

CONTENTS

Author's Word	15
A Word of Translators	17
List of Abbreviations.	18

PART ONE – THE GENERAL PART

Chapter One: General Theory of the Constitution	21
§ 1. The Concept and Subject of Constitutional Law	21
1.1 The Concept of Public and Private Law.	21
1.2 The Concept of Constitutional Law	24
1.2.1 The Historical Circumstances of the Creation of Constitutional Law	24
1.2.2 Constitutional Law and Its Subject	26
1.3 Constitutional Relations and Their Subjects	33
1.4 The Special Character of Constitutional Regulation	38
§ 2. Modern Constitutionality and the Constitution; Its Creation.	38
2.1 The Historically Conditioned Nature of a Constitution as a Document.	38
2.2 Stages of Constitutional Development	43
2.3 The Constitution as an Expression of State Sovereignty	47
2.4 Constitutional Reality of the Relationship between the Constitution and the Creation of a State	49
2.4.1 Constitutional Implications of Decolonization	49
2.4.2 The Dissolution of the Socialist Federations.	51
2.4.3 Constitutional Implications of the Dissolution of the Soviet Union and the Creation of New States on Its Former Territory.	52
2.4.4 The Disintegration of Yugoslavia	53
2.4.5 The Constitutional Transition from the Unitary State to the Federation	54
2.4.6 The Constitutional Fusion of Two States	55
2.5 The Constitution and Public Power	55
2.5.1 The Constitution as a Definition of Public Power	59
2.6 Dominant Constitutional Models – Basic Characteristics.	60
§ 3. Content of the Constitution	63
§ 4. The Constitution as Fundamental Law	65

§ 5. The Constitution as Normative System, the Form and Structure of the Constitution	67
5.1 The Form and Structure of the Constitution.	67
5.2 The Constitution as Normative System	68
§ 6. Constitutional Interpretation	70
§ 7. Liability and Sanctions in Constitutional Law	74
§ 8. Constitutional Implementation and Constitutional Disputes	75
§ 9. Substantive and Procedural Constitutional Law, Constitutional Disputes.	77
§ 10. Sources of Constitutional Law	78
§ 11. Constitutional Law and International Law	82
§ 12. Adoption, Amendments and Repeal of the Constitution	84
12.1 Significance of the Issue	84
12.2 Different Modes of Adoption of the Constitution.	86
12.3 Use of Referendum	89
12.4 Amendments to the Constitution	89
12.5 Stages of Constitutional Amendments	90
§ 13. Protection and Review of the Constitution	91
13.1 Historical Development – the Principle of Constitutionality	91
13.2 Types of the Constitutional Review (of the Protection)	92
13.3 Constitutional Justice	94
13.4 Constitutional Courts	96
§ 14. The Language and Stylistics of Constitutions	100
§ 15. Internal Differentiation of the Constitution	101

PART TWO – THE PARTICULAR PART

Chapter One: Genesis and Character of the Czech Constitution 105

§ 1. Development of the Czechoslovak Constitution	105
1.1 Characteristics of Czechoslovak Constitutional Development	105
1.2 Stages of Czechoslovak Constitutional Development	108
1.3 Internal and External Systems of the Constitution	113
1.4 External Implications of Constitutional Development	114
§ 2. Constitutional Dissolution of Czechoslovakia	116
2.1 Constitutional Situation Between 1989 – 1992	116
2.2 The Process of the Division of Czechoslovakia.	118
2.3 The Division of the Property of the Czech and Slovak Federal Republic	121

