

# LEGAL ASPECTS OF EVENTS OF FEBRUARY 1948

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**Abstract:** *This paper summarizes the political and legal situation in 1948. It includes basic overview of development in previous years and focuses on the problem of legality of selected problems of the Communist overtook of power. These problems are especially: the appointing of ministers by presidents, importance (or unimportance) of number of resigning ministers and irresponsibility of president for his acting*

**Keywords:** *Communism, Constitutional Law, February 1948, Legality, National Front.*

## 1. Introduction

Lot of papers and books were already written about the Communist overtook of the power in 1948; many of them are the memoirs of direct participants. Nevertheless, just few of them focused on the legal aspect of this problem – on the first place I want to mention the articles of Václav Pavlíček written in 1967 and 1968 and presented in his book on freedom and democracy [PAVLÍČEK 2005]: *February 1948 in Parliament, Political Parties and Socialism* and *February 1948 – some notes on the February events in Czechoslovakia*. The consequences are preciously summarized in many parts of the latest monograph dealing with the topic of Communist law. [BOBEK, MOLEK, ŠIMÍČEK 2009]

This article is targeted to give an overview of the events of February 1948 from the legal point and is concentrated on the acting of constitutional functionaries by this time. The article has to answer the question of legality of the constitutional procedures which resulted to the power overtook realized by Communists after the demission of ministries of democratic parties.

## 2. Political situation 1945-1948

### 2.1 Starting points

The main event which influenced the next development of Czechoslovak state and society was the 1946 election. The Communist Party won this election having gained 114 of 300 chairs in the National Assembly.<sup>1</sup>

But it is a mistake to think that the policy line of the state was given by the results of this election. Much more important were the negotiations between the Czechoslovak exile government and Soviet Union about the strategic orientation of Czechoslovakia during the World War II. Act which confirmed the process of convergence with USSR was the Government program of Košice assumed in April 1945. [BOBEK, MOLEK, ŠIMÍČEK 2009]

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<sup>1</sup> Election in 1946 ended by the victory of Communist party. There were 114 Communist MPs, 55 National Socialist MPs, 46 Popular Party MPs, 46 Slovak Democratic MPs, 39 Social Democratic MPs and 3 Freedom Party MPs. The victory strengthens the position of Communist Party in the international communist movement too. [PAVLÍČEK 2005]

Next important point was complete reconstruction of the system of political parties. The situation in Czech lands was influenced by the position of the political representatives in exile, in Slovakia it was given by the results of the Slovak National Rising 1944. All politicians including president Beneš linked their conception of new political system with criticism of pre-war parliamentarism. “Prezident Beneš prosazoval v řadě svých projevů v Londýně systém dvou nebo ještě lépe tří stran – levice, středu a pravice. Předpokládal, že v levicové straně by splynuly Komunistická strana Československa, sociální demokracie a národní socialisté a že komunisté by se v této mase rozplynuli. (...) Střed měli představovat lidovci a konzervativní složku agrárníci.” [PAVLÍČEK 2005]

Even conception of the Communist party (creation of united Socialist Party and cooperating Popular Party) was not completely realized. The basic phenomenon which the parties were agreed on was the abolition of opposition and governmental cooperation of all approved parties in the platform of National Front. These parties were the Communist Party, National Socialist Party, Social Democracy and Popular Party in Czech lands, Democratic Party and Communist Party in Slovakia (Labour Party and Freedom Party were marginal).

After the election two competing political blocks took shape. Right-wing (or democratic) block led by the National Socialists (including Popular Party, Slovak Democrats and part of Social Democracy) and left-wing block led by Communists. Communist Party laid out a target to gain absolute majority in the next election (1948) shortly after the election 1946. Already that time the Communists were accused by other parties of effort to install a dictatorship.

