CHANGING PARLIAMENTARY FUNCTIONS: EUROPEAN PERSPECTIVES

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ABSTRACT

The starting point of this dissertation is the ongoing debate on the decline of parliaments and decreasing trust in parliaments. Parliamentary decline thesis and decreasing trust in parliaments trigger the question if there is a decline in parliamentary functions as well, and is investigated in the present work**.** For this purpose, in this dissertation I examine the changes of parliamentary functions with respect to the claim that parliaments' role and power diminished.

In terms of focus, one can identify many different parliamentary functions. As there is no rigid list of parliamentary functions, I decided to limit my research to three functions which I believe are the most important functions that parliaments carry out: representative, legislative and control functions.

In summary, the aim of this thesis is to demonstrate what parliaments are actually doing by looking into detail of their activities, and this way to explore their functions. There is an ongoing puzzle in relation to parliaments: although parliaments do more, the general perception about them seems to be deteriorating. This is being explored in detail in this thesis. To be more specific, in this thesis I argue that despite the ongoing parliamentary decline thesis, there have not been so many changes with regard to researched parliamentary functions *per se*. In fact, parliaments seem to be continuously improving their procedures to get closer to the ideal type of parliament as defined by the Inter-Parliamentary Union. Therefore, I conclude the thesis arguing that taking parliamentary functions alone, stripped of context, parliamentary functions are being continuously improved and made more sophisticated. They are not deteriorating, at least when it comes to the legal regulation and practices analyzed in this thesis.

Nevertheless, the context in which parliaments function has changed dramatically, and influenced a general popular perception on parliamentary functions. Here I discuss various hypotheses. First, people seem to expect more from parliaments, deriving higher expectations from the classic democratic theory, according to which parliaments are the most central body of governance. Thanks to rapidly developing technologies, but also by virtue of more open and transparent parliaments, people are able to follow parliamentary business better and are not dependent on their representatives to provide them with information and opportunity to follow political decision-making. People are capable to control and provide input to parliaments and executives themselves. Having more information than ever before, the attitude towards parliaments has been changing with people expecting more from them, impairing a perception of parliaments, and their trust in them.

Secondly, another reason behind a popular perception of weak parliaments identified in this thesis, against such enhanced popular expectations, are changes of context parliaments operate in related to the European integration, and to trends such as constitutionalization and judicialization of the legal system. All these processes are leading people to assume that parliaments are weak and unimportant institutions, as they are being stripped of their power that is taken over by European or other national institutions. I argue, again, that this supranational development does not mean that parliaments are doing less; it means that the context in which parliaments function has changed and now there are bodies on the national and supranational level, whose power has increased, such as constitutional courts.

I argue that as context is changing, so must our perception on what parliaments' role and powers are. Changing the context in which parliaments operate does not mean they will become obsolete institutions without a meaning. Parliaments will continue to perform their functions, however, within a different and more complex institutional environment, and against the background of increasing pressures for further involvement of citizens through tools of direct democracy. And once we adjust our perception on roles and functions of parliaments we will better appreciate their indispensable role in contemporary representative democracies.

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INTRODUCTION

The starting point of this dissertation is the ongoing debate on the decline of parliaments and decresing trust in parliaments. Parliamentary decline thesis and decreasing trust in parliaments trigger the question if there is a decline in parliamentary functions as well, and is investigated in the present work**.** The parliamentary decline thesis was first openly formulated by Lord Bryce in 1921, and it has been the dominant narrative on parliamentary behavior during the 20th century[1]. The parliamentary decline thesis was also argued in *Parliamentary Reform* (1934) by Jennigs, *Parliamentary Representation* (1943) by Ross,and in *The Passing of Parliament* (1952) written by Keeton[2]. At the end of the 1960s, literature on parliaments became more optimistic, and although it did not challenge the parliamentary decline thesis, it suggested reforms, such as the elaborated scrutiny committee system[3].

Emphasis of the literature in the 1970s continued to be on the parliamentary decline thesis, with scholars calling for strengthening of parliaments at the expense of governments, including the debate of economic decline argument as an external

1 Matthew Flinders and Alexandra Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis," *British Journal Of Politics & International Relations* 13, no. 2 (2011).

2 William Ivor Jennings and New Fabian Research Bureau (Great Britain), *Parliamentary Reform* (London,: V. Gollancz, ltd., for the New Fabian research bureau, 1934); James Frederick Stanley Ross, *Parliamentary Representation* (London,: Eyre and Spottiswoode, 1943); George Williams Keeton, *The Passing of Parliament* (London: E. Benn, 1952).From:Flinders and Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis." p. 255.

3 S.A. Walkland, "The House of Commons and Its Estimates," *Parliamentary Affairs* 13, no. 4 (1960); A.H. Hanson, "The Purpose of Parliament," *Parliamentary Affairs* 17, no. 3 (1963); Ronald Butt, *The Power of Parliament*, 2nd ed. (London,: Constable, 1969); Michael Ryle, "Committees of the House of Commons," *Political Quarterly* 36, no. 3 (1965).From:Flinders and Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis." p. 256.

pressure[4]. In the 1990s Bruce Lennan was one of the scholars who continued to embrace parliamentary decline thesis. He argued that the original British form of parliamentary government was transformed into monarchy with central position of prime minister due to weakening of existing checks and balances[5].

Debate of parliamentary decline was stirred again in the mid 1980s, with the ongoing process of 'Europeanization' of the parliamentary democracy[6]. At the start, there was a problem of the so-called 'democratic deficit' related to the institutional governance at the European Union level. The ongoing strengthening of the European Parliament has shifted the debate on the impact of the growing influence of the EU policy-making to national parliaments, arguing that parliamentary powers to perform their functions have been transferred to the executive as a side effect of the European integration[7]. Yet another aspect of Europeanization that needs attention is the influence and impact of soft law mechanisms of the Council of Europe as well as the European Union.

In addition to the parliamentary decline thesis, the declining or low trust in parliaments is considered as another indicator of parliamentary decline. The noticeable decline of trust

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4 E.g. Stephen Blank, "Britain's Economic Problems: Lies Adn Damn Lies," in *Is Britain Dying? Perspectives on the Current Crisis*, ed. I. Kramnick (London: Cornell University Press, 1979); Anthony King, "Overload: Problems of Governing Britain in the 1970s," *Political Studies* 23, no. 2 (1975).

5 Philip Williamson, "[Untitled]," *The English Historical Review* 111, no. 441 (1996).; Bruce Lenman, *The Eclipse of Parliament : Appearance and Reality in British Politics since 1914* (London u.a.: Arnold, 1992).

6 See e.g. Katrin Auel and Arthur Benz, "The Politics of Adaptation: The Europeanisation of National Parliamentary Systems," *Journal of Legislative Studies* 11, no. 3/4 (2005).

7 Ibid. T. Raunio and S. Hix, *Backbenchers learn to Fright Back: European Integration and Parliamentary Government,* West European Politics 23(4): 142 - 68 2000; D. Rometch and W. Wessels, *The European Union and Member States: Towards institutional Fusion?* Manchester University Press, 1996, pp. 329 and 362; K. Hanf and B. Soetendorp, *Adapting to European Integration: Small States and the European Union*, Longman Publishing Group, 1998; T. Bergman and and E. Damgaard, Delegation *and Accountability in the European Union: The Nordic Parliamentary Democracies and the EU*, Frank Cass Publishers, 2000.

in the parliaments of the four researched countries over the last fifty years triggers the question if there is a decline in parliamentary functions as well, and is investigated in this dissertation.

Therefore, the main hypothesis of this thesis is that parliamentary decline thesis also involves the decline of parliamentary functions. For this purpose, in this dissertation I examine the changes of parliamentary functions with respect to the claim that parliaments' role and power diminished.

Researched Functions

In terms of focus, one can identify many different parliamentary functions. For instance, Walter Bagehot, the author of the English Constitution, identified and ordered the following functions of the House of Commons according to significance: *elective* as the most important one; and *expressive*, *teaching*, *informing*, and *legislative* functions as the least important ones. In 1970 Packenham identified eleven functions[8], while other authors identify different lists of functions[9]. As there is no rigid list of parliamentary functions, I decided to limit my research to three functions which I believe are the most important functions that parliaments carry out: representative, legislative and control functions.

[8] In his study published in 1970 he identified 11 functions of parliament: *Latent [legitimizing] function* (performed by holding regular meetings); *Manifest [legitimizing] function* (formal approval); *Tension release* (tension solving); *Recruitment*; *Socialization*; *Training*; *Law making*; *'Exit' function*; *Interest articulation*; *Conflict resolution*; and lastly *Administrative oversight and Patronage.* Robert A. Packenham, "Legislatures and Political Development (1970)," in *Legislatures*, ed. Philip Norton (Oxford: Oxford University Press, 1992). pp.86-96

[9] E.g. Adam Tomkins: the function to support the government, the representation of grievances, scrutiny of the Government, legislative function of parliament were placed by Tomkins at the third and last place respectively. Adam Tomkins, *Public Law*, Clarendon Law Series. (Oxford ; New York: Oxford University Press, 2003).

Summary of the Research

In summary, the aim of this thesis is to demonstrate what parliaments are actually doing by looking into detail of their activities, and this way to explore their functions. There is an ongoing puzzle in relation to parliaments: although parliaments do more, the general perception about parliaments seems to be declining. This is being explored in detail in this thesis.

To be more specific, in this thesis I argue that despite the ongoing parliamentary decline thesis, there have not been so many changes with regard to researched parliamentary functions *per se*. In fact, parliaments seem to be continuously improving their procedures to get closer to the ideal type of parliament as defined by the Inter-Parliamentary Union. Therefore, I conclude the thesis arguing that taking parliamentary functions alone, stripped of context, parliamentary functions are being continuously improved and made more sophisticated. They are not deteriorating, at least when it comes to the legal regulation and practices analyzed in this thesis.

Nevertheless, the context parliaments function in has changed dramatically, and influenced a general popular perception on parliamentary functions. Here I discuss various hypotheses. First, people seem to expect more from parliaments, deriving higher expectations from the classic democratic theory, according to which parliaments are the most central body of governance. Thanks to rapidly developing technologies, but also by virtue of more open and transparent parliaments, people are able to follow parliamentary business better and are not dependent on their representatives to provide them with information and opportunity to follow political decision-making. People are capable to control and provide input to parliaments and executives themselves. Having more

information than ever before, the attitude towards parliaments has been changing with people expecting more from them, impairing a perception of parliaments, and their trust in them.

Secondly, another reason behind a popular perception of weak parliaments identified in this thesis, against such enhanced popular expectations, are changes of context parliaments operate in related to the European integration, and to trends such as constitutionalization and judicialization of the legal system. All these processes are leading people to assume that parliaments are weak and unimportant institutions, as they are being stripped of their power that is taken over by European or other national institutions. I argue, again, that this supranational development does not mean that parliaments are doing less; it means that the context in which parliaments function has changed and now there are bodies on the national and supranational level, whose power has increased, such as constitutional courts.

I argue that as the context is changing, so must our perception on what parliaments' roles and powers are. Changing the context in which parliaments operate does not mean they will become obsolete institutions without a meaning. As Pierre Rosavalon rightly pointed out, parliaments will continue to perform their functions, however, with gradually higher involvement of citizens through tools of direct democracy[10]. And once we adjust our perception on roles and functions of parliaments we will realize also what a crucial role they play to facilitate these new tools.

[10] Pierre Rosanvallon, *Counter-Democracy : Politics in an Age of Distrust*, John Robert Seeley Lectures 7 (Cambridge, UK ; New York: Cambridge University Press, 2008).

Part one opens with chapter one on conceptual introduction to parliamentarism.The chapter starts with a discussion on the 'decline of parliaments' thesis, looking at arguments of scholars arguing for parliamentary decline thesis as well as those arguing against it. This discussion is complemented with a section on continuous decline of trust in parliaments, which does not prove the parliamentary decline thesis, but suggests that there is an ongoing negative development of public perception that needs scholarly attention. This introduction of the starting point of the thesis is followed by a section on localization of parliaments within theoretical concepts. It starts with an account on the evolution of understanding of representation and democracy, the conceptual difference between presidentialism and parliamentarism with regard to parliaments, and lastly, the difference between the Westminster and Consensus types of democracy. The next section introduces the three functions of parliaments that this thesis focuses on: representative, legislative and control functions. The respective sub-sections provide theoretical background to the substantive chapters.

The second chapter aims to look at the evolution of parliamentarism by mapping general movements in the evolution of parliamentarism and the role of parliaments in researched countries. The first main trend discussed in the second chapter is institutionalization of parliaments from the perspective of separation of powers; simply said, the separation (in terms of emancipation) of parliaments from the executive. The second main trend resulting from emancipation is the new role of parliaments as sovereigns. Third, parliaments as sovereigns have gradually become a center of democratization through expansion of suffrage or the changing nature of political parties. The conclusion outlines the ideal type of parliament as described by the Inter-Parliamentary Union, and raises

another question with regard to the following chapters, which is to what extent parliaments live up to this ideal.

The second part on the representative function is composed of two chapters, in which I approach representation from the formalistic and descriptive points of view. Formalistic representation, as defined by Pitkin, is concerned with the institutional position of the representative, and has two dimensions: authorization and accountability[11]. The first dimension, authorization, is a method of selection of the representative for office, and the issue here is the process of how a representative gets into office and power. Accountability, on the other hand, is the ability of constituents to punish their representatives if they are dissatisfied with their work. In descriptive representation, a representative resembles those represented. For instance, women MPs represent women constituents, ethnic origin MPs represent ethnic minorities, and so on. In the case of the United Kingdom and Turkey, I come to the conclusion that their parliaments are not representative using both the formalistic and the descriptive approach. In fact, none of the researched assemblies is descriptively representative. From the formalistic point of view, although the German and Slovak electoral systems favor major winners of elections, it could be argued that they are representative. This finding, however, is not a novel situation of researched parliaments. Quite contrary, most parliaments are continually improving when it comes to certain aspects of representativeness, such as the number of women in parliaments.

[11] Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley,: University of California Press, 1967).p 10.

The third part of thesis is devoted to the legislative function, and is composed of chapter five and chapter six. In chapter five I assess the legislative function from the traditional point of view, which is the relationship between parliament and government and agenda-setting prerogative of governments, and conclude that not much has changed here. Executive dominance, as was shown in this chapter through thirteen indicators, is not a recent phenomenon. Quite to the contrary, executive dominance in the parliamentary system is an inherent part of parliamentarism rationalized. Thus, although the executive dominance was shown, it does not represent a change, and one can hardly argue that there is a parliamentary decline because of the procedural executive dominance in parliaments.

Chapter six on the legislative function deals with non-traditional constrains of the legislative function of parliaments: restrictions connected to the European integration and related processes such as judicialization or constitutionalization. The impact of European integration is broken down into different stages of the European process: the impact of conditionality, transfer of competencies through Treaties, constitutionalization by European principles, and the soft law mechanism. European constraints are complemented with the more general trend of judicialization, which is a domain of national as well as international and European courts, and which interferes with the legislative function of parliaments *ex post* through abstract review of legislation.

Finally, the fourth part of the thesis is on the control function and comprises chapters seven and eight. This part seeks to answer the question whether there has been an erosion of the parliamentary control function, which could be subsequently linked to the parliamentary decline thesis. In order to answer the question, I start with the fact that the

legislative-executive relationship has been transformed into 'parliamentarism rationalized' since the Second World War, which means that the executive has been strengthened on the account of legislature. We have seen this situation already with regard to the agenda setting arrangement. Nevertheless, the rationalized form of parliamentarism is as of the present time the traditional arrangement, and thus is not likely to be behind the parliamentary decline thesis. My conclusion is that in general there was no decline either in their scope or in their particular use of control tools.

Chapter eight deals with development of non-traditional control tools. One can conclude that although starting from a much neglected position, the role of national parliaments in European governance is increasing since the Maastricht Treaty, because since then each Treaty amendment brought an improved and more elaborate method of inclusion of parliaments. Parliaments can be involved directly in European legislation making through the Early Warning Mechanism or through the consultation mechanism the Commission introduced in 2006. Indirectly, parliaments can keep themselves involved through controlling government. Parliamentary control of government policy making on the EU level can be exercised *ex ante* or *ex post.* All national parliaments have by now committees specialized in EU affairs. The only aspect related to the control function of parliaments is not particularly a tool, but a functioning feature of parliaments as such, however, with influence on the quality of other control tools – the transparency of parliamentary business. In the 'wired age' the work of parliaments has become extremely visible. Through constant improving of parliamentary websites, and through interaction with citizens through social media, parliaments managed to open parliamentary business

to public scrutiny in an unprecedented way, as Internet access is the most accessible way to get to know parliaments.

Methodology

In the present dissertation I adopted the functional method. I chose functionalism because of its orientation to the practical aspects of law and because the method concerns not only what the law says but what it does[12]. In the present work, analyzing the performance of parliaments focusing on three functions, I first looked at black letter law, and then I complemented this data with the practices and contextual information from parliaments.

The dissertation focuses on parliamentary regimes, more specifically on four jurisdictions: Germany (The Bundestag); Slovakia (The National Council of the Slovak Republic); Turkey (The Turkish Grand National Assembly), and the United Kingdom (the Parliament and especially the House of Commons). In all four countries the executive is accountable to parliament, and its existence is conditioned by the support of the majority of representatives. On the other hand, the four chosen jurisdictions present a wide range of parliamentary practices, due to their different past and legal background.