§ 3. The Constitutional Order of the Czech Republic.	122
§ 4. Continuity and Discontinuity in the Establishment of the Czech Republic	125
4.1 State Continuity and Discontinuity	125
4.2 Territorial Continuity and Discontinuity	127
4.3 Legal Continuity and Discontinuity	128
§ 5. The Constitution of the Czech Republic, its Nature and Structure .	129
§ 6. The Charter of Fundamental Rights and Freedoms	130
§ 7. The Constitution of the Czech Republic and International Law . .	132
7.1 Foreign Relations of the Czech Republic	132
7.2 The Relationship Between the Constitution of the Czech Republic and International Law.	134
7.3 Constitutional Grounds for Binding Effect of International Law.	136
7.4 Constitutional Grounds for Delegation of Powers to a Supranational Institution	137
7.5 Constitutional Review of Conformity to International Treaties	139
7.6 Consequences of the New Amendment to Art. 10 for Constitutional Complaints Proceedings	140
7.7 Consequences of the New Amendment to Art. 10 Regarding the Review of Constitutional Acts and Other Enactments . .	141
7.8 The Binding Effect of Enactments and International Treaties upon a Judge of a Common Court in the Process of Decision-Making	141
§ 8. The Czech Republic as Member State of the European Union. . .	142
8.1 Contractual Basis of the Accession of the Czech Republic to the European Union.	142
8.2 The Relationship Between the Legal System of the European Union and the Legal System of the Czech Republic	144
8.3 The Relationship Between the Jurisdiction of the European Union and the Constitutional Sovereignty of the Czech Republic	145
8.4 The Relationship Between Czech Citizenship and Citizenship of the European Union	146
8.5 Freedom of Movement in Another Member State of the European Union	148
8.6 Participation of the Czech Republic in the Structure and in Activities of Institutions of the European Union. . . .	149

Chapter Two: Substantive Constitutional Law of the Czech Republic	150
Section One: The Czech State, its Form and Constitutional Characteristics	150
§ 1. The Form of the Czech State	150
1.1 The Nature of the Constitutional Model	150
1.2 On National Sovereignty	151
1.3 On the Unitary Form of State	152
1.4. On Republicanism.	154
1.5 On Constitutional Democracy.	155
1.6 On Legal Statehood	158
1.7 On the Principle of Respect for Human Rights	159
1.8 On the Principle of the Separation of Powers	160
1.9 On the Principle of Respect for International Law	160
1.10 On Membership in the European Union	160
§ 2. The Territory of the State and the State Borders	160
2.1 On the Concept of the Territory of the State	160
2.2 Legal Regulation of the State Borders	163
§ 3. Prague, the Capital	164
§ 4. National Symbols.	165
4.1 The Large and Small National Emblems	166
4.2 The National Colours	167
4.3 The National Flag	167
4.4 The Flag of the President of the Republic.	168
4.5 The National Seal	168
4.6 The National Anthem	168
§ 5. The Security of the Czech Republic	168
5.1 Constitutional Foundations of Decision-Making Concerning Security Issues of the Czech Republic.	168
5.1.1 Definition of Situations Raising Security Questions.	168
5.1.2 Emergency Situations	169
5.1.3 State of Emergency	170
5.1.4 State of War	171
5.1.5 Organizational Measures	171
5.2 Constitutional Authorization of the Government Related to the Security of the Czech Republic.	172
5.3 Constitutional Status of Natural and Legal Persons during Security Situations in the Czech Republic.	173
5.4 Legal Regulation of the Presence of Foreign Armies in the Territory of the Czech Republic	174

5.5	Constitutional Foundations of the Defence of the Czech Republic	174
§ 6.	Public Status of Political Parties in the Czech System of Powers .	176
6.1	Political Parties in the Czech Constitutional System	176
6.1.1	Characteristics of a Political Party	176
6.1.2	The Role of Political Parties in the Electoral Process .	177
6.1.3	The Role of Political Parties in the Internal Activities of Parliament	178
6.2	Legal Regulation of the Establishment and Activities of Political Parties	179
6.3	Legal Scope and Limits of the Establishment and Activities of Political Parties	179
6.4	Procedure for the Registration of Political Parties	181
6.5	The Register of Parties and Movements Administered by the Ministry	183
6.6	Suspension of the Activity of a Political Party or Movement, Restoration of their Activity; Dissolution.	183
6.7	Judicial Protection Available to a Member of a Party or Movement	184
6.8	Abolishment and Dissolution of a Political Party	185
6.9	Legal Limits of Financing and the Financial Management of Political Parties	186
6.10	State Subsidies	188

Section Two: Constitutional Foundations of the Status of an Individual and Citizen 191

§ 1.	Citizenship	191
1.1	The Concept of Citizenship	191
1.2	Constitutional Foundations of Citizenship	191
1.3	Derived Citizenship of the European Union	194
1.4	System of Acquisition of Czech Citizenship upon Establishment of the Czech Republic	194
1.5	System of Acquisition and Loss of Czech Republic Citizenship	195
1.5.1	Legal Requirements for Acquisition of Czech Republic Citizenship	195
1.5.2	Legal Requirements for Loss of Czech Republic Citizenship	198
1.6	Citizenship in the Czech Republic in the Context of the Termination of the Czech and Slovak Federal Republic	198
1.7	Legal Regulation of Asylum	201

