by secret ballot on the basis of a universal, equal, and direct right to vote.” For the elections of CD is stipulated by Constitution the proportional system and for the Senate the majority system. Detail arrangement of the type of relevant electoral system and other arrangement of elections shall be provided by law; for the purposes of such implementing was adopted by the Parliament the act on the elections to Parliament of the Czech Republic²⁸. This act arranges the elections of both chambers of Parliament²⁹. Further will be given the attention only to elections of CD, because this paper is devoted only to elections with using of the proportional system.³⁰

III.2 Parliamentary elections in 1996 and 1998 (with 8 multi-mandate districts)

The first elections to CD according to last-mentioned act were held in 1996³¹. The electoral system, stipulated for these elections (and also for elections in 1998³²) by mentioned act was also very similar to system for the elections to FA (that meant strong continuity with the previous legal arrangement). For both mentioned elections (1996 and 1998) were again stipulated binding candidates lists (with max. 4 preferences), the same electoral districts (with the same RMQ) and the same electoral method

²⁸ Act No. 247/1995 C. I. This act abolished the above mentioned act of CNC on elections to CNC from 1990.

²⁹ This act can be changed only by the consent of both chambers.

³⁰ As regards the Senate: according to last-mentioned act is for the Senate stipulated an absolute majority system, in 81 one-mandate electoral districts. In case, that some of the candidates obtained over-half majority of all valid votes in the district, he has the mandate. In case, that no candidate has such majority, there is held the 2nd round with two candidates from the 1st round, who obtained the highest amounts of votes. The mandate has the candidate of the 2nd round, who obtained more votes. In case of equality of votes in 2nd round is used a lot.

³¹ On May 31st and June 1st, 1996.

³² On June 19th and 20th, 1998; these elections were preterm: by constitutional act was in 1998 shortened the regular 4 year-electoral term to 2 years.

used in the 1st and 2nd scrutiny³³ and also the same closing clauses like for the elections of CNC in 1992 (5,7,9,11 %). For applying of preferences was used the same system like in case of the elections of FA with 10 % of preferences.

III.3. The attempt for the reform of the electoral system in 2000 and its result

One of the results of the elections in 1998 was also the signing of above mentioned “opposition treaty” between two strongest parties of these elections (social democrats and conservatives)³⁴. Social democrats formed the government, according to treaty tolerated by conservatives. Both parties also agreed, that made the changes of electoral system to CD, which would give to the system more majority elements so that would be easier to create majority government (as a result of integration principle of elections) and to CD would enter only small amount of parties (all that was suitable at first for both mentioned parties).

The reform was made by an amendment³⁵ of valid electoral law. To this amendment the president applied its suspensive veto, but this veto was over-voted by CD and the act was published and become valid. The elections according to this amendment should be held as ordinary elections in 2002. Reform was made by arrangement and change of electoral method, electoral districts and closing clauses. Valid double-scrutiny electoral quota was supplemented by electoral divisor, the amount of electoral districts was increased (but was reduced their size, as regards of their inhabitants and mandates) and closing clauses were increased.

³³ For both elections (1996 and 1998) was newly stipulated the regulation for the situation, that political party or coalition failed with creating of a technical candidate list for the 2nd scrutiny: in that situation was created such technical candidate list for relevant party or coalition by relevant electoral commission according to preferences for the candidates of such party or coalition.

³⁴ In elections in 1998 won social democrats 71 mandates, conservatives 60, communists 20 and two smaller parties 17 mandates each.

³⁵ Act No. 204/2000 C. I.

The binding candidate lists were left without changes, but the amount of possibly preferences used by a voter was reduced from 4 to 2; there was also abolished a necessary amount of usage of preferences (1/10) by voters for the applying of preferences; 10 % of necessary preferences for relevant candidate was left without changes.

For the elections were newly created 35 electoral districts³⁶ (instead of former 8) and closing clauses for coalitions were increased from 7, 9, 11 % to 10, 15 and 20 %. For the distribution of mandates to districts was left without changes RMQ, but was added the stipulation, that „the lowest amount of mandates in the district is 4. In case, that district obtained less than 4 mandates, deficit mandates are given subsequently from the regions with the smallest divisor reminder. In case of equality of reminders is used a lot.“ For distributing of mandates to parties and coalitions was stipulated modified d’Hondt method of electoral divisor (with the line of divisors 1,42, 2, 3, 4, 5 etc. following with natural numbers³⁷) in one scrutiny. Using of the 1st divisor 1,42 instead of 1 (non-modified d’Hondt) should reduce the chance of the smaller parties for the gaining of the 1st mandate.