[12] Oliver Brand, "Conceptual Comparisons: Towards a Coherent Methodology of Comparative Legal Studies," (2006). p. 409.

PART I: INTRODUCTION TO PARLIAMETNARISM

Chapter 1: Conceptual Introduction into Parliamentary Functions

Introduction

Parliaments, as legislative assemblies, have evolved historically with some traditional functions: representative, legislative, control (scrutiny) function, or the function of formation of a government. With these functions legislatures have been one of the central players in the decision making processes and in the shaping of policies in democracies. Although these functions have remained over the years with parliaments, there is an ongoing debate on how strong and influential parliaments actually are in performing their functions.

'The decline of parliaments' thesis was first formulated by Lord Bryce in 1921, and it has been the dominant narrative on parliamentary behavior during the 20th century[13]. The parliamentary decline thesis suggests that the executive has become more dominant over parliaments, and it comprises several indicators, such as increased capacity of the administration of the executive in relation to legislatures, increased technicality of legislation, or transfer of competences onto the EU level[14]. Declining or low trust in parliaments is considered another indicator of parliamentary decline. Proven decline of

[13] Flinders and Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis."
[14] Ibid. p 254.

trust in parliaments in the four countries over the last fifty years triggers the question if there is a decline in parliamentary functions as well, and is investigated in this dissertation.

The chapter starts with discussion on the 'decline of parliaments' thesis, looking at arguments of scholars arguing for parliamentary decline thesis as well as those arguing against it. This discussion is complemented with a section on the continuous decline of trust in parliaments, which does not prove the parliamentary decline thesis, but certainly suggests that there is an ongoing negative development of public perception that needs scholarly attention. This introduction of the starting point of the thesis is followed by a section on localization of parliaments within theoretical concepts. It starts with an account on the evolution of understanding of representation and democracy, the conceptual difference between presidentialism and parliamentarism with regard to parliaments, and lastly, the difference between the Westminster and Consensus types of democracy. The next section introduces the three functions of parliaments that this thesis focuses on: representative, legislative and control functions. The respective sub-sections provide for theoretical background to substantive chapters.

1.1 'Decline of Parliaments' Thesis

1.1.1 'Decline of parliaments' thesis

1.1.1.1 General decline of parliaments

The parliamentary decline thesis has been mainly based on the growing role of the executive at the expense of parliaments. In the second half of the 19th century, Bagehot

argued that the House of Commons is an efficient part of the British political system, which for some scholars proved the existence of a 'golden age' of parliament, the ideal they could compare later parliaments to[15].

The first writer expressly arguing the decline of parliaments was James Bryce, who in his '*Modern Democracies*' in 1921 did not dismiss Bagehot's view on the Commons, but who rather argued that the role of parliaments has become less central:

> *Every traveller who, curious in political affairs, enquires in the countries which he visits how their legislative bodies are working, receives from the elder men the same everywhere, that there is less brilliant speaking than in the days of their own youth, that the tone of manners has declined, that the best citizens are less disposed to enter the chamber, that its proceedings are less fully reported and excite less interest, that a seat in it confers less social status, and that, for one reason or another, the respect felt for it has waned*[16]

The parliamentary decline thesis was also argued in the works *Parliamentary Reform* (1934) by I. Jennigs, *Parliamentary Representation* (1943) by J. Ross, and in *The Passing of Parliament* (1952) written by G. Keeton[17].At the end of the 1960s literature on parliaments became more optimistic, and although it did not challenge the parliamentary decline thesis, it suggested reforms, such as the elaborated scrutiny committee system[18]. In 1967 Kenneth Wheare also argued that with a few exceptions

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15 Robert Elgie and John Stapleton, "Testing the Decline of Parliament Thesis: Ireland, 1923–2002," *Political Studies* 54, no. 3 (2006).

16 Quoted in Philip Norton, ed. *Legislatures*, Oxford Readings in Politics and Government (Oxford ; New York: Oxford University Press,1992). p47.

17 Jennings and New Fabian Research Bureau (Great Britain), *Parliamentary Reform*; Ross, *Parliamentary Representation*; Keeton, *The Passing of Parliament*.From:Flinders and Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis." p. 255.

18 Walkland, "The House of Commons and Its Estimates."; Hanson, "The Purpose of Parliament."; Butt, *The Power of Parliament*; Ryle, "Committees of the House of Commons."From:Flinders and Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis." p. 256.

parliaments are in decline, especially with regard to powers of the government. However, he continues noting that

> *Governments now do a great deal that they did not do formerly, but most of what they do was not done by anybody before. In particular it was not done by the legislature. This increase of powers by the executive has not been the result of taking away from the legislature things which it did before. Legislatures, indeed, do more that they did and legislators work longer hours and interest themselves in a wider range of subjects. Absolutely their powers have increased. Relatively to the executive government, however, they have in almost all cases, declined.*[19]

Wheare's argument is an interesting one, as he distinguished between power of parliaments as such and power of parliaments in context. Thus, assessing how and what they do by stripping parliaments of context, he admits that they work more and harder than ever before. On the other hand, seeing them together with other institutions, he admits there is a relative decline of their power. Arriving at a conclusion close to Wheare's I see there is a lot of truth in his argument, therefore in this thesis I am going to show how this argument works in later decades and especially at the present time.

Emphasis of the literature in the 1970s continued to be on the parliamentary decline thesis, with scholars calling for the strengthening of parliaments at the expense of governments, including the debate of the economic decline argument as an external pressure[20]. In the 1990s Bruce Lennan was one of the scholars who continued to embrace parliamentary decline thesis. He argued that the original British form of parliamentary government was transformed into monarchy with central position of prime minister due

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19 K. C. Wheare, *Legislatures*, Home University Library of Modern Knowledge, 248 (London, New York,: Oxford University Press, 1963). p.221.

20 E.g. Blank, "Britain's Economic Problems: Lies Adn Damn Lies."; King, "Overload: Problems of Governing Britain in the 1970s."

to weakening of existing checks and balances[21]. All these arguments are important for this dissertation, because whether they are true or not, they are powerful enough to influence the general perception of parliaments.

1.1.1.2 Deparliamentarisation caused by the European Integration

Debate of parliamentary decline has been stirred again since the mid 1980s with the ongoing process of 'Europeanization' of the parliamentary democracy[22]. Europeanization or European integration is the most visible example of tendencies of supra-nationalization, the European Union being merely one of many international organizations that influence the position of parliaments generally through its soft law mechanisms.

With regard to deparliamentarisation caused specifically by the European Integration in the form of the European Union, first, there was an obvious problem of the 'democratic deficit' related to the institutional governance at the European Union level. With each treaty revision, however, the position of the European Parliament, the only institution at the EU level with democratic legitimacy, was strengthened. Treaty revisions introduced power sharing between the European Parliament and the European Commission in the form of a co-decision procedure, which is, since the Treaty of Lisbon (2009),the prevalent decision-making procedure.

[21] Williamson, "[Untitled]."; Lenman, *The Eclipse of Parliament : Appearance and Reality in British Politics since 1914*.

[22] See e.g. Auel and Benz, "The Politics of Adaptation: The Europeanisation of National Parliamentary Systems."

The ongoing strengthening of the European Parliament has shifted the debate on the impact of the growing influence of the EU policy-making to national parliaments, arguing that parliamentary powers to perform their functions have been transferred to the executive as a side effect of the European integration[23]. Moreover, national parliaments have been seen as losers of integration, as they were not mentioned in Treaties up to the Maastricht Treaty (1992).

As a result, in the so-called 'standard version of the democratic deficit' it is argued that progressing European integration has caused that parliamentary control over governments in member states was weakened[24]. The constitutional issue here is that traditional powers of parliaments to legislate over certain areas (such as monetary policy or agriculture) have shifted upwards to the supranational level[25]. At the same time, the control function of the national parliaments has been performed rather poorly, so governments are those striking bargains at the EU level, not parliaments[26]. Sectorization of the EU decision making process and deregulation on the EU level also weaken the reach of parliaments[27].

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[23] Ibid. T. Raunio and S. Hix, *Backbenchers learn to Fright Back: European Integration and Parliamentary Government,* West European Politics 23(4): 142 - 68 2000; D. Rometch and W. Wessels, *The European Union and Member States: Towards institutional Fusion?* Manchester University Press, 1996, pp. 329 and 362; K. Hanf and B. Soetendorp, *Adapting to European Integration: Small States and the European Union*, Longman Publishing Group, 1998; T. Bergman and and E. Damgaard, Delegation *and Accountability in the European Union: The Nordic Parliamentary Democracies and the EU*, Frank Cass Publishers, 2000.

[24] T. Raunio and S. Hix, *Backbenchers learn to Fright Back: European Integration and Parliamentary Government,* West European Politics 23(4): 142 - 68 2000

[25] T. Raunio and S. Hix, "Backbenchers Learn to Fright Back: European Integration and Parliamentary Government," *West European Politics* 23, no. 4 (2000).p.144.

[26] See: e.g. S. Hix, *The Political System of the Eu* (Palgrave Macmillan, 1999).;W. Sandholtz and A. Stone Sweet, *European Integration and Supranational Governance* (Oxford University Press, USA, 1998)..

[27] See e.g. G. Majone, "The Rise of the Regulatory State in Europe, West European Politics " *West European Politics* 17(1994).———, *Regulating Europe* (Routledge, 1996).

Generally speaking, national parliaments were designed to function within national states. What the membership in the European Union means for all national parliaments is the existence at the supra-national level, where parliaments are not supreme anymore. Parliaments have to adapt to new procedures, which can indirectly restrain the legislation process at the EU level; however, national parliaments are not the ones legislating. With regard to the EU legislative process, parliaments are left with merely veto power challenging with regard to time and resources.

Yet another aspect of Europeanization that needs attention is the influence and impact of soft law mechanisms of the Council of Europe as well as the European Union. The Council of Europe, and especially its advisory body, the European Commission for Democracy through Law (Venice Commission), established in 1990, influence the constitution-making in member states of the Council of Europe by their advisory opinions and reports. The goal of the Venice Commission is to help states adopt constitutions that "conform to the standards of Europe's constitutional heritage" by providing states with "constitutional first-aid"[28]. As membership in the Council of Europe is a precondition to enter the European Union, its advisory opinions and reports have to be considered by states, and de facto soft law presents a constraint of legislative power of parliaments.

Perhaps more constraining are soft-law mechanisms used by the European Union. In the 1980s, during the stagnation of internal markets and overall deregulatory tendencies,

[28] The Venice Commission has 58 full member states; Official web site of the Venice Commission http://www.venice.coe.int/WebForms/pages/?p=01_Presentation (last accessed: July 11, 2013)

there had been a criticism of quantity and quality of the EU legislation[29]. The response of the European Commission was the greater use of alternative soft-law instruments[30]. These instruments, compared to typical legislation, are non-binding; however, their goal is the same, harmonization, and they have normative content and practical effects[31]. At the same time, these soft-law instruments lack the democratic control that is typical for legislative procedures. There are three main categories of soft-law instruments: preparatory and informative (Green Papers, White Papers, action programs); interpretative and decisional (administrative rules in EC law, interpretative communications and notices, guidelines), and steering instruments (commission's recommendation sand opinions)[32].

To sum up, according to my opinion, the decline of parliaments due to ongoing Europeanization of national politics is better justified than general parliamentary decline thesis. Besides late acknowledgment of the official role of national parliaments in supra-national governance, the negative impact of policy transfer and soft law of the Council of Europe and the EU on the role of national parliaments is undeniable.

1.1.2 Challenge of the thesis on decline of parliaments

1.1.2.1 Challenge of the general 'decline of parliaments' thesis

The parliamentary decline thesis has been challenged several times. First of all, scholars opposing the parliamentary decline thesis, such as Phillip Norton, argue that there has

[29] Denis Batta and Sarka Havrankova, "Better Regulation Adn the Improvement of Eu Regulatory Environment: Institututional and Legal Implications of the Use of "Soft Law" Instruments," ed. The European Parliament's Committee of Legal Affairs (Brussels2007). p1

[30] Ibid.

[31] Ibid.p.3.

[32] Ibid.pp.3-10.

never been anything like a 'golden age' of parliaments, and that domination of the executive has been more or less always the same. In the *Report of the Commission to Strengthen Parliament* Norton describes one of the working assumptions as follows:

> *... there was no 'golden age' of Parliament, certainly not one that constitutes a template for parliamentary reform. Various writers have portrayed part of the nineteenth century as an era of parliamentary strength, when government was constrained by a powerful Parliament. For part of that century, Parliament did on occasion bring down governments. Party cohesion was weak and most legislation that was passed was not government legislation. That, though, was an era of private legislation and of limited public policy. It is not comparable with the relationship of Parliament to government in an era of mass democracy and an expanded public domain*[33].

Norton's view on the non existence of a 'golden age' weakens the argument on general parliamentary decline, as he argues that there has not been any change, or in other words, there has not been a period in which parliament would be stronger than now. Norton says that in the alleged 'golden age' the circumstances were different, and so were expectations and perceptions on parliament and its functions.

Another challenge of the parliamentary decline thesis is its rejection on the grounds that it has not been proved by proper empirical research. For instance, at the end of the 1960s, Loewenberg had already argued that

> *Although the theme of legislative decline was seldom supported by empirical data and seemed to be based on the largely unsubstantiated premised that at some time in the past a golden age of parliaments existed, the idea of decline nonetheless persisted as part of the conventional wisdom in the area of legislative studies.*[34]

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33 Philip Norton, "Reforming Parliament in the United Kingdom: The Report of the Commission to Strengthen Parliament," *The Journal of Legislative Studies* 6, no. 3 (2000).

34 Quoted Loewenberg in Michael L. Mezey, "Parliament in the New Europe," in *Governing the New Europe*, ed. Jack Ernest Shalom Hayward and Edward Page (Durham, N.C.: Duke University Press, 1995).p. 197.

Wheary also stresses that relatively speaking there might be a decline of legislatures[35]. However, in absolute terms, Wheary argues, parliaments do more than they used to in the past. More recently Flinders and Kelso repeated Loewenberg's argument and at the same time blamed scholars for creating the so-called 'expectation gap':

> *The perpetuation of the PDT [parliamentary decline thesis] represents an extreme example of lazy thinking and the failure of scholars collectively not only to reflect on dominant disciplinary assumptions but also to communicate effectively more sophisticated accounts of parliament to the media and the broader public*[36].

What Flinders and Kelso suggest is that scholars elaborating on the decline thesis influenced public opinion without pointing out the lack of empirical evidence supporting the thesis. Instead, they argue that parliaments were never designed to play the kind of role that current expectations demand, and secondly, parliamentary control of the executive does not belong to the visible part of parliamentary activity[37].Walter Bagehot would perhaps agree with this conclusion, if we consider that he listed the legislative function as the last one from among other functions he attributed to the House of Commons[38]. Flinders and Kelso raised a valid point, that perpetuating empirically unsupported parliamentary decline thesis by scholars is creating high expectations related to functions of parliaments, followed by the perception of a decline among people.

One can observe that there is a common point to several proponents and opponents of the parliamentary decline thesis (PDT thesis), which is that parliaments have never done

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35 Wheare, *Legislatures*.

36 Flinders and Kelso, "Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis." p.250

37 Ibid. p260.

38 Walter Bagehot, *The English Constitution*, New and rev. ed. (Boston,: Little, Brown, and co, 1873). Online version of the book available at: http://www.gutenberg.org/files/4351/4351-h/4351-h.htm#chap05 (last accessed on July 11, 2013).

more and better than now. Proponents of the deparliamentarisation thesis argue that although parliaments are doing their best so far in their history, they are deprived of the power by other institutions or developments. Opponents of the PDT thesis argue that there was never a golden age of parliamentarism, therefore parliaments also, according to their view, never did better.

The existence of the common point suggests the link of parliamentary decline thesis to public expectations and perceptions. The nature of expectations naturally predetermines the answer to the question of parliamentary decline. For instance, if one expects parliaments to autonomously determine own legislative agenda, he or she would argue the decline, as opposed to the expectation that parliament is a deliberative assembly, which may trigger a different conclusion.

1.1.2.2 Challenge of the deparliamentarisation thesis caused by the European integration

Despite the wide-spread notion that national parliaments are the losers of integration, the fact is that since 1992 each new treaty enhanced the role of national parliaments. The first treaty in which national parliaments were specifically mentioned was the Maastricht Treaty (1992), which strengthened national parliaments in relation to governments and it endorsed cooperation between national parliaments and the European Parliament. The Amsterdam Treaty (1997) defined the position of national parliaments under EU scrutiny, and guaranteed the access of parliaments to Commission documents with a six week period for scrutiny. The last treaty, the Treaty of Lisbon (2009), acknowledges the role of parliaments under EU scrutiny and provides for all EU communication and legislative

proposals to be sent directly to parliaments[39]. The period for scrutiny provided for national parliaments was prolonged to eight weeks. Parliaments also received control over the principle of subsidiarity called the Early Warning Mechanism (EWM), which allows them to veto legislation which they consider in violation of the principle of subsidiarity. The EWM incorporated in the Lisbon Treaty was strengthened compared to the one in the previously rejected Constitutional Treaty, which had merely advisory function. Now a majority of national parliaments can actually block EU proposals.