§ 2. Constitutional Foundations of Rights and Freedoms	202
2.1 The Charter of Fundamental Rights and Freedoms as a Legal Act	202
2.2 Human Rights and Fundamental Freedoms	205
2.2.1 The Capacity to Possess Rights	205
2.2.2 The Right to Life	207
2.2.3 The Inviolability of a Person and Their Privacy is Guaranteed	209
2.2.4 Personal Freedom	212
2.2.5 The Prohibition of Forced Labour or Services.	215
2.2.6 The Right to the Preservation of Human Dignity, Personal Honour, Good Reputation and Protection of the Name of an Individual.	218
2.2.7 The Right of Ownership	223
2.2.8 Inviolability of a Person's Dwelling	229
2.2.9 Confidentiality of Letters, Other Papers and Records; Confidentiality of Communications	231
2.2.10 Freedom of Movement and Residence.	232
2.2.11 Freedom of Thought, Conscience and Religious Conviction; Scientific Research and Artistic Works	234
2.2.12 The Right to Free Manifestation of Religion or Belief	236
2.3 Political Rights	242
2.3.1 Freedom of Expression and the Right to Information	242
2.3.2 The Right to Petition	247
2.3.3 The Right of Assembly.	250
2.3.4 The Right of Association.	251
2.3.5 The Right of Resistance	254
2.3.6 The Right to Participate in the Administration of Public Matters	255
2.4 The Rights of National and Ethnic Minorities	257
2.5 Economic, Social, and Cultural Rights	261
2.5.1 Economic Rights	262
2.5.2 Freedom to Form Trade Unions	266
2.5.3 The Right to Remuneration and Work Conditions.	268
2.5.4 Social Rights of Women, Juveniles, and Other Categories of People	269
2.5.5 Social Rights of Citizens in Old Age and Other Situations	269
2.5.6 Constitutional Foundations of Health Care	271

2.5.7	Constitutional Safeguards Related to the Family . . .	272
2.5.8	Constitutional Foundations of Education	273
2.5.9	Constitutional Foundations of Creation and the Access to Culture	275
2.5.9.1	Copyright	276
2.5.9.2	Industrial Property Rights	277
2.5.9.3	Cultural Heritage	278
2.5.10	Constitutional Foundations of the Protection of the Environment.	278
2.6	The Right to the Judicial and Other Legal Protection.	279

**Section Three: The Constitutional System of the Separation
of Powers in the Czech Republic 289**

§ 1.	The Constitutional Concept of the Separation of Powers.	289
§ 2.	Legislative Power in the Czech Republic	295
2.1	The Characteristics and Structure of Parliament	295
2.2	The Powers and Jurisdiction of Parliament	298
2.3	Constitutional Foundations of Parliamentary Procedural Law (Substantive Legal Aspect)	301
2.4	The Characteristics of the Mandate of a Deputy or Senator .	304
2.4.1	The Constitutional Concept of the Mandate of a Deputy or Senator	304
2.4.2	Personal Content of the Mandate	306
§ 3.	Executive Power in the Constitution of the Czech Republic. . . .	308
3.1	Constitutional Concept of Executive Power	308
3.2	President of the Republic	310
3.2.1	Position of the President of the Republic	310
3.2.2	Election of the President of the Republic	311
3.2.3	Powers and Competence of the President of the Republic	312
3.3	The Government.	315
3.3.1	The Constitutional Position of the Government	315
3.3.2	The Appointment of the Government and its Resignation	316
3.3.3	Ministries and Other Administrative Agencies	318
3.4	State Prosecution Offices	321
§ 4.	Judicial Power in the Constitution of the Czech Republic	323
4.1	The Constitutional Conception of Judicial Power.	323
4.2	The European Conception of Judicial Power	327