All above mentioned changes, with exclusion of changes, as regards of preferences, were challenged by president and by group of senators in Constitutional Court, that these changes are non-conform to constitutional norms, mainly to protected principle of pluralism and free competition of political parties and constitutionally stipulated proportional system for the elections of the CD and proposed their abolishment.

Constitutional Court (CC) examined the case and all challenged changes (with exclusion of increased closing clauses) by its decision³⁸ from Jan. 24th, 2001 for their non-constitutionality (especially for their

³⁶ It meant, that up to this change were on average 25 mandates on one district (200/8) and after change on average about five mandates on one district (200/35).

³⁷ Non-modified d’Hondt method of electoral divisor has only natural numbers starting from 1.

³⁸ Decision No. 64/2001 C. I.

inconformity with above mentioned constitutional principles) abolished. CC especially examined, to what extent is the new arrangement corresponding to proportional electoral system. Its decision CC reasoned among others as follows: The proportional system “makes possible maximal representation of all opinions and interests in a parliament, keeps of excessive majorities, supports the creation of majority on the basis of discussions and compromise.” Proportional system is typical by its differentiation principle. But „some limitation of differentiation in distributing of mandates is necessary and therefore possible.“ In scrutiny is the interference of the principle of differentiation with „the principle of integration, because from elections shall arise the chamber, which by its composition enables the making of political majority capable both to create the government and to provide the legislative competence.“ It means, that the proportional system³⁹ needs some integration elements, but its proportional base must be secured. According to opinion of CC, in examined case, the increasing of amount of districts to 35, stipulation of the lowest amount of mandates in the district to 4⁴⁰ and using of modified d’Hondt method forms in its sum so concentration of integration elements, that in its result leads to leaving the characteristics of the proportional system.

CC also performed (on the result of elections in 1998 with the application of new arrangement), that increasing of electoral districts is able to significantly increase the entering threshold for gaining at least 1 mandate, i. e. is able to increase (except legally stipulated closing clause) that „natural closing clause“ up to 10,5 % in some districts and even if up to almost 19 in another districts (average natural clause is in all district about 14,7 %). Regarding to stipulation of proportional system for CD in constitution is necessary also „with respect to integration stimuli and

³⁹ This system is based, as is known, on the principle of wide representation of political subjects in elected body and direct proportion between votes and mandates.

⁴⁰ Such stipulation is according to opinion of CC inconsistent with the principle of the equality of right to vote.

insistence put to functionality of democratic political system simultaneously follow up the necessity of reflection of the will preferably of the maximum amount of voters.“ New arrangement tends to „non-functional and inadmissible hypertrophy of integration elements in the proportional system“. ⁴¹

The increased closing clauses were not abolished by CC, because, according to opinion of CC, the reasons for the arrangement of closing clause are various, so the arrangement of that clause is on the discretion of a legislator, who is „naturally bound minimally by the amount of closing clause for 1 political party“. ⁴²

III.4. Parliamentary elections in 2002, 2006 and 2010 (14 multi-mandate districts)

As a result of above mentioned decision of CC, by which was abolished parts of electoral law, there was a necessity to “repair” such “holes” by legislative activity of the Parliament so that the next elections can be held. By the act of Parliament was adopted for these elections (2002⁴³) new arrangement, which also comprised some majority elements; in principle is used for election of CD up to this time.

Binding candidate lists left untouched, in the state arranged by Act No. 204/2000 C. I. (see above), together with maximum 2 preferences, which can be made by a voter on a list and abolished necessary amount of usage of preferences (1/10) by voters for the applying of preferences; 10 % of necessary preferences for relevant candidate was newly reduced to 7 %. As regards of the electoral districts, new arrangement stipulated, that the

⁴¹ „Integration tendencies are significantly multiplied also by modified d’Hondt system, performed in this case by electoral divisor 1,42. Determinant element in proportional system is namely the size of electoral districts, so on one hand the bigger district – the more proportional result, on the other hand, the lesser district – the result is more far from principle of proportionality.“ See Decision No. 64/2001 C. I.