Subsequently, some scholars argue that national parliaments virtually form a third chamber alongside the Council of Ministers and the European Parliament[40]. Cooper concludes that powers of national parliaments to influence legislation are quite substantial; however, what is missing is the drive of national parliamentarians to advance to a position of national parliaments within the EU[41]. The truth is that parliamentarians on the national level tend to focus on issues that are of interest to the majority of the electorate, which are mainly of local or national, not European character. Thus whatever enhanced rule would be given to them to enhance the role of national parliaments, this would not change the situation. The question is, however, if in such a situation we should still talk of the decline of parliaments.

[39] Besides integrating new role for national parliaments into the "Treaty on the Functioning of the EU" (TFEU) and the "Treaty of the European Union" (TEU), Treaty of Lisbon also contains two special Protocols: Protocol n°1 on the "Role of national Parliaments in the European Union"; Protocol n°2 on the "Application of the principle of subsidiarity and proportionality".

[40] Ian Cooper, "A 'Virtual Third Chamber" for the European Union? National Parliaments after the Treaty of Lisbon," *West European Politics* 35, no. 3 (May 2012). pp.441-442.

[41] Ibid. p. 461.

Not only the powers of national parliaments are substantial, but the fact the EU improved the position of parliaments was argued by Duina and Oliver[42]. First, the EU triggered legislation that was beyond the traditional scope of the parliamentary role, such as in the area of antitrust, and secondly, the EU has managed cross-national lesson drawing leading to more effective domestic policies[43]. This argument seems to me as a positive view on the whole impact of the integration process. While some scholars would see the glass half empty, they decided to see it as half full.

Rizzuto argues the claim that national parliaments have been the main losers in the process is not substantiated by empirical evidence. National parliaments have adapted their structures and procedures to keep pace with the increasing scope of integration. This process has included strengthening the constitutional powers of parliaments in some of the member states.

Thus, although there is an argument that there is a deparliamentarisation due to the European integration, there are also those scholars who argue against it. The debate is basically the same as when it comes to the general 'decline of parliaments' thesis. However, documented values of trust in parliaments indicate that there is gradual decline of trust in national parliaments not only in the European Union, but also in Turkey, and is discussed in the following section.

[42] Francesco Duina and Michael Oliver, "National Parliaments in the European Union: Are There Any Benefits to Integration? ," *European Law Journal* 11, no. 2 (March 2005).
[43] Ibid.

1.1.3 Decline of the trust in parliaments

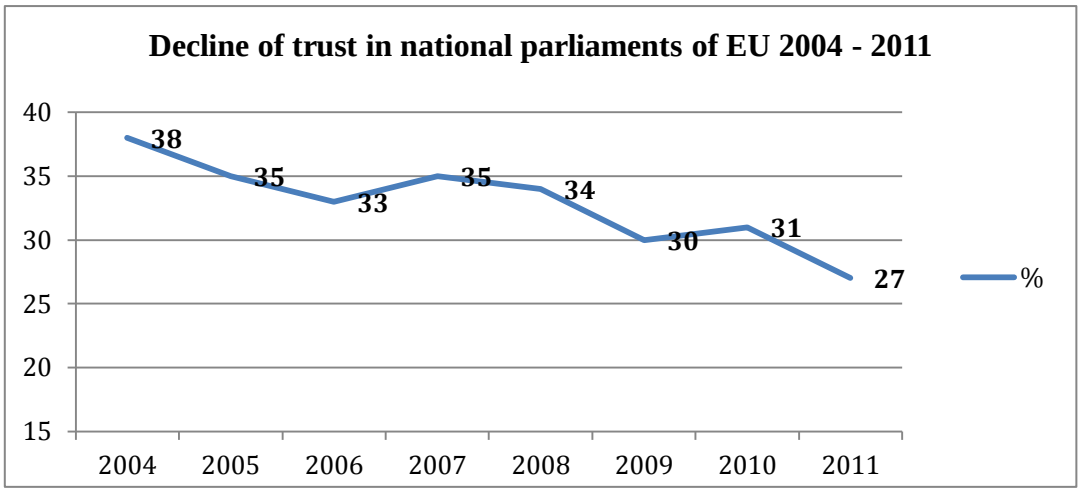
Parliaments are agents of citizens, and their mandate is based on public confidence and trust[44].As will be shown in this section, throughout the last decades, trust in parliaments has been declining, while at the same time distrust has been rising. This situation is paradoxical given the fact that democracy, according to the 2005 UN World Summit, has become a universal value not owned by a particular region or country[45]. Declining trust could also be seen as disillusionment with the results of democracy in practice, as data in this section show that declining trust is the case of new as well as old democracies.

Declining trust in is not the explanation of the erosion of parliaments, but it could be used as indicators of the decline. In Figure **1** one can see an overall decline of trust in parliaments within the European Union between the years of the relatively short period of 2004 and 2011.

Figure 1: Decline of trust in national parliaments of EU 2004-2011

[44] "Presentation of the Reports on the Panel Discussions," in *3rd World Conference of Speakers of Parliament*, ed. United Nations (Geneva19 - 21 July 2010). Available at: http://www.ipu.org/splz-e/speakers10/people.pdf (Last accessed July 11, 2013).

[45] David Beetham, Aloys Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice* (Geneva: Inter-Parliamentary Union, 2006).p . 1



Source: Eurobarometer

The data collected by the European Commission (Eurobarometer) used in Figure 1 allows us to compare trust in national parliaments and other national institutions in all four researched states. In

Figure 2 is displayed the tendency to trust in the parliaments of Germany, Slovakia, Turkey, the UK and the EU as of 2004. Respondents in all researched countries were asked the same question:

Please tell me if you tend to trust the National Parliament or tend not to trust it?

The question was raised with three possible answers: 1. Tend to trust, 2. Tend not to trust, and lastly 3.DK - Don't know.

As can be seen in

Figure 2, although the average in the EU is gradually decreasing, the declining trust trend is not so straightforward when it comes to Germany, Slovakia, Turkey and the UK. On

top, when it comes to trust in parliament, is Turkey. Starting in 2004 the polled value was 76 percent trust in parliament, however, the trust dropped to 54 percent in 2012. Although far above the European average, trust in parliament sharply declined. Interestingly, Turkey had general elections in 2007, in which following the trust rapidly dropped to it's lowest level of 47 percent. This may suggest that even the most popular policians are not able to transfer their popularity into trust in parliament as an institution. German and Slovak parliaments seem to be the exception in terms of overall decline in trust. Values of trust in parliaments are, based on data from Eurobarometer, higher than in 2004.

Table 1: Confidence in Bundestag 1984-2008

1984	1994	2000	2002	2008
50 %	26.1%	25.5%	30.9%	26.9%

Source: Thomas Saalfeld and Ralf Dobmeier, The Bundestag and German Citizens (2012)

Although for Slovakia there are no values for past decades due to the communist regime, Saalfeld reports (see Table **1**) that in 1984 50 percent of German citizens expressed confidence in the Bundestag, which sharply dropped ten years later[46]. Moreover, his value for 2008 is much lower than portrayed by the Euro barometer. Thus, having the benefit of an alternative source, we can conclude, first, that the German Bundestag also experienced a decline in trust, and secondly, that available data shall be taken as mere indicators of the decline, not as its evidence.

[46] Thomas Saalfeld and Ralf Dobmeier, "The Bundestag and German Citizens: More Communication, Growing Distance," *The Journal of Legislative Studies* 18, no. 3-4 (2012).

Table 2: Trust in UK Parliament 1996 -2005

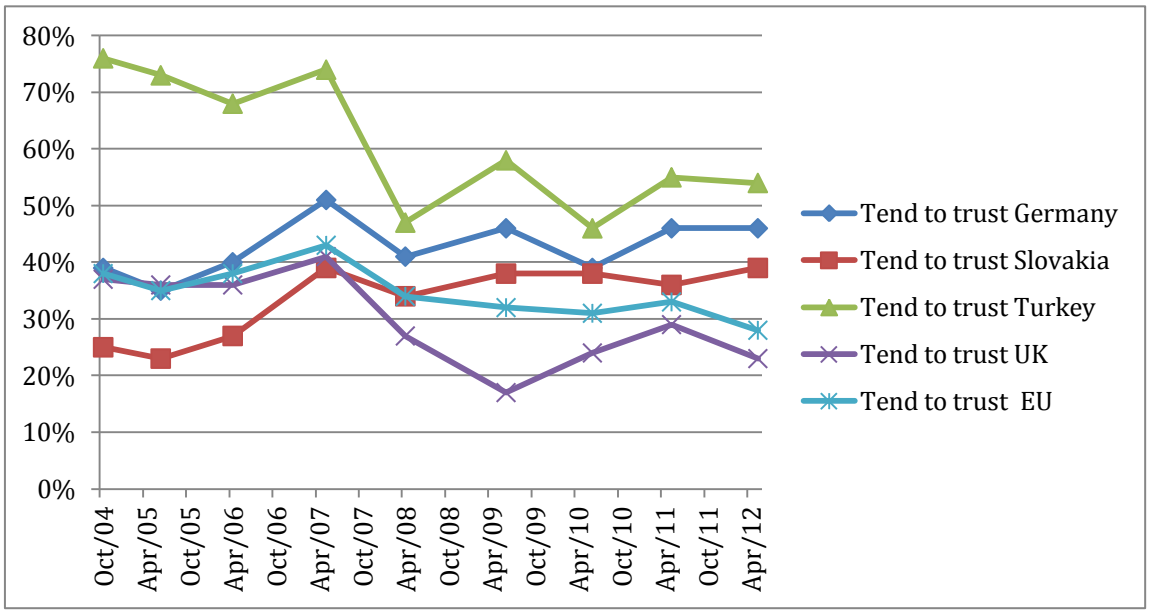
1996	1997	1999	2000	2001	2002	2003	2004	2005
51 %	46 %	36 %	34 %	34 %	37%	37 %	25%	36%

Source: Dr. Susan Hattis Rolef: Public Trust in Parliaments –A Comparative Study

Lastly, trust in British parliament, according to data collected by the European Commission, dropped from 37 percent in 2004 to 23 percent in 2012. Furthermore, British values are lower than the EU average; in 2009 only 17 percent of respondents expressed trust in parliament. In addition, available data from an alternative study enforce the decline by the fact that in 1996 there was as much as 51 percent trust in parliament (See

Table 2). It is very interesting, since as this study will also show, British parliament functioning in the stable parliamentary democracy has to thank its historical tradition and culture constantly improving parliamentary procedures and resources. What makes low values of trust in parliament in the case of Britain even more interesting is the fact that the most recent reported level of trust in Turkey was 54 percent, and this was the lowest since 2004 with a much more turbulent political system.

Figure 2: 'Tend to trust' 2004- 2012 in Germany, Slovakia, Turkey, the UK and the EU

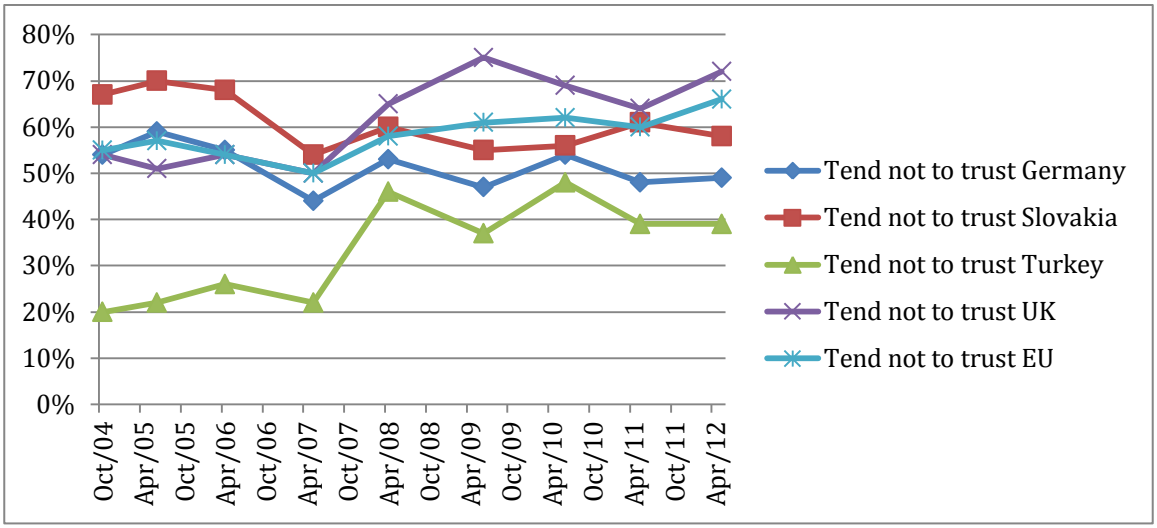


Date	Germany	Slovakia	Turkey	UK	EU
Oct-04	39%	25%	76%	37%	38%
Jun-05	35%	23%	73%	36%	35%
Apr-06	40%	27%	68%	36%	38%
May-07	51%	39%	74%	41%	43%
Apr-08	41%	34%	47%	27%	34%
Jun-09	46%	38%	58%	17%	32%
Jun-10	39%	38%	46%	24%	31%
May-11	46%	36%	55%	29%	33%
May-12	**46%**	**39%**	**54%**	**23%**	**28%**

Source: Eurobarometer

Decline of trust corresponds to the striking high level of distrust. Overall, distrust in parliaments increased in the member states of the EU, the UK and Turkey. In this case the UK and Turkey share the value of the increase of distrust in parliament, however, Turkish distrust in parliaments is still one of the lowest, while British is one of the highest (See Figure 3).

Figure 3: 'Tend to distrust' 2004-2012 in Germany, Slovakia, Turkey, the UK and the EU



Date	Germany	Slovakia	Turkey	UK	EU
Oct-04	54%	67%	20%	54%	55%
Jun-05	59%	70%	22%	51%	57%
Apr-06	55%	68%	26%	54%	54%
May-07	44%	54%	22%	50%	50%
Apr-08	53%	60%	46%	65%	58%
Jun-09	47%	55%	37%	75%	61%
Jun-10	54%	56%	48%	69%	62%
May-11	48%	61%	39%	64%	60%
May-12	**49%**	**58%**	**39%**	**72%**	**66%**

Taking the level of trust in parliaments as one of the possible indicators of decline of parliaments, this section has shown the erosion of trust on the one hand, and the rise of distrust on the other. Together with the whole debate on the parliamentary decline thesis, this dissertation will answer the question of how parliaments are performing their functions against this background. If there is a decline of parliaments, does it also mean that there is a decline in performance of parliamentary functions?

1.2 Localization of parliaments within theoretical concepts

In this section I aim to put parliaments into a theoretical context. First, parliaments are representative bodies, and they are the central institution within the representative democracy. However, historically speaking, representation and democracy were used as opposite concepts. Thus the first section in this part of the chapter deals with the different meanings of 'representative' and 'democracy' and stipulates when and how they became compatible.

Once the representative democracy is established, we can step further and distinguish between the two main political systems which can exist within representative democracy: the presidential and parliamentary systems. From the point of parliaments, whether the system is presidential or parliamentary matters, as in the first one, the government is not accountable to parliament. Therefore, this section explains the different features of the two systems, and concludes that the present research is limited to the four legislatures which are from parliamentary representative democracies.

The last section deals with the different nature of parliamentary democracies as conceptualized by Lijphart: the majoritarian and consensual democracies. Lijphart identified features of both types, although he acknowledged that it is hard to find a pure version of either of these types. What I aimed to point to in this section based on what I have learnt from the four researched parliaments is that the nature of parliamentarism is not static, on the contrary it evolves over time, and for instance the United Kingdom is shifting from a majoritarian system while Turkey is shifting towards it.

1.2.1 Representation and Democracy: From Antagonism to Harmony

In general, democratic theory presupposes parliament to be in the center due to its democratic legitimacy as a sole representative body. Therefore, nowadays we tend to associate representation and democracy with each other automatically. Yet, from the historical point of view these two concepts have contradictory origins, and representation used to be understood as the opposite of democracy (*incompatibility theory*). Democracy is a Greek invention based on participation, although democracy was participatory to an astonishing degree, it was extremely constricted, considering other peoples – barbarians or women - as incapable of politics[47].

Representation, on the other hand, centuries later was a response to the need of the monarch for additional revenue, and required a delegate from each shire or borough to be sent to consign to special additional taxation[48]. As a matter of convenience to the king, the parliament was summoned or dissolved according to the needs of the royal exchequer. What happened in the 18th century was that thinkers of modern revolutions challenged the Medieval assumption that each man is born with an assigned role from God within a sacred hierarchy holding that everybody born is equal and thus has a stake in public life[49]. This is how democracy re-emerged in the 18th century and got aligned with existing undemocratic representation[50].

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47 Hanna Fenichel Pitkin, "Representation and Democracy: An Uneasy Alliance," *Scandinavian Political Studies* 27, no. 3 (2004). p.4

48 Ibid.p.5

49 'all men are created equal' – Declaration of Independence; Ibid., p.5

50 Ibid.p5

Thus, coming back to the conceptual difference between democracy and representative government, and the shifting point being modern revolutions in the 18th century, Manin in *The Principles of Representative Government* argues that the founding fathers of the United States chose the representative government being aware of this conceptual difference[51]. In other words, representative government in the present understanding has evolved "from a political system that was conceived by its founders as opposed to democracy", and current institutions that are representative and perceived as a symbol of democratic government were actually initially neither created as democratic nor as institutions to secure a government by the people"[52].