4.3	Constitutional Principles of Judicial Power	328
4.4	Constitutional Court of the Czech Republic	331
4.4.1	Czechoslovak Constitutional Justice	331
4.4.2	Constitutional Justice of the Czech Republic	336
4.4.3	A Judge of the Constitutional Court and his Position	339
4.4.4	Jurisdiction of the Constitutional Court	343
4.4.5	Organization of the Constitutional Court	346
4.5	The System of Common Courts in the Czech Republic.	350
4.6	Constitutional Position of a Judge.	352
4.7	Constitutional Principles of Administrative Justice.	355
4.8	Decision-Making in Some Competence Disputes.	357
§ 5.	The Supreme Control Office	357
§ 6.	The Czech National Bank.	359
§ 7.	Territorial Self-Government in the Czech Republic	361
7.1	General Approach to Territorial Self-Government	361
7.2	Constitutional Concept of Territorial Self-Government in the Czech Republic	363
7.3	Constitutional Status of Municipalities	364
7.4	Constitutional Status of Regions	368
7.5	The Status of the Capital City of Prague	369
7.6	Local Referendum.	370
7.7	Elections to Municipal Boards of Representatives	371
7.8	Elections to Regional Boards of Representatives	373
§ 8.	Ombudsman.	374
8.1	Status of Ombudsman in the Constitutional System	374
8.2	Competences of the Ombudsman	376
Chapter Three: Procedural Constitutional Law		379
Section One: Procedural Voting Rights		379
§ 1.	Subjective Voting Rights	379
1.1	Active Voting Right	379
1.2	Passive Voting Right	380
§ 2.	Electoral Regulations.	380
2.1	Phases of the Electoral Process	380
2.2	Internal Organization of Elections	382
2.3	The Concept of the Electoral Arithmetic	385
2.3.1	The Electoral System for the Chamber of Deputies	385
2.3.2	The Electoral System for the Senate	386

2.3.3	The Electoral System for Regional Boards of Representatives	386
2.3.4	The Electoral System for Municipal Boards of Representatives	387
2.3.5	The Electoral System for the European Parliament . . .	388
§ 3.	Judicial Review of Legality and Constitutionality of Elections, Electoral Justice, Electoral Judicial System	389
3.1	The Purpose of Electoral Justice	389
3.2	Protection of Active Voting Right	390
3.3	Protection of Passive Voting Right in Parliamentary Elections	390
3.4	Protection of Passive Voting Right in Elections to Boards of Representatives	391
3.5	Constitutional Protection of Electoral Justice	392
	Section Two: Procedural Law of Parliament	393
§ 1.	Delimitation of the Concept and Content of Procedural Law of Parliament	393
§ 2.	Constitutional Foundations of the Procedural Law of Parliament .	394
2.1	The Concept of the Procedural Law of Parliament	394
2.2	The Content of the Procedural Law of Parliament	396
§ 3.	Organizational Foundations of Activities of the Chamber of Deputies	396
3.1	Sessions and Constituent Sessions of the Chamber of Deputies	396
3.2	Officials of the Chamber of Deputies	397
3.3	Organs of the Chamber of Deputies.	398
3.4	Clubs of Deputies	399
§ 4.	General Principles of Procedure in the Chamber of Deputies . . .	400
4.1	Meetings and Convening of the Chamber of Deputies	400
4.2	Organization of Meetings of the Chamber of Deputies	401
4.3	Standing Orders of Meetings of the Chamber of Deputies . . .	402
4.3.1	Principles of Meetings of the Chamber of Deputies . . .	402
4.3.2	Procedure for Meetings of the Chamber of Deputies . . .	403
4.4	Methods of Voting in the Chamber of Deputies	405
§ 5.	Special Types of Procedure in the Chamber of Deputies.	405
5.1	Discussion of a Vote of Confidence in the Government	406
5.2	Discussion of Draft Acts (Legislative Procedure)	406
5.3	Discussion of the Draft State Budget Act	410
5.4	Discussion of International Treaties.	411
5.5	Discussion of the Investigation Commission	411

5.6 Discussion of Interpellations	413
5.7 Discussion of Petitions and Other Submissions from Citizens.	414
5.8 Election Procedure of the Chamber of Deputies	414
§ 6. The Standing Orders of the Senate	415
Section Three: Proceedings before the Constitutional Court of the Czech Republic	417
§ 1. Protection of Constitutionality as a Process	417
§ 2. Characteristics of Proceedings Before the Czech Constitutional Court	419
Bibliography	423
Curriculum Vitae.	431
The Team of Translators	447
Index	448