⁴² See Decision No. 64/2001 C. I.

⁴³ These elections were held on June, 14th – 15th, 2002.

electoral districts are the same, as higher self-administered regions (created in 1997, in effect from Jan. 1st, 2000 in amount of 14⁴⁴). Also these districts (like previous 8 districts) are not equal, as regards if the amount of their inhabitants. Using of RMQ for determining of amount of mandates for the districts was left without changes. As electoral system was arranged one scrutiny d'Hondt method of electoral divisor (with divisors 1, 2, 3 etc. following with natural numbers). Closing clause was left untouched in the state made by Act No. 204/2000 C. l., i. e. 5, 10, 15 and 20 %. The same system was used for the elections in 2006⁴⁵ and also for the elections in 2010⁴⁶; for the elections in 2010 was increased the amount of preferences used by voter to 4 and the amount of necessary preferences for the relevant candidate was newly reduced to 5 %.

The legal arrangement, which followed the mentioned decision of CC, can be considered as arrangement, which stabilized the electoral system in the Czech Republic (in small changes is used more than 8 years). This arrangement comprised, in comparison with that, used up to 1998, more majority elements: higher amount of electoral districts, usually with lesser amount of mandates, used d'Hondt method of electoral divisor, abolished necessary number of voters, who used preference voting and finally reduced percentage of preferences for candidate. Mentioned final arrangement of preference voting played important role in elections in 2010, where many candidates entered the CD by preferences. So, there can be made conclusion, that reduced percentage of necessary preferences for candidate - 5 % (in connection with finally arranged amount of possible

⁴⁴ It means on average about 14 mandates on one district.

⁴⁵ These elections were held on June 2nd – 3rd, 2006.

⁴⁶ These elections (the last elections to CD up to this time) were held on May, 28th – 29th, 2010.

preferences used by a voter – 4) is a strong motivation factor for voters to participate in elections⁴⁷.

Despite of these majority elements (together with higher closing clause) the political system in the Czech Republic was not in past always stable (i. e. there was a problem to form stable majority in CD, especially from 2006 to 2010, when were planned also preterm elections) and also used regions (which are not equal as regards of the amount of their inhabitants) make disproportions, which are not fully compatible with the principle of equal right to vote (this right includes also the equality of electoral districts). Present legal arrangement of elections remains the survival of the “opposition treaty”, when previous attempt for reform was abolished by CC and after it there was found acceptable more majority model of generally proportional system.

⁴⁷ From 2006 to 2010 were submitted some proposals for changes in preferences: one of them proposed the increasing of possible used preferences by a voter up to 5 and reduction of necessary percentage of preferences for a candidate to 2 %: it means increasing of importance of preferences and increasing of personalization of voting, and also increasing of majority elements in the electoral system and increasing of motivation of voters to participate in elections. See proposal No. 1029 (5th electoral term of CD):

<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=1029&CT1=0>

Another proposal, contrary, proposed reduction of possible preferences used by a voter to 2 and increasing of necessary percentage for a candidate to 7 % (i. e. to return the arrangement to 2002): this proposal was supported by an argument, that high amount of possible preference for a voter and low percentage of necessary preferences for a candidate is a danger advantage for candidates from large cities, where is not a problem for them to reach such percentage, in comparison with middle and small municipalities. This would cause, that CD would be composed from deputies especially from large cities, which would lead to creating of politics more preferring the interest of these cities. High role of preferences (in favor of large cities) could also be demotivation for the voters from middle and small municipalities to vote (because of composing of CD from deputies from large cities). High role of preferences could also make the downgrading of political culture, because before the elections some deputies could make all for their media “visibility” for obtaining more preferences; that could lead to their rebellion and their obstruction to realizations of electoral programs of the parties of which they were candidates. See proposal No. 998 (5th electoral term of CD): <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=998&CT1=0>

Both proposals, however, was not adopted.

III.5. The attempt for the reform of electoral system in 2009 and its result

In previous electoral term of CD (2006-2010, the 5th electoral term) was searched the electoral system, which would solve the mentioned problems of present system (disproportions, non-equality of districts and problems with creating of stable majority in CD). A task for solving of these problems assumed the government, which studied the electoral systems abroad (in Greece, Italy, the Netherlands, Poland and Scotland), worked up several variants of reform, and finally chose one of them and submitted it (on March 3rd, 2009) to legislator⁴⁸.