James Madison, the author of the Federalist No.10, promotes the representative government contrasted to democracy, arguing the superiority of the system, in which a body of chosen citizens' wisdom discern the true interests and avoid temporary or partial considerations[53]. Thus, he did not prefer the concept of representation over democracy on the basis of, for instance, physical impossibility to govern the state by the direct democracy, but was in favor of the nation governed by the elite possessing the "most wisdom" and the "most virtue". Sieyes also points out the difference between democracy

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51 Bernard Manin, *The Principles of Representative Government*, Themes in the Social Sciences (Cambridge ; New York: Cambridge University Press, 1997).p. 1, 236.

52 Ibid.p. 236.

53 Madison proposed republic as a cure for the problem with factions as opposed to pure democracy pointing to two main differences: first difference is a delegation of the government to a small number of citizens by elections and second, the greater number of citizens the greater sphere of the country, over which it can be extended. The representative government's effect is "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations." The second argument means that if "each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters". A. Hamilton, J. Madison, & J. Jay, The Federalist with the Letters of 'Brutus', T. Ball (red.), Cambridge, 2003, p. 43–45.

and representative government[54]. The first one is a system where citizens would make laws by themselves, while the latter one is a system where elected representatives are entrusted with making laws[55]. Sieyes writes in favor of representation claiming that human relations are contractual, individuals represent each other, and so the representation is social life itself[56].

In its present state, the concept of the representative government has both democratic and undemocratic features resulting from its very nature, thus representative government represents a sort of mixed government[57]. For the representative democracy to be considered legitimate, the participation of citizens in the legislative process is not required. People can express their political views by speaking in public forums or by voting, which are rarely specific policies[58]. The majority of scholars consider representation to be the original invention of the founding fathers in order to "neutralize the political participation by making the people a legitimatizing force at the instant they renounce their ruling power"[59]. In practice, Manin argues, the system of representative government has led to the oligarchic government of few[60].

54 Manin, *The Principles of Representative Government*.p. 3
55 Ibid.p. 3
56 Nadia Urbinati, *Representative Democracy : Principles and Genealogy* (Chicago: University of Chicago Press, 2006). P141
57 Ibid. p2.
58 Ibid. p3.
59 Ibid. p4.
60 Hannah Arendt argues that "the age old distinction between ruler and ruled which the [American and French] Revolution[s] had set out to abolish through the establishment of a republic has asserted itself again; once more, the people are not admitted to the public realm, once more the business of government has become the privilege of the few" in Hannah Arendt, *On Revolution*, Compass Books, (New York,: Viking Press, 1965).pp. 273, 240.

The above mentioned *incompatibility theory* (between democracy and representation)is related to the modern conception of sovereignty, and it is especially linked to thinkers such as Rousseau and Montesquieu. Jean-Jacques Rousseau considered democracy merely as a form of executive. He argued against the representation from the position of freedom in a legitimate state. According to Rousseau, freedom requires active and personal participation of people jointly deciding on public policies. He argued that people are free only during the moment of casting votes, and afterwards they sink back into slavery[61]. Montesquieu argued that the state where people delegated their sovereignty could not be democratic and must be specified as a mixed government – elected aristocracy[62].

The conceptual difference between democracy and representation is derived from the original meaning of two concepts as forms of government. Representative democracy, based on that, seems an oxymoron, and writers cited above were discussing the incompatibility theory searching for correct names for governments of their time. However, since the 18th century the term 'democracy' has acquired another meaning, which is in a sense a description of liberal democracy: a state governed by multi party elections, representative government and freedom of expression. A democratic government shall give every group equal opportunity to influence policy making[63].

[61] Jean-Jacques Rousseau, *The Social Contract*, The Penguin Classics, L201 (Harmondsworth,: Penguin, 1968).pp. 140–41.

[62] Urbinati, *Representative Democracy : Principles and Genealogy*. P7

[63] Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*.

1.2.2 Presidentialism vs. Parliamentarism

The four jurisdictions chosen for the purpose of analysis in the present dissertation have in common a parliamentary form of government, which makes them comparable. Thus the first limitation of the present research is that it focuses merely on four countries in which the government is accountable to the parliament, and in which both are created by the same elections, which is not the case in presidential systems. One has to keep in mind that presidential as well as parliamentary systems are themselves not uniform, and they are shaped by many indicators such as types of political parties, or historical and social backgrounds.

Democracy is a characteristic feature of governments in which offices are filled by contested elections[64]. There are two main forms of governments: *parliamentary* and *presidential*. The survival of the first one depends on the confidence of parliament, which means that a parliamentary majority may remove the government from office by passing a vote of no-confidence, or not supporting the confidence vote. In such a case two possible scenarios follow: either there is an attempt to form a new government from parties present in the parliament or there are new elections. On the other hand, in the *presidential* system the executive and legislative powers are created independently from each other and the executive is in office for a fixed term. The executive is directly elected, and it has considerable constitutional powers. Parliament cannot remove the

[64] Mike Alvarez and Jose Antonio Cheibub, "Classifying Political Regimes," *Studies in Comparative International Development* 31, no. 2 (1996).p 5.

government (or the head of government) from the office, nevertheless an inbuilt system of checks and balances allows branches of government to control each other[65].

Assemblies in parliamentary systems thus have formally a strong reach on the executive in terms of confidence votes. Parliamentarians can outvote government from office, which is not case of their colleagues in presidential system assemblies. However, in reality, the political parties in parliamentary systems tend to be cohesive, and it is hard to imagine a confidence vote to take place successfully. At most it is used by the opposition to open the debate or point public attention to certain topics[66].

On the other hand, parliaments in presidential systems are separated from the executive; the executive does not depend on the majority in parliament. This has several consequences: first, the system does not lead to strong party cohesion, which allows more independent work on the side of parliamentarians. Secondly, at times of 'divided government', the strict separation typical for the system may cause a deadlock lasting until next elections[67].

Not everyone agrees with this dichotomy. There are authors that argue that besides these two forms there is one more – *semi-presidentialism*. This system is typical with its dual

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65 Robert Alan Dahl, Ian Shapiro, and José Antônio Cheibub, *The Democracy Sourcebook* (Cambridge, Mass.: MIT Press, 2003). p.258.

66 For instance opposition in National Council of Slovak Republic tends to initiate vote of no-confidence against ministers or Prime Minister often even though it is obviously not going to receive enough support. In 2009 a proposal for no-confidence was submitted immediately after parliament adopted a declaration of confidence in a government. The Spectator, "Government to Discuss Opposition's No-Confidence Motion in Štefanov," (21 April 2009).

67 Mark O. Dickerson and) Thomas Flanagan, p. 292. , *An Introduction to Government and Politics: A Conceptual Approach*, 5 ed. (Toronto, London, Singapore: Nelson1998). p. 292.; See also Juan J. Linz and Arturo Valenzuela, *The Failure of Presidential Democracy : The Case of Latin America / Edited by Juan J. Linz and Arturo Valenzuela* (Baltimore : Johns Hopkins University Press, c1994).

executive created by different elections, while sharing executive power at the same time. The president is elected on a fixed term, and a prime minister is responsible to legislature[68]. This concept was first identified by Maurice Duverger in 1970s, who defined the system as semi-presidential if it combines three elements:

> *(1) the president of the republic is elected by universal suffrage; (2) he or she possesses quite considerable powers; (3) he has opposite him a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show opposition to them.* [69]

However, there are more recent competing definitions which define semi-presidentialism differently. For example, Elgie proposed the following definition: "Semi-presidentialism is where a popularly elected fixed-term president exists alongside a prime minister and cabinet who are responsible to the legislature."[70] This kind of definition includes all countries with such a constitutional arrangement disregarding actual distribution of powers between the main actors in the state. In this case, for example, Slovakia would be automatically considered as a semi-presidential country due to the fact that the president is directly elected, although his function besides suspensive veto power is purely representative and he does not share power with the government. On the contrary, Linz claims that "[p]arliamentary systems may include presidents who are elected by direct popular vote, but they usually lack the ability to compete seriously for power with the prime minister.[71]" Lastly, Lijphart argued that there are no examples of intermediate systems that exist between parliamentarism and presidentialism, and in the French case

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[68] Robert Elgie and Sophia Moestrup, *Semi-Presidentialism Outside Europe* (New York: Routledge, 2007). p.1.

[69] Ibid. p 2.

[70] Robert Elgie and Sophia Moestrup, *Semi-Presidentialism Outside Europe* (New York: Routledge, 2007). p.2

[71] Juan Linz, *The Perils of Presidentialism* in Dahl, Shapiro, and Cheibub, *The Democracy Sourcebook*. p. 258.

there are two systems alternating and thus denying existence of semi-presidential systems[72].

Assemblies in this study are for comparative purposes chosen from parliamentary systems. In the presidential system the nature of control, due to separation of powers, cannot be compared with the parliamentary system, since parliament cannot remove the executive from office.

1.2.3 Westminster vs. Consensus democracy

Lijphart says that "[t]here are many ways in which, in principle, a democracy can be organized and run …"[73] There are various concepts of democracy; the ones relevant for this dissertation are concepts of *majoritarian democracy/ Westminster democracy* as opposed to *consensus democracy*. In the model of majoritarian democracy, a legislature is elected by a simple majority, and the political power is concentrated in the hands of the winning party. In contrast, *consensus democracy* engages far greater compromise and minority rights[74]. In this model, the majority is a rule, but not the only one as it is in a majoritarian type of democracy. The consensus model of democracy considers majority rule as a minimum condition seeking to maximize the majority for the purpose of decision making, and it is more suitable for deeply divided societies, as in the majoritarian model it can leave many people without representation.

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[72] Arend Lijphart, "Presidential or Parliamentary Democracy: Does It Make a Difference?," in *The Failure of Presidential Democracy: The Case of Latin America*, ed. Arturo Valenzuela and Juan J. Linz (Baltimore: Johns Hopkins University Press, 1994). p. 94.

[73] ———, *Patterns of Democracy : Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999). p.1.

[74] Ibid. p.7

Lijphart defines the difference between the models as "… the majoritarian model of democracy is exclusive, competitive, and adversarial, whereas the consensus model is characterized by inclusiveness, bargaining, and compromise; for this reason, consensus democracy could also be termed "negotiation democracy""[75]. He introduces two dimensions of differences (each with 5 criteria) between the consensual and majoritarian democracy: the Executive-Parties dimension and the Federal-Unitary dimension (see Table 3).

Table 3: Majoritarian/Westminster vs. Consensus Democracy

Majoritarian/Westminster Democracy	**Consensus Democracy**
Concentration of executive power in single-party majority cabinets;	Executive power-sharing in broad multiparty coalitions;
the executive is dominant over the legislature;	a legislative-executive balance of power;
Two-party;	Multiparty system;
Pluralistic FPTP electoral rules	Proportional Representation;
pluralist interest groups	corporatist' interest group systems aimed at compromise and concertation
unitary	federal/decentralized structure
unicameral	bicameral legislature
flexible, easily amended (or non-existent) constitutions	rigid, supermajority-amended constitutions
legislatures determine constitutionality of own legislation	judicial review of constitutionality by an independent court
executive control of central bank	central bank independence

Source: A. Lijphart, Patterns of Democracy[76]

Out of four researched countries in this dissertation, the UK is traditionally defined as a majoritarian democracy. However, due to the recent trend in the Turkish political arena, I argue that the Turkish system is also shifting towards the majoritarian type. Turkey is traditionally not as majoritarian as the UK, and we cannot also talk about a pure

[75] Arend Lijphart, *Patterns of Democracy : Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press, 1999). p 2.

[76] Note: Criteria of two dimension; first 5 criteria are from executive-parties dimension and second half is from federal-unitary dimension

majoritarian model. However, based on the last three elections, we can try to test the criteria set by Lijphart. First, we will see how this criteria matches the current British system, and then it will be applied to the Turkish Grand National Assembly.

When going through the majoritarian criteria (see Table 3) in the case of the UK, we can observe that on several points the British model deviates from the pure majoritarian model. In case of some deviations we can still argue for de facto majoritarianism, like the bicameral House, however some are placing the British model closer to the consensual one – e.g. devolution. To sum up, the reasons why the British model is considered majoritarian by Lijphart are: most of the time the cabinet consists of members of the one party that wins elections, while the second largest party remains in the opposition[77]. Coalition cabinets are rather rare, although there has been one after the last elections in 2010. The cabinet is dominating the parliament, and although it is dependent on the confidence of parliament, in reality, the cabinet is backed up by the cohesive party in the Commons. Further, the politics in Britain are traditionally dominated by two large parties: the Conservatives and the Labour party. The House of Commons is elected by the FPTP electoral system in single member districts resulting in disproportional results. The

[77] The birth of the British party system reaches back to the end of the 17th century, when division over the extent of the royal power resulted in the establishment of the two major parties: the Tories (the supporters of the crown) and the Whigs (supporters of restriction of royal legislative power). The purpose of the party organization of Whigs and Tories was to ensure sufficient support for the government of the day to enable it to survive and win elections. Expansion of the electorate in 1832, 1867 and 1884 contributed to gradual formation of the modern party system, as previous limited electorate did not require as complex bureaucratic apparatus as an enlarged one at the end of the 19th century. Three political parties emerged at that time: the Liberal and the Conservative, and the Labour Party. First half of the 20th century marked the steady decrease of electorate of the Liberal Party, resulting in the post war years to be known by the overwhelming domination of two parties: Labour and Conservative.

British interest group system is pluralist, which means multiplicity of interest groups pressuring the government[78].

Furthermore, Britain has no written constitution, which means that there is not one document written down as a constitution. Rather there are number of basic laws (e.g. Magna Charta 1215, Bill of Rights 1689), principles and constitutional conventions[79]. There is an absence of judicial review (Supremacy of Parliament).

The United Kingdom, however, does not fit entirely all majoritarian criteria. The British government cannot be described as centralized and unitary since 1997 with the process of devolution and creation of national assemblies and governments. Secondly, another deviation is that British parliament is not unicameral, although the Commons prevail, and the Lords can only delay the legislation. Lastly, the central bank was given independence to decide on the rate only in 1997, which removed executive control over it[80]. In addition to this clear deviation, there has to be considered the recent political trends, for instance, the recent coalition government, or the rising strength of the Liberal Democrats as the third political party.

Looking at the Turkish political arena during the last three elections, I argue that, traditionally a consensus democracy, Turkey moved closer towards a majoritarian system of democracy by adapting some of its features. For instance, since 2002 elections, a single party has been creating the government (AK Partisi), and being cohesive, it is

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78 Lijphart, *Patterns of Democracy : Government Forms and Performance in Thirty-Six Countries*. p 16.

79 Ibid.p 19.

80 Ibid.p 21.

dominant over the legislature. The elections of 2002brought into parliament only two parties: AKP and CHP. In 2007 and 2011 these two parties were joined by nationalists MHP. The seat share by major political parties is comparable to that of the United Kingdom (see

Table 4). The Assembly is unicameral. Turkey has a constitutionally guaranteed unity of its territory. Turkey has a PR electoral system, however, this system is accompanied by a 10 percent threshold, the *d'Hondt* method, and other restrictions, leaving a significant number of voters unrepresented in a favor of major parties.

Table 4: Seat share of 2 largest political parties

	Seat share of 2 largest political parties*
Slovakia	52,22%
Turkey	**88,12%**
Germany	72,54%
The UK	**86,93%**

*** The time span is the last three elections; Slovakia in 2010, 2006, 2002; Turkey in 2011, 2007, 2002; Germany in 2009, 2005 and 2002; The UK in 2010, 2005 and 2001.**

The United Kingdom does not represent the pure model of a majoritarian democracy, and the shift towards a consensus type is more visible especially in the last decade. Turkey, on the other hand, being a consensus type of democracy, is shifting slowly towards a majoritarian type of democracy, because of the reasons mentioned in the preceding paragraph. The nature of democracy in researched jurisdictions is significant as in the following chapters we will analyze the functions of parliaments and the position of the parliament in relation to the government while performing their functions.

1.3 Conceptual Introduction into functions of parliament

The functions of parliament can be understood in a narrow as well as in a broader sense. The narrow meaning defines functions of parliaments as tasks that parliament discharges through set procedures (e.g debates or question times)[81]. In a broader sense among functions of parliaments are also those functions that are not directly connected to decision-making (e.g. constituency work of members)[82]. In the present work, I will focus only on functions of parliament in their narrow sense.

Since the establishment of the first parliaments, academics, politicians or journalists have been trying to define functions of legislatures. I examine some of their work in the following paragraphs. It is important to note right at the beginning that legislative function is just one of the functions that parliament has, and it is neither the sole nor the most important one. As Norton noted, one of the reasons of the widespread assumption about the decline of legislatures was their name 'legislatures' that evoke that these bodies only role is to produce legislation[83].

Walter Bagehot (1826-1877), the author of the English Constitution, identified and ordered according to significance several functions of the House of Commons. As the most important function Bagehot considered the *elective* one; in other words the House of Commons acting as an electoral chamber[84]. At the second place of importance was an

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81 Malcolm Aldons, "Responsible, Representative and Accountable Government," *Australian Journal of Public Administration* 60, no. 1 (2001). p. 36.

82 Ibid. p. 36.

83 Philip Norton, *Does Parliament Matter?*, Contemporary Political Studies (New York ; London: Harvester Wheatsheaf, 1993). p5.