## ***2.2 Rising conflict***

Preparations for new election culminated during Fall 1947 especially in relation to Congress of Social Democracy (November 1947) and the meeting of the Central Committee of Communist Party in the same time. Communist chairman Klement Gottwald spoke about the necessity of gaining support of majority, danger of possibility of reactionary putsch and about the preparation for election in all ways. [GOTTWALD 1958] But we cannot understand the term “preparation for election” in the same meaning as in tradition democratic societies. As narrates eyewitness of this period, journalist Karel Pacner: “Velkou roli mělo sehrát zastrašování v předvolební kampani. Začátkem ledna 1948 vydal komunistický velitel Sboru národní bezpečnosti rozkaz: V zájmu veřejné bezpečnosti a pořádku je třeba, aby na každé veřejné schůzi byl přítomen aspoň jeden člen SNB, a to v občanském oděvu jako posluchač. Je velmi prospěšné, když se postaví nebo si sedne vedle spolehlivého občana. Pronese-li někdo na schůzi trestní výrok, přihlásí se pak spolehlivý občan o slovo a napadne trestný obsah řeči. Poněvadž zde jde o verbální delikt, je zapotřebí si závadný výrok do slova poznamenati a pak uvést v udání. Jak člen SNB, tak i spolehlivý občan na schůzi přítomný vystoupí pak před soudem jako svědci.” [PACNER 1997]

Pavliček gives us the testimony about infiltration of communists into other parties and about possibility of creation of united left-wing candidacy slate: “Podpora levice v nekomunistických stranách měla případně i vyústit v koncepci vytvoření levicové kandidátky ve volbách, která by zahrnovala všechny pokrokové a demokratické síly a šla za rámec komunistické strany. V zájmu realizace této politiky byla zejména v sociální demokracii a v národně socialistické straně podporována frakční činnost a připravována půda pro takovou kandidátku,” and he supplements that the question of power had to be decided. [PAVLÍČEK 2005]

### 3. February 1948

#### 3.1 Escalation of crisis

Launching moment of the conflict became a disposal of land commander of Police (SNB) lieutenant-colonel Dybal. He called out eight non-communist local commanders in Prague 12<sup>th</sup> February 1948. This situation was discussed in the government next day and the democratic representatives protested against this proceeding, especially Minister of Justice Prokop Drtina who said: “Dověděl jsem se, že na ministerstvu vnitra byl včera vydán rozkaz zemského velitele SNB pplk. Dybala, podle něhož má dojít ke změně na osmi velitelských místech obvodních velitelů SNB v Praze. Také na některých velitelstvích mají být uskutečněny změny. Při tom se mají na místa dostat vesměs příslušníci KS, ale naproti tomu se odstraňují a odcházejí důstojníci SNB vyšších hodností a s delší služební dobou, kteří mají výbornou kvalifikaci, a opomíjejí se tímto způsobem ve prospěch mladších a méně kvalifikovaných kolegů jen proto, že jde o členy komunistické strany. Tato opatření byla zřejmě učiněna právě v předvečer dnešního jednání vlády a musí tedy vyvolat nejen rozruch a nedůvěru v kruzích nekomunistických členů národní bezpečnosti, ale také nejhlubší nedůvěru členů vlády ostatních politických stran.”

The government agreed with his arguments and accepted a resolution to stop moving the SNB officers and investigate complaints on Interior and Justice. Communists didn't agree with that. [PACNER 1997]

Communist minister of Interior Václav Nosek refused to fulfill the governmental resolution: he said this matter is not in the competence of government.<sup>2</sup> Democratic ministers demitted in protest against his practice and hoped in fall of whole government and defeat of Communists in election.

Next advancement depends on president. He wasn't delighted with the demission and his first reaction was not to accept it. Communist Prime Minister Gottwald was against that and forced him to accept the resignation. [KAPLAN 1997] According to testimony of president's chancellor Jaromír Smutný Beneš didn't intend to accept the demission and planned the continuation of the government in current composition till early election. But Gottwald pressured on him enormously to accept and nominate new ministers offered by Communists; the representatives of democratic parties didn't expect this evolution [SMUTNÝ 1996].

Anyway, the upcoming pressure existed in whole society on all levels. Movements of Soviet Army in Ukraine, Hungary and Germany and visit of Soviet diplomat Valerian Zorin also couldn't calm down the situation.