In explanatory report to this proposal was mentioned, that present electoral system does not create a good conditions for forming of stable government. Relatively equally it makes stronger both concurrence biggest parties (i. e. conservatives and social democrats), which obtain over-proportional gains of mandates, off the smaller parties with high coalition potential. It gives to the winner of elections two possibilities: great coalition (or “opposition treaty”) or very frangible coalition with sub-proportionally represented smaller parties. For example, one of the smaller parties, the Greens (“environment-party”), should obtain in elections in 2006 (by clear proportional mathematics) about 13 mandates, but obtained only 6.

“Used d’Hondt divisor in itself has not disproportional effect, but its behavior depends on the amount of electoral districts. The system of d’Hondt divisor in 14 districts can be considered as to a great extent as the element assisting to non-proportionality. Its role as regards of proportional distribution of votes plays also the size of electoral districts.”⁴⁹

⁴⁸ See proposal No. 758 (5th electoral term of CD):
<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=758&CT1=0>

⁴⁹ See proposal No. 758 (5th electoral term of CD):
<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=758&CT1=0>

A table demonstrated bellow⁵⁰ shows, how many valid votes was necessary for gaining of one mandate for individual political parties in the elections of CD in 2006:

<i>Political party</i>	<i>Amount of gained valid votes</i>	<i>Amount of gained mandates</i>	<i>Amount of votes necessary for gaining of 1 mandate</i>
<i>conservatives</i>	1 892 475	81	23 364
<i>social democrats</i>	1 728 827	74	23 363
<i>communists</i>	685 328	26	26 359
<i>Christian democrats</i>	386 706	13	29 747
<i>Greens</i>	336 487	6	56 081

Non-proportionality of the system, as regards of valid votes necessary for gaining of one mandate, is created by considerably different size of the districts (among 14 districts are some districts with high amount of inhabitants and also some with lower population), respectively by the amount of voters, who participated in elections; this implies strongly differential amount of distributed mandates in relevant districts: for example in 2006 was the amount of mandates between 5 and 25 (the smallest two districts had 5 and 8 mandates and the biggest districts had 23 and 25 mandates). The results in great districts show at relevant example certain size of proportionality, in smaller and medium districts (which are prevalent) are the results highly disproportional. In the districts, where is higher amount of mandates, is also higher chance of smaller parties to gain the mandate. "This state, to some measure, raise the doubts as regards of equality of active right to vote (from the point of view of

⁵⁰ Proposal No. 758 (5th electoral term of CD):
<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=758&CT1=0>

voters; because the vote of voters in different districts has considerably different weight) and as regards of the fulfillment of the principle of proportional representation (from the point of view of electoral parties and individual candidates).”⁵¹

For the taking out of above mentioned problems were made, by mentioned proposal, relevant changes in electoral law. The candidate lists should be submitted for actual 14 electoral districts, because the political parties are territorially organized according to self-administrative division of state (14 electoral districts correspond to higher self-administered regions), but these 14 electoral districts are newly associated to so called “joined districts” (in the amount of 8⁵²), so that there should be the districts with in principle equal amount of inhabitants. Some of joined districts should comprise only one of electoral district, some of them two electoral districts and one joined district should comprise three electoral districts).

After the voting of voters are the relevant mandates by RMQ distributed between joined districts. Newly should be again stipulated two scrutinies, closing clause remained untouched (5, 10, 15 and 20 %). In the 1st scrutiny should be distributed mandates in joined districts to political parties (coalitions) by Hagenbach-Bischoff’s electoral quota.⁵³ Then the mandates should be distributed to candidate lists in electoral districts (that is not applied to joined districts, which comprised only one electoral district) by d’Hondt divisor method. The mandates should be distributed to candidates according to their sequence on the list or (at first) according to

⁵¹ See proposal No. 758 (5th electoral term of CD):
<http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=758&CT1=0>

⁵² These joined districts should not be the same like 8 electoral districts used up to 1998.

⁵³ In case, that by this method was distributed one more mandate (then is the amount of mandates of the district), the mandate is taken away to party, which in joined district has the smallest divisor reminder. In case of equal reminder is the mandate taken away to party, which obtained in joined district smaller amount of votes. In case of equality of votes is used a lot.

preferences (this system was not changed; in case, that the reform would be applied, the amount of possible preference used by a voter would be 4 and the amount of necessary preference for a candidate would be 5⁵⁴).