84 Bagehot, *The English Constitution*. p. 118.

expressive function of the Commons[85]. In the more commonly used language this would mean the representative function of parliament, when Members of Parliament express their opinions. Thirdly, Bagehot listed the *teaching* function, as he believed that through its position parliament can alter society, and fourth he mentioned the *informing* function, in the sense to inform the Sovereign about the grievances of the electorate[86]. The fifth and final function was the function of *legislation*. Not denying the importance of this function, Bagehot tried to point out that there are more important functions of parliament than the legislative one that we shall take into account[87]. Bagehot's list is a first example of a possible take on parliamentary functions.

Another, more recent influential and often cited enumeration of functions of parliaments comes from Robert Packenham. In his study published in 1970 he identified 11 functions of parliament: *Latent [legitimizing] function* (performed by holding regular meetings); *Manifest [legitimizing] function* (formal approval); *Tension release* (tension solving); *Recruitment*; *Socialization*; *Training*; *Law making*; *'Exit' function*; *Interest articulation*; *Conflict resolution*; and lastly *Administrative oversight and Patronage*[88]. This work is still considered as one of the most influential ones in the area of comparative legislative studies, since it is believed it more accurately presents the activities of parliaments[89].

85 Ibid, P 119
86 Ibid, P 119
87 Ibid, P 119
88 Packenham, "Legislatures and Political Development (1970)." pp.86-96.
89 Norton, *Does Parliament Matter?* p 8.

An influential scholar and a member of the British parliament, Lord Norton identified the following five core functions of Westminster parliament during its leadership in the Commission for Strengthening Parliament:

> *1. To create and sustain a government. This is achieved through elections to the House of Commons and, where necessary, through votes of confidence in the House.*
> *2. To ensure that the business of government is carried on. This is achieved through giving assent to government bills and to requests for supply (money) from the government.*
> *3. To facilitate a credible opposition. This is done through the second largest party forming an organized alternative government. Other parties may also organize and seek to challenge government.*
> *4. To ensure that the measures and actions of government are subject to scrutiny on behalf of citizens and that the government answers to Parliament for its actions.*
> *5. To ensure that the voices of citizens, individually and collectively, are heard and that, where necessary, a redress of grievance is achieved.*[90]

Lastly, as an example of various lists of functions of parliaments, there is a list by Adam Tomkins, who looked at functions from the historical point of view, and placed on top the function to *support the government*, as the government has to present itself collectively or ministers individually to the parliament in order to receive support for its programs[91]. At the second place Tomkins listed the *representation of grievances* that evolved as a response to the Monarch's need of revenue, when parliamentarians saw the opportunity to bargain or impose conditions. In England for example both Houses acquired representative functions; Lords were representing interests of aristocracy, and Commons interests of those who elected them[92]. *Scrutiny of the Government* and the *Legislative function of parliament* were placed by Tomkins at the third and last place respectively[93].

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90 ———, "Reforming Parliament in the United Kingdom: The Report of the Commission to Strengthen Parliament." p3
91 Tomkins, *Public Law.*
92 Ibid.
93 Tomkins, *Public Law.*

From these definitions one can see that the legislative function was by none of authors considered as the sole or most important function of parliament. Already Bagehot at the time of writing gave a little credit to the legislative function of British parliament. Examples coming from authors writing in recent decades show that they mostly considered role of Parliament not as one making the law, but rather giving assent to the measures presented by the government (Norton, Packenham). The legislative function is one of functions this dissertation focuses on; however, the former account on different lists of parliamentary functions aims to correct one of misconceptions related to parliamentary functions, which is that parliaments' main function is to legislate.

Another important fact that one has to realize when looking at the functions of parliaments, speaking of parliamentary democracies, is that it is the function of parliament not only to create and sustain the government but also to hold the executing to account[94]. These two functions are contradictory and the conflict is usually resolved in favor of the government, which according to Norton creates the disproportion between the government and parliament[95]. However, the overall point with regard to the list of parliamentary functions is that one can indentify different functions of parliament based on one's research questions. This dissertation is limited to comparative analysis of three parliamentary functions: legislative, control, and representative, which I consider to be basic functions of modern parliaments and would not deal with others.

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[94] Matthew Flinders, "Shifting the Balance? Parliament, the Executive and the British Constitution," *Political Studies* 50(2002). p.23

[95] Norton, "Reforming Parliament in the United Kingdom: The Report of the Commission to Strengthen Parliament." p3

1.3.1 Representative Function

One of the most important conditions of parliament to be considered democratic is to be representative. Sajó points out that "parliament is the body of (general popular) representation from where, in parliamentary systems, the special legitimacy of the legislative power and its supremacy over the executive power derives.[96]" Furthermore, he argues that parliament exercises its legislative function due to its popular representative character, and democratic legitimacy[97]. Conditioning the legitimacy of parliament with its representative character triggers the question of what "representative" and "representation" mean. Further paragraphs give an account of the different approaches of representation that could be taken, from the basic conceptions to the present challenges.

There are numerous concepts and approaches to representation. In essence, when we are talking about political representation, we talk about its four components: First, a person represented (principal – voters, clients); secondly, a person representing (agent - parliamentarians, organization); third, a subject represented (opinions, interests); and lastly, political context (the setting in which representation takes place)[98]. More specifically, democratic theory deals with representatives in elected office only (unlike more general theories of representation). As it will be illustrated below, the approaches and concepts differ according to the component on which scholars focus their attention.

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96 András Sajó, *Limiting Government : An Introduction to Constitutionalism* (Budapest ; New York: Central European University Press, 1999).p.107.

97 Ibid.p.107.

98 Dovi, Suzanne, "Political Representation", The Stanford Encyclopedia of Philosophy (Winter 2011 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/archives/win2011/entries/political-representation/.

1.3.1.1 Different concepts of representation

In her seminal work *The Concept of Representation*, Hannah Pitkin argued that one shall look at political representation through the different contextual ways in order to understand it[99]. She identified four different approaches to representation, namely formalistic, descriptive, symbolic or substantive representation. Formalistic representation in general deals with the institutional arrangements that are a precondition of representation; symbolic representation answers the question of what kind of response representatives invoke from those being represented; descriptive representation is an approach dealing with the extent to which representatives resemble those who are represented; and lastly, substantive representation is concerned with the activity of representatives.

Decades later, Jane Mansbridge noted that the normative understanding of representation has not kept up with recent empirical and contemporary democratic practices. In her article *Rethinking Representation* she identifies four forms of representation in modern democracies: promissory, anticipatory, gyroscopic, and surrogacy:

> *Promissory representation is a form of representation in which representatives are to be evaluated by the promises they make to constituents during campaigns… In anticipatory representation, representatives focus on what they think their constituents will reward in the next election and not on what they promised during the campaign of the previous election... In gyroscopic representation, representatives "look within" to derive from their own experience conceptions of interest and principles to serve as a basis for their action. Finally, surrogate representation occurs when a legislator represents constituents outside of their districts.*[100]

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99 Pitkin, *The Concept of Representation*.p 10.

100 Dovi, Suzanne, "Political Representation", The Stanford Encyclopedia of Philosophy (Winter 2011 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2011/entries/political-representation/ (Last accessed October 14, 2013).

Mansbridge's argument is that as there are these different forms of representation, the representatives shall also be assessed based on different normative measures.

Nadia Urbinati offered a different way of re-envisioning representation and calls for understanding of *representation as advocacy*[101]. Urbinati claims that "the point of representation should not be the aggregation of interests, but the preservation of disagreements necessary for preserving liberty"[102].

Philip Pettit in his essay introduced another aspect in which the relationship may vary[103]. Representation may be *responsive* or *indicative*. Responsive representation means that the representative is responsive to the wishes of the represented person; there is control over representatives by consultations. The latter representation happens when instead of responsive representation there is a person who shares general attitudes on subject matters with the represented person. The reason somebody will choose this kind of person would be because of his or her mentality, which would correspond to the person represented. There would be, however, no responsiveness in the latter case and there will not be a possibility of control. Author explains that scholars deal almost exclusively with responsive representation and the indicative one is more typical for early democratic theory, as this kind of representation is achieved in the lottery system[104].

101 Nadia Urbinati, "Representation as Advocacy: A Study of Democratic Deliberation," *Political Theory* 28(2000).

102 Dovi, Suzanne, "Political Representation", The Stanford Encyclopedia of Philosophy (Winter 2011 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2011/entries/political-representation/ (Last accessed October 14, 2013).

103 Philip Pettit, "Representation, Responsive and Indicative," *Constellations* 17, no. 3 (2010). P 427

104 Ibid. p.428.

1.3.1.2 Formalistic and Descriptive Approach to Representative Function

The analysis in the third and fourth chapter on representative function is limited to Pitkin's two approaches, specifically to formalistic and descriptive approaches leaving the other forms aside. Pitkin's classification, together with classifications of other authors mentioned in the first part of this chapter, show that there are various approaches on how to deal with the issue of representation. With regard to formalistic representation, the present research deals with both its parts; authorization, through the account of electoral processes in the four jurisdictions, and accountability with regard to the types of mandates of parliamentarians and their positions within parliamentary party groups.

The second part of the chapter is devoted to descriptive representation, namely representation of women and minorities in national parliaments. Descriptiveness of parliaments is their essential feature, as they shall reflect the diversity of population.

1.3.2 Legislative function

In the 17th century, Locke in the Second Treatise of Government wrote that only the legislature can adopt the law in accordance with its mandate that would have power over man in society[105]. A century later, James Madison had the same belief in the strength of legislature over other branches of government when he wrote that "[i]n republican government, the legislative authority necessarily predominates" and suggested remedies

[105] John Locke, *Second Treatise on Government*, available at: http://www.earlymoderntexts.com/pdf/locke2tr.pdf (Last Accessed July 11, 2013).

to protect this inconveniency[106]. However, as examples of various definitions of functions of parliaments written above show, the legislative function of parliament has not been considered as the primary function of legislatures.

Certainly there are various methods of looking at legislative process and measuring the outcomes, for instance, looking at the numbers of proposed bills versus adopted legislation, or origins of the legislation. For this dissertation I chose to work with agenda setting powers of government in relation to legislatures in the chosen jurisdictions. One of the scholars researching agenda setting powers of governments and parliaments and their impact on the policy outcomes has been Herbert Döring[107], who for his study of legislatures took an agenda setting power of government as a cause to assess the rise or decline in laws enacted by parliament[108].

Norton, in his study of British parliament, mentioned that the main concern of scholars nowadays is how legislatures can actually influence the content of public policy[109]. Three types of legislatures have been identified according to the mentioned policy influencing capacity: policy making, policy influencing, and legislatures with little or no effect[110]. The policy making process is quite lengthy – it consists of four stages: initiation,

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[106] The Federalist No. 51, *The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*, [James Madison], available at: http://www.constitution.org/fed/federa51.htm

[107] Herbert Doring is Professor of Political Science, University of Potsdam. Bio available online: http://www.uni-potsdam.de/db/vergleich/?page_id=130 (Last accessed July 11, 2013).

[108] Herbert Döring, ed. *Parliaments and Majority Rule in Western Europe* (Frankfurt: Campus, St. Martin's Press 1995). p 656; Other articles by Herbert Döring: Parliamentary Agenda Control and Legislative Outcomes in Western Europe, Legislative Studies Quarterly, Vol. 26, No. 1 (Feb., 2001), pp. 145-165, Stable URL: http://www.jstor.org/stable/440407 .Accessed: 02/01/2012 06:32.

[109] Philip Norton, *Parliament in British Politics*, Contemporary Political Studies Series (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2005).

[110] See table 4.1 in Ibid. P 61.

formulation, deliberation, and approval.[111] The first two stages are the ones during which the policy can be shaped and influenced[112]. The parliament can play the role in both – in the first stage through private members' bills, which happens rarely, and in the second via procedures in the initial stages of the legislative process. In the latter two stages parliaments are presented with already formulated proposals that are hardly ever subjected to amendments. Norton's categorization supports the choice of researching the agenda setting powers of government in relation to parliament, since the options of parliamentarians to organize its work in the legislative process influences the overall capacity to influence the policy making powers of government, and agenda setting powers show the overall strength and importance of parliament when performing its legislative function.

In chapter five on legislative function and agenda setting powers, I assess the four parliaments first based on indicators as presented by Herbert Döring and then I complement it with indicators I argue are of equal importance and are omitted from Döring's analysis. The agenda setting is viewed as a traditional constrain of the legislative function of parliaments. In chapter six I assess the legislative function of parliaments through what I call non-traditional constraints of legislative function of parliaments. These constraints are novel in a sense that they resulted from European integration, or judicial activism.

111 Ibid. p. 63
112 Ibid. p. 63

1.3.3 Control function

One of the features of parliamentary democracies is that the government is accountable to parliament[113]. Parliament and government are both installed through the same elections, and most of the time the government relies on the majority in parliament. Accountability means to be held to account, scrutinized, and being required to give an account or explanation[114]. This complex concept can be used and explained in many different ways. For example, Lord Sharman divided the notion of accountability into four aspects:

- *"giving an explanation — through which the main stakeholders (for example Parliament) are advised about what is happening, perhaps through an annual report, outlining performance and capacity;*
- *providing further information when required — where those accountable may be asked to account further, perhaps by providing information (eg to a select committee) on performance, beyond accounts already given;*
- *reviewing, and if necessary revising — where those accountable respond by examining performance, systems or practices, and if necessary, making changes to meet the expectations of stakeholders; and*
- *granting redress or imposing sanctions — if a mechanism to impose sanctions exists, stakeholders might enforce their rights on those accountable to effect changes.*[115]

Another useful guidance gives the Inter-Parliamentary Union that defined the parliamentary oversight as "the review, monitoring and supervision of government and

[113] For the purposes of this paper, based on provided definitions, under control function of parliaments I understand scrutiny, oversight, or holding parliaments accountable, and I use these terms interchangeably. I am aware of the fact that in different contexts these terms would be maybe differentiated.

[114] Anthony Staddon, "Holding the Executive to Account? The Accountability Function of the Uk Parliament," http://siteresources.worldbank.org/PSGLP/Resources/HoldingtheExecuTheAccountabilityFunctionoftheUKParliament.pdf , p.4

[115] Lord Sharman of Redlynch, "Holding to Account: Review of Audit and Accountability for Central Government," (2001). Par. 3.6.

public agencies, including the implementation of policy and legislation"[116]. Based on this definition, these key features of the control function are:

- to detect and prevent abuse, arbitrary behavior, or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens;
- to hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations;
- to ensure that policies announced by the government and authorized by parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programs; and
- to improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.[117]

Having the basic notion of what the control function shall be, the main question of the chapter is if there is a decline in performance of the control function of parliaments that could be linked to parliamentary decline thesis.

1.3.3.1 Classification of parliamentary control tools

Parliaments have at their disposal various control tools: hearings in plenary committees and in plenary settings, commissions of inquiry, parliamentary questions and question time, interpellations, the ombudsman, auditors general, and committees (see Table 5)[118]. Some of them are stipulated in constitutions; however, most scrutiny tools are part of the adopted rules of parliamentary procedures[119].

Table 5: Control tools at the disposal of the four researched parliaments

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116 Hironori Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments," (Inter-Parliamentary Union, 2007). p. 9.

117 Ibid. p. 9.

118 John Johnson, Robert Nakamura, and Rick Stapenhurst, eds., *Legislative Oversight and Budgeting: A World Perspective* (World Bank Publications 2008). p13.

119 Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments." p. 11

	Committee hearing	Hearing in plenary sitting	Commission of Inquiry	Questions	Questions time	Interpel lations	Ombuds man
Germany	Yes	Yes	Yes	Yes	Yes	Yes	Yes (1956)
Slovakia	Yes	Yes	N/A	Yes	Yes	Yes	Yes (2001)
Turkey	Yes	Yes	Yes	Yes	Yes	No	Yes(2010)
UK	Yes	Yes	Yes	Yes	Yes	No	Yes (1967)

Source: Rick Stapenhurst et al. (eds), Legislative oversight and budgeting: a world perspective, Washington, DC: World Bank, c2008

There are various classifications of the control mechanisms, e.g. they can be grouped according to timing (*ex ante* or *ex post*), or whether the activity takes place inside or outside the chamber. *Ex ante* oversight is performed during policy formulation (like hearings in committees and in the plenary), and on the contrary, under *ex post* legislative oversight measures are understood as those that take place after the adoption of governmental policy (questions, interpellations or committees of inquiry)[120].

The second classification categorizes tools of oversight into *internal* (scrutiny inside the chamber) and *external* (scrutiny performed outside of the chamber). Among internal scrutiny measures we consider debates, parliamentary questions, interpellations, hearings, and public account committees; in the UK specifically it would also be so-called opposition days and adjournment debates. Ombudsmen, auditors general and according to Norton, the committee system would also be measures of scrutiny outside the chamber[121].

[120] Johnson, Nakamura, and Stapenhurst, eds., *Legislative Oversight and Budgeting: A World Perspective*. p13.

[121] Norton, *Parliament in British Politics*. p?

The researched countries belong to parliamentary systems, in which the existence of the government is dependent on majority support in parliament. This feature of parliamentary system means that one has to count with party loyalty, which shapes the efficiency of control mechanisms of parliament over government[122]. Governments in these systems make little effort to encourage oversight or scrutiny; on the contrary, they may put pressure on parliamentarians and silence them[123]. Nonetheless, there are attempts to strengthen parliaments structurally as well as financially in order to achieve the efficient system of scrutiny[124]. Decreasing party loyalty or coalition governments may also contribute to enhanced scrutiny, because each political party as being part of a coalition is a separate veto player[125].