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<sup>2</sup> Nosek requested to make a legal analysis of the jurisdiction of the cabinet in this matter. One of the experts mentioned the resolution had been only formally incorrect – according to the Constitution the Government had had to declare the question as a political and decide about it. Author of the expertise advised of fact that democratic (non-communist) ministers had the majority in government and they can (even repetitively) recall the procedures advantageous for the Communist Party. [PACNER 1997]

### 3.2 Legal point of view

#### 3.2.1 *Appointing of ministers by the president*

Let's concentrate on the legal aspect of incurred situation. Pavlíček says that both parties emphasized the necessity to solve the crisis in legal and constitutional way. [PAVLÍČEK 2005]

Valid 1920 Constitution that prime minister and other ministers are appointed by the president (§ 70). Government shall be responsible to the National Assembly which may express no confidence to it by the majority of votes (§ 75). Pavlíček thinks that the easiest and most logical way to recall the government would be this way. "Byl by to zároveň postup i podle § 78 ústavy, podle něhož vyslovila-li poslanecká sněmovna vládě nedůvěru (...) musela vláda podat demisi do rukou prezidenta republiky (...). O možnosti využití parlamentu však nenacházíme v dokumentech těchto stran žádné zmínky, lze se domnívat, že na parlament a postup podle těchto ustanovení ústavy v celém průběhu krize pravicové strany ani nepomyslely." [PAVLÍČEK 2005] The democratic parties trusted in the cooperation with president and fall of whole government.

The question is what the legal possibilities of president Beneš were. Traditional legal science of the First republic acknowledges broad competences to the president: "Pokud se propouštění vlády týče, nutno zdůraznit, že prezident republiky je jest státoprávně také zde vlastním subjektem tohoto práva a že mu patří volná iniciativa. President by nemusil vyčkávatí žádosti o demisi, kdyby chtěl vládu, či jednotlivé její členy propustiti. Nepotřebuje k tomu také předcházejícího návrhu vlády nebo jejího předsedy." [SVOBODA 1934] Pavlíček didn't agree with this statement by accentuation of the principle of parliamentary democracy and reports to the proposal of 1920 Constitution. [PAVLÍČEK 2005]

In my opinion argumentation of Václav Pavlíček is more logical and systematical than the opinions of the opposite side. Therefore the president had no power to repeal the government without no-confidence vote in Parliament against it.

#### 3.2.2 *Number of ministers demitted*

Other discussed problem is the importance of fact that only minority of ministers resigned. Common opinion is that after demission of majority the government should no more exist.<sup>3</sup> This opinion is based on § 80 of the Constitution (resp. on § 4 of President's Decree No. 1/1945 Coll. on New organization of government): the Government have a quorum by presence of the majority of members. Pavlíček objects: "V uvedeném ustanovení se uvádí, že vláda rozhoduje ve sboru, který je schopen se usnášet, je-li přítomna nadpoloviční většina členů vlády. Neschopnost vlády usnášet se neznamená nutně povinnost vlády podati demisi, ale toliko povinnost předsedy vlády zabezpečit znovu její dělnost a udržet si důvěru v parlamentu, tak, jak to ústava vyžadovala." [PAVLÍČEK 2005]

Proof of this interpretation is the fact that in the moment when president was appointing new ministers majority of ministers demitted (Social Democrats Václav Majer and František Tymeš resigned).<sup>4</sup>

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<sup>3</sup> E. g.: "Twelve ministers left but fourteen stayed; therefore the Government had the quorum. By demission of one more minister the Government exists no more. In this situation the Communist Party had the advantage: Gottwald understood it at once." [PACNER 1997]

<sup>4</sup> Compare the opinion of Karel Pacner. [PACNER 1997]

### 3.2.3 *Non-responsibility of president*

Third key point of this constitutional problem is the non-responsibility of president from the execution of his office. According to Constitution the government was responsible for his acts; all president's act should be countersigned by prime minister or responsible minister (§ 66). Constitutional customs demanded to sign the repeal of prime minister leaving his office by himself and appointive decree by the new prime minister. [WEYR 1937]

Therefore it wasn't possible to repeal the prime minister without his consent. "Takový prezidentův akt nemohl být platný bez spolupodpisu předsedy vlády, z čehož by vyplývalo, že prezident nemohl platně propustit premiéra neporaženého v Národním shromáždění proti jeho vůli z jeho úřadu, aniž by porušil ústavu." [PAVLÍČEK 2005] Opposite argumentation is used (again) by some of pre-war constitutionalists: "... by nebylo překážek, aby i propuštění staré vlády bylo spolupodepsáno premiérem novým. President republiky je subjektem těchto úkonů a účelem kontrasignace není, aby mu ji znemožňovala, ale jen aby konstruovala odpovědnost za tyto akty. Dovede-li si president opatřit kohokoliv, kdo svojí odpovědností za jeho akty – změny vlády nevyjímaje – před parlamentem obstojí, nemůže mu být bráněno, aby ji předsezval." [SVOBODA 1934] This argumentation is problematic related to the democratic legitimacy of such conduct.