All mandates, which was not distributed in the 1st scrutiny should be given (in the 2nd scrutiny), as an electoral bonus (for the benefit of the possibility of creating a stable majority in CD), to political party (or coalition), which obtained the highest amount of valid votes in all electoral districts. In case, that more parties (coalitions) have the same highest amount of the votes in all electoral districts, these parties (coalitions) obtained the mandates equally. In case, that is not possible to distribute all the mandates, remaining mandates are distributed by a lot.⁵⁵

The applying of electoral system according to mentioned proposal, in case of its adoption, was planned already for the elections in 2010; this proposal, however, was not adopted. Three weeks after the submitting of the bill to CD was by CD to government proclaimed the veto of non-confidence; than was formed a new (transient) government, and mentioned bill was by CD rejected (on June 10th, 2009).

IV. Parliamentary elections in the Slovak Republic (1993-2010)

According to Constitution of Slovak republic “is the only constitutive and legislative organ of Slovak Republic” NRSR; that organ has 150 members elected for the term of four years; deputies are elected in “universal, equal and direct elections by secret ballot”. Detail arrangement, as regards of

⁵⁴ These amounts were given to electoral law already before submitting of mentioned proposal.

⁵⁵ For the purposes of the second scrutiny should each political party (or coalition), whose candidate list was registered at least in one electoral district, hand at least 20 days before the day of elections to Czech statistic office (that office carry out the calculations in scrutinies) nation-wide candidate list. On such list should be placed all candidates from candidate lists of electoral districts in the sequence stipulated by their party (coalition). In the second scrutiny should be the mandates distributed according to sequence of candidates on the relevant candidate list; before such distributing should be from relevant candidate list excluded the candidates, who obtained the mandate in the 1st scrutiny.

elections, shall be provided by law: as mentioned implementing law served up to 2004 above mentioned electoral act of SNC on elections of SNC (from 1993 for the elections of NRSR).

The first elections to NCSR were held (as preterm elections) in 1994⁵⁶. The electoral system arranged for them was also very similar to system for the elections of FA. Also in these elections were used the binding candidates lists (the voter was authorized to use only one list with max. 4 preferences); and also there was used the same (4) electoral districts (with the same method of RMQ). Like in SNC-elections in 1992 was in both scrutinies used only Hagenbach-Bischoff's electoral quota. Closing clauses were the same like in SCN-elections in 1992 (5, 7, 10 %). For applying of preferences was used the same arrangement like in case of elections of FA, with 10 % of preferences.

The next elections according to electoral act of SNC on elections of SNC were held in 1998⁵⁷. In comparison with the system used in 1994 there were again binding candidate lists with max. 4 preferences; but, there was made important changes: previous four electoral districts were supplemented by only one nation-wide electoral district (therefore using of RMQ was abolished); closing clause was only one (5 %) and there was necessary to reach it by sole party and also by all members - parties - of coalition (if a coalition was created). In one scrutiny (due to only one electoral district) was used Hagenbach-Bischoff's quota.⁵⁸ For applying of preferences was used the same arrangement like in case of elections of FA, with 10 % of preferences (the same was applied also in 2002).

⁵⁶ On September 30th and October 1st, 1994.

⁵⁷ On September 25th – 26th, 1998.

⁵⁸ In case, that by this method were not distributed all mandates, remaining mandates are given subsequently to parties with the highest divisor reminder. In case of equality of reminders is relevant the higher number of party-votes; in case of that equality is used a lot. In case, that by such method was distributed one more mandate (then was stipulated), this mandate is taken away to party with the smallest divisor reminder; in case of equality of reminders is relevant smaller amount of votes; in case of equality was used a lot; the same methods were applied in 2002, 2006 and 2010 (in 2006 and 2010 according to new electoral law).

The last elections according to act of SNC on elections to SNC were held in 2002⁵⁹. In comparison with the elections in 1998 were again used binding candidate lists with max. 4 preferences, one electoral district and one scrutiny with Hagenbach-Bischoff's quota. Closing clauses were returned to the state in 1992/1994.