1.3.3.2 Traditional vs. Non-traditional control tools

Part IV on the control function is again divided into two chapters. In Chapter 7 I discuss what I call traditional control tools: confidence votes, parliamentary questions and interpellations, debates and committee oversight. Chapter 8 then deals with non-traditional control mechanisms, trends or developments that influenced control function of parliaments in recent decades. Such developments are without a doubt membership in the European Union, and deepening transparency of parliamentary business.

122 John Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations," in *Legislative Research Series* (National Democratic Institute for International Affairs, 2000). p. 24

123 Ibid.p. 24

124 Ibid.p. 26

125 George Tsebelis, "Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis," *American Political Science Review*, no. 93 (1999).

Chapter 2: Parliamentarism in Researched Jurisdictions

Introduction

Parliaments have been considered central for modern democracies, since they have been seen as a key body to democratization, and "the ultimate political symbol of peaceful compromise and quiet agreement[126]". Historically speaking, parliaments have been associated with two significant roles: first, they have been the motor of democratization. In the United Kingdom parliament was a central body of the gradual democratization process in terms of its representativeness. In Slovakia parliament had the same role following the change of regime from totalitarian to democratic in the 1990s. And lastly, parliament was the legislative and executive body in the early 1920s in Turkey, when the state was in transition from a religious monarchy towards a secular republic, and had a central role in transitions after military takeovers.

Secondly, parliaments' roles have also been to secure the stability of the regime, as it was in post-war Germany. At the present time, however, reasons why parliaments have been crucial seem to be solved. As the statement of the 2005 UN World Summit declared, democracy has become a universal value[127].Parliaments in most of the countries, certainly in the four researched jurisdictions in this dissertation, are regularly elected representative bodies, with more or less stable governments. Thus, from these two perspectives, one can argue that parliaments cannot rely on their roles anymore.

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[126] John Keane, "Dictatorship and the Decline of Parliament: Carl Schmitt's Theory of Political Sovereignty," http://johnkeane.net/31/topics-of-interest/dictatorship-and-the-decline-of-parliament-carl-schmitts-theory-of-political-sovereignty. (Last accessed July 12, 2013).

[127] Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*. p.1

Besides losing its central role with regard to securing democracy and stability, parliaments of EU member states, including British, German and Slovak ones, have also become institutions within the multi-level governance of the European Union. As was discussed in the first chapter, national parliaments have been considered as losers of EU integration. On the level of treaties, national parliaments were first mentioned as late as Maastricht Treaty (1992), which strengthened national parliaments in relation to governments and endorsed cooperation between national parliaments and the European Parliament. The Amsterdam Treaty (1997) defined the position of national parliaments within EU scrutiny, and guaranteed the access of parliaments to Commission documents with six week periods for scrutiny. The last treaty, the Treaty of Lisbon (2009), emphasized the role of parliaments in EU scrutiny and provided for all EU communication and legislative proposal to be sent directly to national parliaments. The period for scrutiny was prolonged by two weeks, and parliaments received control over the principle of subsidiarity. Discussion on the impact of European integration on national parliaments eroded is discussed in Chapter 6 of this thesis; however, when discussing the major parliamentary developments here, one should see parliaments of the member states of the EU as a part of multi-level governance.

Against this background, the present chapter aims to look at the evolution of parliamentarism by mapping general movements in evolution of parliamentarism and the role of parliaments in Germany, Slovakia, Turkey and the United Kingdom. The first main trend discussed here is an institutionalization of parliaments from the perspective of separation of powers. Parliaments were first convened by rulers as their advisory bodies

and in order to approve revenue needed by rulers to wage wars. Simply said, the first main trend is the separation of parliaments from the executive. The second main trend resulting from emancipation is the new role of parliaments as sovereigns. Parliament as a sovereign, for the purposes of this section, means that parliament represents the supreme legislative institution of the state, drawing its legitimacy from the people. This understanding is broader than the British doctrine of the parliamentary sovereignty. Third, parliaments have gradually as sovereigns became a center of democratization through expansion of suffrage or the changing nature of political parties. The conclusion outlines the ideal type of parliament as described by the Inter-Parliamentary Union, and raises another question with regard to following chapters, which is to what extent parliaments live up to this ideal.

2.1 Separation of Powers: Gradual Emancipation of Parliaments

The initial struggle of the first assemblies that spread around Europe was the separation of their powers from monarchs and local rulers that convened them in order to seek support especially in the form of revenue[128]. This section analyzes the gradual institutionalization of parliaments as the first main general trend in their evolution and then looking at gradual emancipation of British parliament, followed by a shorter account of the German and Turkish early experiences with parliamentarism. While in the United Kingdom parliament over time separated its business from royal will, as will be shown this was not case for parliaments in Germany and the Ottoman Empire, which became sovereign only after the change of regimes.

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[128] Greg Power, "Global Parliamentary Report: The Changing Nature of Parliamentary Representation," (Inter-Parliamentary Union, United Nations Development Program, April 2012). p11

This section suggests that although the general reason to convene parliaments was the need of revenue, and the general trend was that of separating from rulers, it was certainly not the trend for all countries. In some, not discussed here, parliaments declined after the initial period because monarchs found sources of income elsewhere (Spain- discovery of the Americas), and in others, such as the case of Germany or Turkey, parliaments were convened at the end of the 19th and the beginning of the 20th century for a time too short for a gradual emancipation.

2.1.1 British parliament's Emancipation from Monarch (13th – 17th century)

From among the researched parliaments British Parliament is the oldest and its origins go back as far as the 13th century, although it is not possible to state with exact certainty when in Medieval times the predecessor of the House of Commons emerged[129]. The term parliament was first used in the records of the court of law in 1236 and described the meeting of prelates and nobles[130]. During the 13th century the King summoned several assemblies to help him overcome existing political and financial problems[131]. In these early days the parliament represented the one-time gathering, or occasion or an event, and not the institution.

[129] Ian Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction* (New York: Oxford University Press 2009). p. 119; For the constitutional history see also: Ann Lyon, *Constitutional History of the United Kingdom* (Cavendish Publishing Limited, United Kingdom, 2003).

[130] H. G. Richardson and G. O. Sayles, " The Earliest Known Official Use of the Term 'Parliament'," *The English Historical Review* 82, no. 325 (1967). p. 748.

[131] Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*. p119.

Parliament as a political institution began to form under the reign of Edward I (1239-1307) and his successors[132]. Edward I needed Parliament to vote on extraordinary taxes that allowed him to finance wars[133]. Each such approval gave Parliament the right to ask for a favor back from the King and gradually increased Parliament's political influence[134]. Estates came in front of the Royal Council with petitions for which the King's demand for revenue was satisfied[135]. In the early days of Parliament the judicial function of parliament was in the center, while the significance of Parliament as a deliberative assembly grew gradually, when estates realized that individual petitions represent grievances common to all[136]. As Pollard notes, Parliament evolved into a political arena rather than a court of law since individual grievances were a matter for the courts, while national grievances were matters of politics[137]. Thus when representatives realized they shared problems and goals, Parliament evolved from the court towards a political institution.

The division of Parliament into two chambers was completed by 1341[138]. By 1377 the membership, procedure, and privileges were settled, and some of its powers[139] were

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132 "The Birth of English Parliament," http://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/edward/.

133 Ibid.

134 Ibid.

135 Later known as the Court of Star Chambers, and in recent times it is the Judicial Council of the Privy Council.

136 A. F. Pollard, *The Evolution of Parliament* (New York,: Longmans, Green and co., 1920). p. 60.

137 Ibid.p. 60.

138 The division of into two Houses was not planned and longer process. In first meetings the parliament was composed of four divisions: clergy, barons, knights, and burgesses. They were meeting and deliberating separated from each other. During the reign of Edward the Third knights formed union with representatives of the towns under name 'the Commons". John Richard Green, *A Short History of the English People* (New York : Collier & Son, c1900).

139 For example regulation of trade, protection of subjects against oppression, and injustice. Ibid.

acknowledged by the Monarch[140]. However, one has to keep in mind that Parliament was established by royal will, as an instrument of royal government, hence throughout the Middle Ages parliament could evolve only as much as the personality and purpose of each king allowed[141].

Therefore, up to the 17th century British parliaments were summoned and dissolved at the will of the sovereign. The power was vested in the Crown, who did not merely reign, it ruled. Nevertheless, the power of the Crown was not absolute. The Magna Charta (1215)constrained powers of the Crown to raise revenue and taxes, which is considered to be the foundation of 'parliamentary democracy'[142]. Later, throughout the 14th and 15th centuries, three principles were gradually established: first, there will be no taxation without the consent of the Parliament, secondly, both Houses of Parliament need to consent to pass the legislation, and lastly, the Commons have the right to investigate and amend the abuses by the Crown administration[143]. Immunity of representatives, the parliamentary privilege with regard to freedom of arrest and freedom of debate, was also created[144]. These principles are what we call the ancient constitution, according to which all power resides in the Crown besides those fragments specifically transferred to Parliament[145].

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140 R. G. Davies and Jeffrey Howard Denton, *The English Parliament in the Middle Ages*, The Middle Ages (Philadelphia: University of Pennsylvania Press, 1981). p.29.

141 Ibid. p.29.

142 Jan Luiten Van Zanden, Eltjo Buringh, and Maarten Bosker, "The Rise and Decline of European Parliaments, 1188-1789," *Economic History Review* 65, no. 3 (2012). p.839

143 Tomkins, *Public Law.* p. 41.

144 "History: The Origins of Parliament," http://www.infoplease.com/ce6/history/A0860252.html.

145 Peter Leyland, *The Constitution of the United Kingdom : A Contextual Analysis*, Constitutional Systems of the World V. 1 (Oxford ; Portland, Or.: Hart Publisishing, 2007).

This set of principles known as an ancient constitution was challenged after the Tudor line came to an end and was replaced by the Stuart dynasty at the beginning of the 17th century, the time in British history known as the struggle for power between all three components of 'the Estates of the Realm'[146]. Introducing a new doctrine for the source of the King's power, the Stuarts sought to limit the powers of Parliament[147]. The Commons and the Lords became more and more hesitant to approve a new levy of taxes for the Monarchs without their acceptance of certain limits on their personal power[148]. On the other side, the Stuart monarchs tried to rule the country using their prerogative powers and bypassing Parliament causing them difficulty whenever the Crown needed revenue[149]. This first led to the Civil War and later on, after the Restoration, to the Glorious Revolution in 1688 and the subsequent installation of William Orange and Mary I as joint monarchs[150]. The declaration affirming the rights and liberties of the people and conferring the Crown to Prince William of Orange and Mary I, was for the new rulers a precondition of accession to the Throne. This declaration became in 1689 the Bill of Rights Act[151].

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146 Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*.p. 25.

147 Monarchs from Stuart dynasty (starting with James I of England) promoted the 'Divine Right of Kings' theory. This theory represents a political and religious doctrine of royal and political legitimacy. The doctrine means that the power of the Monarch is derived directly from the God, and there is no authority on earth that Monarch shall be subjected to – neither people, nor aristocracy. If the King is unjust, only God can judge him. At the same time, any attempt to restrict his power may constitute sacrilegious act. Author of the theory is Jean Bodin. This doctrine was abandoned in England during the Glorious Revolution.

148 Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*.p. 26.

149 Ibid.p. 26.

150 Lucinda Maer and Oonagh Gay, "The Bill of Rights 1689," http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-00293.pdf.

151 *An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*, http://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction

With regard to the significance of the Bill of Rights Act specifically for parliamentary development, the Act contained a statement that "*Proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament"*, which has been understood as a prerogative that validity of statutes passed by Parliament cannot be challenged by courts[152].

Thus the Bill of Rights represents a new 'contract' between Parliament and the Crown, and has made the Crown subject to the Parliament, and recognizes the Parliament's unlimited authority – the supremacy of Parliament or Parliamentary Sovereignty. This was a huge step forward in the evolution of parliamentarism in the United Kingdom, and practically from this time on Parliament has been meeting regularly irrespectively of Royal will, which marks the beginning of the separation of powers between parliament and monarchy.

2.1.2 Reichstag during the German Empire (1871- 1919)

In Germany, parliament became a competitor to the monarch's power much later than in Britain, because even as of the times of Napoleon, the German countries were still loosely bound as the 'Holy Roman Empire of the German Nation'[153]. It was only after the Congress of Vienna (September 1814 - June 1815) when German princes, instead of restoring the Holy Empire, established the German Confederation by signing the German

[152] Leyland, *The Constitution of the United Kingdom : A Contextual Analysis*.

[153] German states were organized in Holy Empire from mid of 10th century to the beginning of 19th Century. The Emperor was elected by high nobility and clergy, confirmed by the Pope; it was not a hereditary title. More info see at: U.S. Department of State, "Background Note: Germany," http://www.state.gov/r/pa/ei/bgn/3997.htm, .p2.

Federal Act (*Bundesakte*) on 8 June 1815[154]. The German Confederation (*Staatenbund*), consisting of 38 sovereign states and four free cities, had a single federal body - the Confederate Assembly (*Bundesversammlung*) in Frankfurt am Main[155]. The members of the Assembly were delegates appointed and instructed by their governments[156]. This arrangement resembles the present day Bundesrat, the second chamber of German parliament.

The Confederation, however, was loose and ill defined, and a lot of issues regarding the organization of the state were left for future deliberation[157]. When it came to development of German parliamentarism beyond the Confederate Assembly, the important part of the progress was the setting up of national assemblies. According to Article 13 of the German Federal Act, individual states were supposed to adopt their own constitutions[158]. Adopted constitutions brought into the system of government certain forms of representation, charters of civil rights and liberties, and the first representative assemblies usually consisting of two chambers[159].

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154 See e.g. A. J. P. Taylor, *The Course of German History : A Survey of the Development of German History since 1815* (London: Routledge, 1988).p.42; Text of German Federal Act available in English at: http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=233

155 http://www.state.gov/r/pa/ei/bgn/3997.htm, p2, see also: James J. Sheehan, *German History, 1770-1866*, Oxford History of Modern Europe (Oxford: Clarendon Press, 1989). p. 402. ; Golo Mann, *The History of Germany since 1789* (London,: Chatto & Windus, 1968). p79.

156 Sheehan, *German History, 1770-1866*. p. 402.

157 Ibid. p. 404.

158 See the text of German Federal Act available in English at: http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=233

159 E.g. Bavarian Constitution adopted in 1818 established a bicameral representative body. The Upper Chamber consisted of nobility, clergy (ex officio), or royal appointees. The Lower Chamber – the Chamber of Deputies was elected by five separate categories of voters (class system of right to vote). Baden's Constitution adopted in the same year also introduced bicameral legislative body with nobility in Upper and elected Lower Chamber. However, in case of Baden all those who met the economic and legal qualifications within assigned district could participate in a vote. More on German state constitutions and legislative bodies see in Sheehan, *German History, 1770-1866*. p 411.

A few decades later, the development of German statehood, and particularly existing assemblies, was influenced by the revolutionary year 1848[160]. Rulers of German states, pressed by revolts calling for fundamental rights and national unification, granted citizens political rights and agreed to convene a National Assembly in Frankfurt to open the discussion on a German nation state[161]. Members of the National Assembly were chosen in general elections in all independent states and a total number of 809 elected representatives assembled in St. Paul's Church[162]. In March 1849 the St. Paul's Church Assembly agreed on the Constitution creating a Confederation headed by a hereditary emperor with power to appoint the government[163]. According to the Constitution, the Parliament was in charge of enactment of legislation, budget and control of the government[164]. Yet, this arrangement came to an end when Fridrich Wilhelm IV, King of Prussia, declined the offered position of head of state. Shortly afterwards the Assembly dissolved itself and the revolutionary activities were broken[165].

In the following years, Prussia, one of the German states, was becoming the main economic and political force, and it was Prussia's expansionism that led to gradual unification of the German states under its leadership[166]. The German Empire was established in 1871 after Prussia defeated France in a mutual conflict[167]. Although the new constitution of 16 April 1871 appeared liberal on the surface, in reality it gave a

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160 Ibid. p 658.

161 Taylor, *The Course of German History : A Survey of the Development of German History since 1815*. p. 76.

162 Ibid. p. 77.

163 For more details of Constitution drafting and debate see e.g. William Carr, *A History of Germany 1815-1990*, 4th ed. (London: Arnold, 1991).;

164 Ibid. p 50.

165 Ibid. p. 50.

166 Ibid. p 119.

167 Ibid. p.119.

considerable amount of power to the Monarch, and has been described as 'autocracy by consent[168]'.The power to nominate the Chancellor was vested to the Emperor as his sole prerogative, and the Chancellor was not accountable to the Reichstag. The most liberal component of the constitution is considered to be the introduction of a parliamentary regime with 400 MPs elected by universal franchise by using a first-past-the-post system[169]. The Bundesrat was composed of unelected representatives of twenty-five states, each state holding a number of votes proportional to their size, very similar to the present arrangement, and because of this, the Bundesrat was dominated by Prussia.

Theoretically, the Reichstag possessed significant powers, including legislative and budgetary power, and control over military finance. Elections were every three years with generally over 60 percent participation. Abrams notes, however, that in reality the Kaiser and the Bundesrat possessed extensive powers limiting the powers of the Reichstag, such as the Bundesrat's veto power over parliamentary decisions or the Kaiser's power to dissolve the Reichstag on the recommendation of the Chancellor[170]. Thus, Abrams summed up the situation by saying that "votes cast may have reflected the mood of the country but they did not affect the way the country was run"[171].