## 4. Conclusion

That's about the formal constitutional procedures applied by the solution of this crisis which reached to the Communist putsch: the proceeding of demission of the democratic ministers and of appointing new government members loyal to the Communists didn't break the constitution. The restoration of government passed in accordance with law.

But all non-legal ways to gain all the power has to be mentioned too. Creation of action committees on all levels, rearming of Popular Militia, stopping of publishing non-communist press and unreasonable seizures of democratic politicians were very significant non-legal actions of the Communist Party in this time. Main importance has the "restored" National Front with participation of representatives of many interest organizations (Labour Unions, Agrarian Union, partisans etc.) and turn-coats from Popular and National Socialist Party. Communist party and Social Democratic Party sent their official representatives. This new National Front was under the full control of Communists and was an instrument to realize the policy of the Central Committee of KSČ. [RIPKA 1995]

By staying on the formal point of view, we can see also one other legal possibility how to solve this governmental crisis. First option was the new parliamentary election, solution planned by the democratic parties, which expected not-acceptation of the demission by president Beneš and fall of the common government of National Front.

Neither Communists nor democratic parties tried to use the solution within the jurisdiction of Parliament. E.g. the democratic parties might try the process of summoning of the National Assembly and no-confidence vote (according to § 76 of the Constitution). Question is the chance to realize this process because the majority in the National Assembly was very uncertain. But from the confidence voting for the new Gottwald's government we can assume that this process will not have a chance and Communists could be more successful trying to decide the battle on the field of Parliament, especially because of many turn-coats from National Socialists, Popular Party and mainly Social Democrats which also gave information to Communists during the whole time of the crisis. [PACNER 1997, RIPKA 1995]

Wednesday 10<sup>th</sup> March 1948 came the “reborn” government to the Parliament. 241 MPs were present, 9 (reportedly) on holidays, 6 had resigned and 44 were hiding or run off to western countries (of 300 MPs). Till next day (day of the confidence vote) another 11 MPs missed. The voting was unanimous. Communist politician Václav Kopecký later said: “Z obavy, aby jednomyslnost při hlasování v Národním shromáždění nebudila dojem vynuceného zglajchšaltování, přímo jsme prosili některé poslance, o kterých jsme věděli, že s námi ve své duši nesouhlasí, aby hlasovali proti, anebo se aspoň zdrželi hlasování. Ujišťovali jsme je, že se jim nic nestane a nabízeli jsme jim různé záruky. Ale nebylo to nic platné. Hlasovali jednomyslně pro...” [PACNER 1997] Through this voting Communists legalized their overtook of power in Parliament.

Nevertheless, communists gained the real power in the country during the first days of the crisis. They needed the signature of president Beneš only to confirm their victory, formally achieved in democratic way. [KAPLAN 1997, PACNER 1997]

Summarized: Enthroning of Communist power on the constitutional level passed in compliance with Constitution even though acting realized by Communists and Security forces controlled by them during were explicitly contrary to law. Therefore it was in logical antagonism with the Marxist theory of Violent Revolution as explained by Lenin in *The State and Revolution*, [LENIN 1950] but political processes and other unrightfully actions of Communists in following years could be much more understand as Violent Revolution than the February 1948 putsch. And we can also assume that the Communist party would probably have used the force if the constitutional way of overtook hadn't worked.

I think this analysis fulfill the objective of this paper. Final summarization is that the Communist overtook was (at least from the formal point of view) legal but considering the circumstances we cannot regard it as legitimate and therefore it was against the legal system in general [PŘIBÁŇ 1997] and has to be considered as unlawful.

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