In 2004 NCSR adopted the new electoral law, the act on the elections to NCSR⁶⁰, which is valid and effect up to this time, and was used for the elections in 2006 and 2010.⁶¹ As regards of used electoral method and other here described associated institutes, this act was in principle inspired in previous legal arrangement. The elections in 2006 and 2010 was held on the same principles like in 2002 (see above). Only as regards the applying of preferences, there was not necessary to reach some amount of voters, who used the preference voting (like in FA – at least 1/10). The amount of voters, who used preference voting was not relevant. Relevant was only the percentage of preferences for a candidate (at least 3 percents from all valid votes for his/her candidate list). This (abolishing necessary amount of usage of preferences and reducing percents of preferences for a candidate) gives to “party” elections more personal elements (and also majority elements to proportional system) and more attention to the will of voters, as regards of the candidates in elected body.

From analysis of the elections in Slovakia can be made a conclusion, that its legal arrangement shows a strong continuity. In all Slovak elections was used the proportional electoral system of electoral quota (in majority of Hagenbach-Bischoff). Slovaks did not make any attempt to change it for example to the electoral divisor (in comparison with the Czech Republic). The principle of integration is saved by (at present time stabilized) variable (progressive) closing clause (basic for single parties and higher depending

⁵⁹ On September 20th - 21st, 2002.

⁶⁰ Act No. 333/2004 C. I.

⁶¹ On June 17th, 2006 (slightly preterm elections) and on June, 12th, 2010.

on the amount of members of coalition – 5, 7, 10 %). The main reforming element in the evolution of Slovak electoral legislature is transition from the double-scrutiny system (with more electoral districts) to one electoral district with one scrutiny. Typical is also the more a more openness to preference voting (also by abolishing of the necessary amount of voters, who used preference voting at last time: relevant is only the percentage of preferences for a candidate). Such system is also really corresponding to principles of differentiation in proportional system and to equal right to vote (with necessary applying of integration elements⁶²). And also can be said, that mentioned system is in Slovakia at present time relatively stabilized.

V. Conclusion

As the conclusion from analysis and comparison of electoral institutes in the Czech Republic and Slovak republic and corresponding time comparison, there can be said, that valid Slovak legal arrangement of parliamentary election is stabilized, especially after the last more important change, supplementing of previous 4 electoral districts by one nation-wide electoral district, and shows no problems with the proportionality and equality of right to vote. More openness to using and importance of preferences ensure to the voters the possibility to perform their will, as regards of personal composition of elected body (the same can be said, as regards of the Czech Republic). Adequate integration elements (closing clauses) ensure on the whole solid level of stability of political system.

The legal arrangement in the Czech Republic shows certain discontinuity with the older Czechoslovak arrangement: electoral quota was supplemented by electoral divisor (contrary to Slovakia, where is in such case, in principle, a continuity – all the time is used the electoral

⁶² By using of the closing clause.

quota). The endeavors in the Czech Republic to give more integration elements to electoral system (for the purposes of more stability) were successful only partially: the attempt for change from 2000 (modified d'Hondt system in 35 districts) was not permitted by the decision of CC, with regard to its non-correspondence with the principles of a proportional electoral system; another attempt for the change from 2009 (Hagenbach-Bischoff's electoral quota in 8 joined districts with the electoral bonus in the second scrutiny) was rejected by CD; and contemporary valid arrangement (d'Hondt electoral divisor in 14 districts) is problematic, as regards of non-equality of the districts in connection with used electoral method and caused non-proportionality as regards of smaller political parties (which collide with the principle of equal right to vote). Also implemented integration elements (together with closing clauses) are not ensuring at any time the stability of political system. All mentioned means, that the electoral system in the Czech Republic needs another reforms, which took out mentioned problems. This can be made especially by creating of more equal districts (or only one nation-wide electoral district), joined with relevant electoral method (Slovakia can be a model here), maybe also with some variant of electoral bonus (in favor of stability of political system).

Summary:

The paper deals with the analysis and comparison of electoral institutes in the Czech Republic and Slovak Republic, according to relevant legal arrangement, together with corresponding time comparison (1990-2010), in proportional electoral system, especially as regards of used electoral method, used electoral districts and relevant closing clause, and their corresponding to fundamental principles of fair elections (including of principles of differentiation and integration). All that is studied, as regards of Chamber of Deputies (lower house of bicameral Parliament of the Czech

Republic) and National Council of Slovak Republic (unicameral Slovak parliament). In this context are also studied made or proposed reforms of electoral legislature and their results.