German parliamentarism has naturally evolved in a much different space and pace than in the United Kingdom. British parliament was strengthening its position throughout centuries, which helped it to establish parliamentary conventions and parliamentary

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168 Lynn Abrams, *Bismarck and the German Empire: 1871-1918* (Taylor and Francis, 2006).p. 13

169 More on electoral system during the Empire see: German Bundestag, "German Parliamentarism: Empire (1871-1918) " http://www.bundestag.de/htdocs_e/artandhistory/history/parliamentarism/empire/index.html.

170 Abrams, *Bismarck and the German Empire: 1871-1918*.p. 14

171 Ibid.p. 55

supremacy at the end of the day. In the case of Germany, two centuries after the Glorious Revolution, parliaments were established and elected on the initiative of monarchs, and royal strong influence.

2.1.3 Turkish Parliament during the Ottoman Empire (1876- 1920)

The first Turkish Constitution was adopted in the late Ottoman Empire in 1876[172]. Although the Constitution of 1876 vested all supreme legislative and executive power to the Sultan, it provided for a bicameral parliament called the General Assembly (*Meclis-i Umumi*). The first parliament came into being in 1877[173]. It was composed of the Chamber of Notables (*Meclis-i Ayan*) and the Chamber of Deputies (*Meclis-i Mebusan*)[174]. Senators were appointed by the Sultan for life; however their number was not supposed to exceed 1/3 of the members of the Chamber of Deputies, which were brought in based on indirect elections[175].

Powers of the new parliament were limited; legislative initiative was conditioned by Sultan's approval and the Sultan also had absolute veto power over adopted legislation. The Sultan himself had full executive authority including selection of his own ministers, who had to obtain the confidence of the Sultan, not parliament. Thus, there was no

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[172] 'Young Turks' were "a group of modern-educated bureaucrats and officers, who became active in 1890s and organized the constitutional revolution of 1908, to modernize and so strengthen state and society on the basis of a positivist and increasingly nationalist set of ideas." In Erik Jan Zürcher, *Turkey : A Modern History*, [New ed. (London: I. B. Tauris, 2004). p 3.
Ahmed considers the political opposition known as 'Young Ottomans' as "the first example of a popular Muslim pressure group whose aim was to force the state to take their interests into account" In Feroz Ahmad, *The Making of Modern Turkey*, Making of the Middle East Series (London: Routledge, 1993). p. 28.

[173] Ersin Kalaycioglu, "Why Legislatures Persist in Developing Countries: The Case of Turkey," *Legislative Studies Quarterly* 5, no. 1 (1980). p.124.

[174] Article 42 of the "The Ottoman Constitution 1876," http://www.worldstatesmen.org/OttomanConstitution1876.htm.

[175] "The Constitutional Tradition and Parliamentary Life," Turkish Grand National Assembly, http://www.tbmm.gov.tr/english/about_tgna.htm#THE%20FIRST%20PARLIAMENT.

'government' relying on the confidence of parliament. Nevertheless, parliament had a right to impeach ministers at the Supreme Court (*Divan-i Ali*), and actually the Sultan dissolved parliament on June 28, 1877, once parliament initiated proceedings at the Supreme Court against some ministers[176].

A more significant parliament was summoned by the Sultan in 1908, and this one lasted with some interruptions until the end of the First World War (1920)[177]. At the same time, adopted constitutional amendments changed the character of the Constitution of 1876: the Sultan retained the right to veto legislation; however, it changed from absolute to suspensive only, the Assembly was authorized to meet on the November 1st each year without a formal decision on convocation made by the Sultan, and ministers were made individually and collectively responsible to the Chamber.[178] Throughout this 'second constitutional period', although parliaments were not stable, powers of the Sultan were gradually restricted[179].

Looking at the first general trend in evolution of parliamentarism, emancipation of parliaments from royal will in the United Kingdom, Germany and Turkey, one can see that parliaments were convened by monarchs to solve their current problems. In the United Kingdom, parliament did go through a lengthy struggle of independence from the monarch, which was finished by the Glorious Revolution, when the relationship between

176 There was a second parliament elected in the first constitutional period in January 1878. Few days after parliament was convened, it recalled Grand Vizier from his position, although it did not have a right to do so. For this reason, the Sultan dissolved parliament and suspended the constitution.

177 Zürcher, *Turkey : A Modern History*. p 95.

178 Edward Mead Earle, "The New Constitution of Turkey," *Political Science Quarterly* 40, no. 1 (1925). p. 79.

179 Altogether there were seven constitutional amendments in the second constitutional period.

parliament and monarchs was codified, making parliament the supreme legislator. In Germany and Turkey the positions of parliaments were shaped in a much shorter experience and struggle, starting from the 19th century on. While in the German Empire, the emancipation of the Reichstag was rather formal, with strong influence of the Kaiser, in Turkey, especially during the second constitutional period, parliament managed to constrain the Sultan and strengthen its position.

In summary, overall emancipation of parliaments was up until the 19th century very circumstantial, dependent on the character of the Medieval state, the position of nobility and their vassal relationship with the ruler, or the source of income of the ruler. Simply said, if rulers had revenue, they would abstain from calling parliaments. This thesis proved to be true e.g. in the case of Spanish parliament, which, although it was called as soon as in the 12th century, it was abandoned after the discovery of the Americas[180]. The same is true for absolutism in France, or in the United Kingdom during the reign of the Stuart dynasty. Thus if monarchs succeeded in collection of taxes elsewhere, they would ignore parliaments.

2.2 Parliaments as sovereigns

After the emancipation of parliaments from the executive, the next logical development was that parliaments became sovereigns, which is connected to the new understanding of the role of the individual following the revolutions of the 17th and 18th centuries, and gradual expansion of suffrage. Parliament as a sovereign, for the purposes of this section, means that it represents the supreme legislative institution of the state, drawing its

[180] Van Zanden, Buringh, and Bosker, "The Rise and Decline of European Parliaments, 1188-1789."

legitimacy from the people. This understanding is broader than the constitutional doctrine of the parliamentary sovereignty as understood in the case of Britain, a concept which is contrasted with the doctrine of separation of powers or judicial review, although it needs to be mentioned as well.

2.2.1 Parliamentary Sovereignty as a constitutional concept in Britain

Sovereignty of parliaments took various forms. The most notable is the concept of parliamentary sovereignty established at the end of the 17th century in England. Since this time, the sovereignty of parliament had been considered as one of the founding principles of the constitution. This concept, according to Dicey's orthodox theory, means that parliament has right to make or unmake any law; in addition, no person or body in England has the right to override or set aside the Acts of Parliament[181].Thus the first notion of this theory is that that the Parliament can pass any law without any limits[182].Blackstone noted that "Parliament can do everything that is not naturally impossible"[183].The second inherent notion of British parliamentary sovereignty is that Parliament cannot bind its successors, and thus the provisions of the later statute override the provisions of the earlier, which implies that there is no hierarchy of Acts of Parliament as a third characteristic of the doctrine[184]. Having all statutes equal leads to the rule of an implied repeal – the adopted law contradicting the existing one prevails.

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181 Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (Indianapolis: Liberty/Classics, 1982).

182 Ibid.

183 William Blackstone, *Commentaries on the Laws of England* (Chicago1979).

184 Dicey, *Introduction to the Study of the Law of the Constitution*. See also: Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*.

Parliamentary sovereignty was established in England much sooner than in other countries. However, supremacy of what kind of parliament are we talking about? At the beginning of the 20th century, the majority of the Lords were hereditary, thus undemocratic, and the undemocratic composition of the House of Lords mattered as they were equally involved in the legislation process as elected Commons. Although, for example, Bagehot claimed already in the late 19th century that the Lords had always been inferior to the Commons, for a bill to become a statute, consent of both Houses, and royal assent was needed[185]. This was changed by the adoption of the Parliamentary Acts of 1911 and 1949, which changed the balance of power between the Commons and the Lords.

2.2.1.1 Parliamentary Acts of 1911 and 1949

The first Parliamentary Act of 1911 was adopted following the so-called "constitutional crisis" in 1909-1910[186]. In 1906 the Liberal Party won elections, and the budget of 1909 reflected their radical views. The budget was passed by the Commons, but Tories in the Lords blocked it. To solve this deadlock, the Cabinet resigned and the Liberal Party's main campaign focused on challenging the power of the Lords to block the legislation. The Liberal Party won elections, the budget was passed and theCabinet proposed legislation to limit powers of the Lords regarding monetary bills.

185 Bagehot, *The English Constitution*.p. 96.

186 Tomkins, *Public Law.*; see also: Tom Mullen, "Reflections on Jackson V Attorney General: Questioning Sovereignty," *Legal Studies* 27, no. 1 (2007).; Aileen McHarg, "What Is Delegated Legislation?," *Public Law* (2006).

Thus, as a result of this constitutional crisis, the Parliament Act of 1911 represents the first attempt to reform the House of Lords. By this act, Parliament removed the House of Lords' right to refuse a Bill previously passed by the Commons[187]. In 1949 Parliament adopted further restriction of the Lords' ability to delay a bill from the two years enacted in 1911, to one year. The Act of 1949 was passed based on the Act of 1911, since it did not receive the approval of the House of Lords[188].

Another self-restraint limitation of the Lords is known as the *Salisbury-Addison Convention*. It was created at the end of the 1940s, when the Labour party won elections and most of the Lords were conservative[189]. Under these circumstances the House of Lords would be able to obstruct the governing of a new executive. Leaders of the Labour (Viscount Addison) and the Conservative (Marquess of Salisbury) fractions of the Lords, however, met and established the Convention according to which the House of Lords shall not reject legislation, the introduction of which was part of the governmental electoral manifesto[190].

In recent years, with accession to the European Union, devolution and adoption of the Human Rights Act of 1998, the orthodox theory as represented by Dicey has been much debated and subjected to criticism[191]. One of the sensitive points of Dicey's doctrine is

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[187] The only exception to this rule is a bill that would propose to extend the term of Parliament over 5 years.

[188] Jeffrey Jowell, "Parliamentary Sovereignty under the New Constitutional Hypothesis," *Public Law* (2006). p. 566.

[189] For background of House of Lords see: http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf

[190] "A House for the Future," (Royal Commission on the Reform of the House of Lords, 2000). p 10.

[191] See e.g. Michael Gordon, "The Conceptual Foundations of Parliamentary Sovereignty: Reconsidering Jennings and Wade," *Public Law* (2009).; Mullen, "Reflections on Jackson V Attorney General: Questioning Sovereignty."

the notion that parliament cannot bind its successors. However, isn't for instance membership in the EU limitation of the presumed unlimited power of British legislature?[192] There are two theories connected to this topic: The *continuing theory* represented by Dicey, which sees Parliament as a 'perpetual institution' and claims that Parliament cannot bind its successors; and the *self-embracing theory*, represented for example by Jennings, according to which parliamentary sovereignty includes also power to bind its successors through the substantive or procedural entrenchments of the legislation[193].

In past years, the debate on parliamentary sovereignty has been accelerated by the famous litigation on the Hunting Act 2004 in the *Jackson case*, where the House of Lords was acting as the highest appellate instance[194].Lords were not of united opinion on the issue of parliamentary sovereignty, and their attitudes ranged from firm confirmation of the doctrine of Parliamentary Sovereignty (Lord Bingham) to critique of the doctrine (Lord Steyn, Lord Hope, and Baroness Hale)[195]. The open-ended debate shows that the Dicean concept of parliamentary sovereignty will have to be reconsidered by Parliament in light

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[192] Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*. p.36.

[193] Ibid. p.36.

[194] R. (on the application of Jackson) v Attorney General [2005] UKHL 56; [2006] 1 A.C. 262 (HL); The issue in the Jackson case was if the Hunting Act 2004 was a valid Act of Parliament. The Hunting Act aimed to outlaw hunting of wild mammals with dogs . Since the House of Lords did not approve the bill, the House of Commons invoked laws of 1911 and 1949, and adopted the Hunting Act without Lords' consent. Mr. Jackson challenged the validity of the Hunting Act, claiming that the law of 1949 is invalid. The House of Lords, as the last judicial instance, unanimously ruled that the Act of 1949 is valid and so is the Hunting Act of 2004.

[195] "Our constitution is dominated by the sovereignty of Parliament. But Parliamentary sovereignty is no longer, if it ever was, absolute ... It is no longer right to say that its freedom to legislate admits of no qualification whatever. Step by step, gradually but surely, the English principle of the absolute legislative sovereignty of Parliament which Dicey derived from Coke and Blackstone is being qualified." R. (on the application of Jackson) v Attorney General [2005] UKHL 56; [2006] 1 A.C. 262 (HL), p. 104

of recent developments. For example, with the introduction of a fixed electoral term[196], it is clear that Parliament does limit itself for the future, as the prerogative of the Prime Minister of the day to call elections at any moment was abandoned in 2010. Parliamentary Sovereignty is questionable also in the light of the Human Rights Act, and the membership of the United Kingdom in the European Union.

2.2.1.2 House of Lords reform

Although theoretically speaking the Jackson case triggered the debate on the nature of the concept of parliamentary sovereignty, it might be a moment to also point out the unfinished process of democratization of the House of Lords in England. At the present time, the House of Lords consists of so-called Lords Spiritual and Lords Temporal. Lords Spiritual consists of Life peers, and remaining Hereditary peers[197]. Life peers, whose title ceases after their death, are appointed for their lifetime by the Crown on the proposal of the Prime Minister. They currently make up the majority of the House of Lords. After the reform of 1999, out of more than 700 Hereditary Peers only 92 remained until the presumed next step of the reform[198]. Lords Temporal consists of senior bishops of the Church of England as the established Church of the State. As will be shown below, the Lords have been in the last years at the center of the reform process, and the Lords' composition will later, after the reform is completed, determine its new role and powers.

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[196] The Conservative- Liberal-Democrats coalition adopted a Fixed-term Parliaments Act in 2011, which provides for fixed 5 year term as of 2015.

[197] The size of the House of Lords at the time of the reform was over 1200 members. See in L.R. Borthwick, "Methods of Composition of Second Chambers " *The Journal of Legislative Studies* 7, no. 1 (2001).p 20.

[198] The next step of the constitutional reform has not taken place yet. There is an ongoing discussion on how the House of Lords shall be created. The Coalition Agreement between the Conservatives and the Liberal Democrats of 2010 shows the most recent development. The government established a committee to prepare proposals for the Lords to become wholly or mainly elected on the basis of proportional system.

But first let's step back to see the most important reforms of the Lords in the 20th century enhancing the democratic character of the chamber. First, by adoption of *the Life Peerages Act 1958*[199]Parliament permitted creation of peers for life, and also admission of women for the first time to the membership of the House[200]. The main aim of this Act was to appoint more Labor peers to the predominantly Conservative House of Lords[201]. Besides changing the political balance, the positive consequence was nominating experts as Lords, which changed the quality of work of the Lords[202]. A few years later, *the Peerage Act 1963* allowed disclamation of hereditary peerages for life, women as hereditary peeresses and all Scottish Peers to sit in the House[203].

In 1997, the Labour Party manifesto declared a commitment to reform the House of Lords[204]. In 1999, by adoption of *the House of Lords Act,* Parliament removed the right of all but 92 hereditary Peers to sit in the upper house, which changed the House into a predominantly appointed body[205]. The government announced that the negotiated compromise of leaving 92 hereditary peers in the House will last until the second stage of

199 *The Life Peerages Act*.

200 Vernon Bogdanor, *The New British Constitution* (Oxford ; Portland, Ore.: Hart Pub., 2009).p.155.

201 Composition of the House of Lords in 1955: 55 Labor peers, 507 Conservatives, 238 Independences and 42 Liberals. Ibid.p. 155.

202 Ibid. p. 155.

203 "House of Lords Briefing Membership: Types of Member Routes to Membership Parties & Groups," (http://www.parliament.uk/documents/lords-information-office/hoflbpmembership.pdf, 2009).

204 "A modern House of Lords: The House of Lords must be reformed. As an initial, self contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered." Labour Party, *New labour: because Britain deserves better*, April 1997, pp32-33

205 Bogdanor, *The New British Constitution*. p.145.

the reform[206]. The remaining 92 peers were divided into three groups: 75 were elected by Hereditary peers in existing party groups in the Lords, proportionally to the share of each party among sitting Hereditary peers; 15 were elected by the whole House of Lords including Life Lords; and 2 were hereditary office holders – the Earl Marshal of England and the Lord Great Chamberlain[207]. Until November 2002 Hereditary peers who died were replaced by the next candidate on the list. Since November 2002 there has been a by-election mechanism in place. New peers are elected from among any qualifying Hereditary peers.

Removal of most of the Lords was the first, and apparently easier-to-do stage of the planned reform of the British Upper House. Since then there have been several reform proposals, white papers, and reports presented; however, none of them received enough political support.[208] After more than a decade, during which the Commons could not agree on the composition of the Lords, the *House of Lords Reform Bill* was introduced into parliament in June 2012[209]. The composition of the future House of Lords is divided into two electoral periods. Final composition of the House counts with 360 elected

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206 "House of Lords Bill," (1999).

207 HM Government, "The House of Lords: Reform," (February 2007). Available at: http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf par. 3.29 (Last accessed July 12, 2013).

208 In 1999 the Royal Commission on the Reform of the House of Lords was established. The Commission published the report A House for the Future in January 2000 with recommendations for new arrangement. The government and opposition could not agree on the further steps, and the debate was interrupted by the 2001 elections. The newly elected Labour government issued a White paper The House of Lords Completing the Reform in November 2001 ; however the proposal met with such criticism that the government subsequently abandoned it. In July 2002 a 24-member Joint Committee was appointed, and in December it published a report . Deliberation in both Houses failed to deliver any kind of agreement . The Government published yet another White Paper in 2007 on House of Lords reform followed by a free vote in both Houses on the composition of the second chamber .

209 Government, "The House of Lords: Reform." Available at: http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf par. 3.29 (Last accessed July 12, 2013).

members, 90 appointed members, up to 12 Lords Spiritual, and any ministerial members[210]. The bill specifically declares that no member of the House will be a member by the virtue of peerage[211]. The Parliamentary Acts 1911 and 1949 remain in force after the beginning of the first electoral period; however, the bill repeals the preamble of the Parliamentary Act 1911[212]. Elections to the House of Lords will be anytime there are elections to the Commons. Each election will return 120 ordinary elected members, with a term in office of 15 years[213].At the beginning of August 2012, Prime Minister David Cameron announced that due to the opposition within the Conservative party, the bill was withdrawn. The Conservative backbenchers, as well as the Labour Party, opposed Program Motion that would limit deliberation on the bill to the approved schedule.

All above-mentioned reforms have direct impact on the manner in which functions of Parliament are performed. The role of the House of Lords in performing the legislative function is limited at the moment, as Houses of Parliament are not equal as of 1911. This inequality has been justified by the undemocratic character of the House of Lords. However, this will be changed once the Upper Chamber will be at least partially elected, and Lords will gain the function they do not have now- representative function.

210 The House of Lords Reform Bill 2012-13, Part 1, I., 3, available at: "House of Lords Reform Bill: Explanatory Notes."http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0052/13052.pdf, (Last accessed July 12, 2013).

211 Part 1, 1.4 Ibid.

212 Part 1, 1.2 Ibid.

213 Besides bill itself, valuable information provide comments of the Joint Committee: "Joint Committee on the Draft House of Lords Reform Bill - First Report ", (2012). http://www.publications.parliament.uk/pa/jt201012/jtselect/jtdraftref/284/28402.htm.

2.2.2 German Rationalized parliamentarism: Lessons Learned from Weimar

2.2.2.1 Weimar Republic

After the First World War, the parliament adopted amendment to the Imperial Constitution turning the Empire to a parliamentary monarchy[214]. Shortly afterwards, on 9 November 1918, the Weimar Republic was proclaimed, and the first German Republic was born[215]. The Weimar National Assembly adopted the new Constitution on 11 August 1919 and defined the Republic as parliamentary[216]. The Reichstag of the Weimar Republic was a central legislative body to which the government was accountable and elected for four years[217]. Due to fear of parliamentary extensive powers, the counterweight was seen in position of a directly elected President, who was given considerable discretionary powers especially in moments of emergency. Besides that, the President had power to dissolve the Reichstag, appoint or dismiss the Chancellor, or intervene with legislative process by initiating a referendum[218].

The chosen balance of powers between the Reichstag and the office of President turned out to be unfortunate. Although the Weimar Constitution was in many respects considered as very progressive, the parliamentary system installed turned out to be very unstable, which in the end was considered as one of the reasons of the rise of the Nazi regime[219]. In January 1933, facing not only the social, political and economic, but also

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214 Helmut Heiber, *The Weimar Republic* (Oxford England ; Cambridge, Mass.: Blackwell, 1993).p3.

215 Interestingly, Heiber claims that the exact date when it happened can not be fixed. The possibilities range from the September 1918 until the February 1919. See in Ibid. p1.

216 Eberhard Kolb, *The Weimar Republic*, 2nd ed. (London ; New York: Routledge, 2005). p 19; For the text of the Weimar Constitution see e.g. Anton Kaes, Martin Jay, and Edward Dimendberg, *The Weimar Republic Sourcebook*, Weimar and Now 3 (Berkeley: University of California Press, 1994). p. 46.

217 Kolb, *The Weimar Republic*. p 19.

218 Ibid. p 19.

219 Ibid. p 160.

psychological crisis, and after rise of National Socialist German Worker's Party (NSDAP) and manipulated elections, President Hindenburg appointed Adolf Hitler as Chancellor[220]. Hitler gradually replaced the parliamentary system with an authoritarian state, especially by adoption of the Enabling Act *(Ermächtigungsgesetz)*, which gave the government of the Third Reich unlimited powers to enact laws without the consent of the Reichstag and countersignature of the President, even if the laws violated the Weimar Constitution[221]. As Hitler's regime developed, parliament consisted only of members of NSDAP, who swore their allegiance to the *Führer*, thus we can say it was neither a democratic nor an independent body[222]. The last session of the Reichstag during the Third Reich regime was in April 1942[223].

2.2.2.2 The Bundestag and the Bundesrat under the Basic Law

The Weimar Republic, which had one of the most progressive constitutions of its time, did not succeed with a new republican parliamentary arrangement. The highly proportional parliament led to extremely unstable governments, which strengthened the President's role in emergency situations. Thus, although the Weimar Constitution empowered the parliament, institutional arrangement led to its failure. The new constitution of the German Federal Republic, called Basic Law (*Grundgesetzt*), adopted after the Second World War on 8 May 1949, was in many respects a reaction to the flaws

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220 "The Enabling Act of 23 March 1933," *Historical Exhibition Presented by the German Bundestag*(March 2006), http://www.bundestag.de/htdocs_e/artandhistory/history/factsheets/enabling_act.pdf. See also ———, *The Weimar Republic*. p 101 – 135.

221 "The Enabling Act of 23 March 1933."

222 "Sham Parliamentarism in the National Socialist Era," *Historical Exhibition Presented by the German Bundestag*(March 2006), http://www.bundestag.de/htdocs_e/artandhistory/history/factsheets/sham_parliament.pdf.

223 Ibid.

of the Weimar Constitution[224]. Framers of the Basic Law tried to design a constitution that would balance efficiency with stability. At this time the term 'parliamentarism rationalized' was introduced and means preservation of the parliamentary regime with strengthening of the executive, and it could be argued that it has become a rule in present day parliamentary arrangement.

The main innovations of the Basic Law, which influenced the position of parliament as a sovereign, are as follows: first, unlike the Weimar Constitution, the Basic Law does not provide for a proportionality requirement, and actually the electoral system is left to be governed not by a constitution, but by federal law. The electoral law introduced a mixed electoral system, combining a vote for party lists with selecting candidates for constituencies. The PR part of the electoral system provides for a 5 percent electoral threshold (see Chapter 3). This arrangement aimed to limit the number of political parties entering parliament, which was a problem in the Weimar Republic, where the extreme proportionality led to minority governments and instability. Generally speaking, the rationalized parliamentarism was also reflected in the electoral rules by balancing proportionality and stability measures.

Secondly, the vote of confidence measure was replaced by a constructive vote of confidence, which prevents the toppling of the government without electing a successor at the same time. Thus, the traditional strong control tool of parliamentarians was not taken away but constrained.

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[224] After the War, the Third Reich was divided into four occupied territories; three of them gradually merged under united administration and later created the German Federal Republic . The fourth under the Soviet occupation became the German Democratic Republic. The Basic Law was adopted as interim constitution valid until the reunification of Germany. See Carr, *A History of Germany 1815-1990*. p. 373.

2.2.2.3 The Bundesrat

The Bundesrat, the upper chamber of German parliament, was for the first time established during the German Reich in 1871. At that time, 22 sovereign states and *Hansa* cities formed a federation. Powerful signatories, such as kings of Bavaria, Württemberg, and Saxony, were cautious about delegating powers to the Reich, and wanted to keep control over execution of laws on one hand, and participation in lawmaking on the other. The creation of the Bundesrat was supposed to fulfill these demands. After the abolition of the monarchy in 1918, during the Weimar Republic, the Bundesrat survived under the name *Reichsrat*[225].

In the current Federal Republic of Germany, the Basic Law stipulates that the Bundesrat is the institution through which the *Länder*participate "in the legislation and administration of the Federation and in matters concerning the European Union"[226]. The members of the Bundesrat are not elected but nominated (and recalled) by Land governments[227]. The Basic Law stipulates the number of votes that is allocated to each Land according to the size of its population, ranging from three to six votes[228]. Despite this fact, all votes per state need to be cast as a unit, and the representatives are bound by the imperative mandate. Thus, it is up to the *Länder* how many members they will nominate, as at the end of the day they have to cast the vote as one, and it will not reflect their own decision but the decision of the *Land* executive[229]. Altogether, the Bundesrat

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225 Hans-Georg Wehling, The Bundesrat, Publius, Vol. 19, No. 4, Federalism and Intergovernmental Relations in West Germany: A Fortieth Year Appraisal (Autumn, 1989), pp. 53-64, p55.

226 *The Basic Law.* Article 51

227 Ibid. Article 51 (1)

228 Ibid. Article 51(2)

229 Ibid. Article 51(3)

has 69 members (votes). For the adoption of a decision, the vote of thirty-five members is needed (absolute majority)[230].

When it comes to legislative process on the federal level, the involvement of the Bundesrat depends on whether it is a consent or objection law. Consent laws (*Zustimmungsgesetze*) represent the co-decision role of the Bundestag, as these laws can be adopted only with the agreement of both chambers. The rejection of the Bundesrat corresponds to absolute veto, and practically means that the bill cannot be adopted[231]. These are the laws of fundamental interests of the *Länder*. On the other hand, if the 'consent' requirement is not specified in the Basic Law, the explicit approval of the Bundesrat is not required. These so-called Objection Laws (*Einspruchsgesetze*) mean that the Bundesrat may adopt objection; however the objection has a form of a suspensive veto and can be overturned by the Bundestag with the same majority as was used for its adoption[232].

This shows that the Bundesrat does not have a similar say as the Bundestag with regard to different types of legislation. On the other hand, the Bundesrat's overall position in the legislation process is stronger than the position of the Lords in British parliament. While the Parliamentary Acts of 1911 and 1949 constrained the role of Lords and took away their veto power, the Bundesrat is equally involved in adoption of consent laws. Certainly this is connected to the legitimacy of both upper chambers. The role of Lords has been challenged since the beginning of the 20th century due to their unelected character, which

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230 See official web site of the Bundestag: http://www.bundesrat.de (Last accessed July 12, 2013).
231 *The Basic Law.* Article 77(2)
232 Ibid. Article 77(4)

subsequently was a rationale behind the restriction of their power. On the other hand, the Bundesrat represents the German Lander. Members of the Bundesrat are also not elected; nevertheless, they are appointed by the Landers' governments, who are democratically elected in the respective Lander. Thus ultimately the Bundesrat does not lack the popular legitimacy as is the case of the House of Lords.

2.2.3 Parliament as sovereign? Co-existence of Turkish Assembly with military

The history of the Turkish parliament traces back to end of the First World War, and the Turkish War of Independence (1919-1922). To be more precise, the Turkish Grand National Assembly (TGNA), the first republican parliament, was established on 23 April 1920. It had not only legislative, but also executive power. From among its members it selected the Assembly Government[233]. The TGNA elected Mustafa Kemal Pasha, the leader of the resistance, as head of the Assembly and he held this function until he was elected as President of the new Republic of Turkey[234]. After the proclamation of the Turkish Republic in 1923, the new state had to undergo a transition from a religious monarchy to a secular republican system, and the TGNA as a deliberation forum was the symbol of the newly established political regime[235].

Since the establishment of the Republic of Turkey, there have been four constitutions: 1921, 1924, 1961 and the current Constitution of 1982. *The Constitution of 1921* vested both legislative and executive power to the TGNA as the sole representative of the

233 Zürcher, *Turkey : A Modern History*. p.150.
234 "The Constitutional Tradition and Parliamentary Life."
235 Kalaycioglu, "Why Legislatures Persist in Developing Countries: The Case of Turkey."p.125.

nation.[236] The executive power was performed by the Council of Ministers, whose role and creation, besides the fact that they are elected and accountable by and to the Assembly, was left to be regulated by the special law, which shows the higher significance of the parliament.[237]. *The Constitution of 1924* was a reaction to insufficiency of the previous constitution of 1921, which consisted merely of 23 articles. The Constitution defined the Turkish State as a Republic with sovereignty stemming from the nation and vested all executive and legislative powers to the unicameral Grand National Assembly (GNA)[238]. The GNA exercised the legislative power directly, and the executive power through the President of the Republic, who was elected by the Assembly[239]. The President chose his own Cabinet; however; the whole government was controlled by the Assembly that could "at any time withdraw power from it"[240]. Up until the end of the Second World War, Turkey remained a single party state.

Ataturk's People's Party, later known as the Republican People's Party (*Halk Partisi*, *Cumhuriyet Halk Partisi* – CHP) was, until elections in 1946, the only officially allowed political party[241]. Official sources of the TGNA indicate that already by 1950 there were more than 25 political parties[242]. Since the transition to a multiparty state in 1946, however, Turkey has faced three military *coup d'états*, two of them resulting in adoption of new constitutions (1961, 1982), and of course changing the balance of powers of the

236 Article 2 of the Constitution of 1921. See the translation of selected articles into English translated by Ö. F. Gençkaya available at: http://www.bilkent.edu.tr/~genckaya/1921C.html.
237 Article 7, 8 - Ibid
238 Article 1, 3, 5 of the Constitution 1924 in Earle, "The New Constitution of Turkey." p. 89.
239 Article 6 and 7 of the Constitution 1924, Ibid. p. 89.
240 Article 7, last sentence, Ibid. p. 89.
241 "The Constitutional Tradition and Parliamentary Life."
242 Ibid.

state institutions. This is important information about Turkish political development, as it makes us realize the instability of democracy in Turkey.

The Constitution of 1961 was the result of the military takeover in 1960[243]. The junta which had seized power called itself the National Unity Committee, and unable to propose its own solutions following the coup, invited a group of academics to form a commission and prepare a new constitution[244]. The constitution explicitly guaranteed freedom of thought, expression, association and press, and other liberties[245]. From the institutional changes, the most notable were establishment of a bicameral TGNA, a Constitutional Court, and a role given to the military High Command in the newly created National Security Council[246].

The present Constitution of 1982 is a result of another *coup d'etat* in 1980, which suspended the Constitution of 1961 and closed down political parties[247]. The Constitution is with amendments valid until the present time. The main innovation regarding the TGNA was that it introduced a unicameral parliament, and it strengthened the executive[248].

The TGNA's role as a center of democratization was reinstated after each military takeover. Every time the army took over the regime, it directly seized power only for a

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243 Zürcher, *Turkey : A Modern History*. p 240.

244 Ibid. p 127.

245 See "The 1961 Turkish Constitution," http://www.worldstatesmen.org/Turkeyconstitution1961.pdf.

246 Ahmad, *The Making of Modern Turkey*. p. 130. For National Security Council see Article 111.

247 Zürcher, *Turkey : A Modern History*. p.150.

248 Ömer Faruk Gençkaya, "Reforming Parliamentary Procedure in Turkey," in *Aspects of Democratization in Turkey*, ed. Ruşen Keleş, Yasushi Hazama, and Ömer Faruk Gençkaya (Tokyo: Institute of Developing Economies, JETRO, 1999). p.2

short time and then exercised it through influence on the assembly. All three times the military initiated constitutional changes and reforms, and since 1982 stayed present in the system through the National Security Council, which power over the Turkish government was diluted only recently under the government of the Justice and Development Party.

2.2.4 Short legacy of Slovak parliamentarism

The Slovak Republic is the 'youngest' state from the jurisdictions that are the subject of the present research; in the present form it was established as an independent state on 1 January 1993, adopting, as many other neighboring post-communist countries, a parliamentary form of government[249]. The Constitution designates the National Council of the Slovak Republic as a supreme legislative body, and one can argue that parliament has been the center of the democratization process since the change of regime.

Before recently acquired independence and the democratization role of the National Council in it, there were parliaments established during the 19th century as an expression of a quite late coming self-determination of Slovaks within the Hungarian Empire. To be more precise, the first Slovak parliament called the Slovak National Council was established on 16 September 1848 in Vienna[250]. During the years 1848 – 1849 it was the highest political body with legislative and executive powers, with a seat in Myjava[251]. The Council led by Jozef Miloslav Hurban, on 19 September 1848 announced Slovak

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249 There was a Slovak Republic during WWII, the first time in history established as an independent state, with a constitution, parliament and president. However, as soon as the war was over, the Slovak state was discontinued, and Slovakia became part of the pre-war Czechoslovak Republic again.

250 C. A. J. M. Kortmann et al., *Constitutional Law of 10 Eu Member States : The 2004 Enlargement* (Deventer: Kluwer BV, 2006). p IX -3.

251 Stanislav J. Kirschbaum, *A History of Slovakia : The Struggle for Survival* (New York: St. Martin's Press, 1995). p. 119.

autonomy from Hungary and organized volunteers to fight against Hungarian forces[252]. After the unsuccessful attempt to revolt, Slovaks were until the end of the First World War represented only in the Lower Chamber of the Hungarian Assembly by elected Slovak MPs[253].

The second parliament, the Slovak National Council, was established in Turciansky Svaty Martin shortly before the end of the First World War[254]. The Council adopted the *Declaration of the Slovak Nation* expressing "the political will of the Slovak nation to exist in a new state together with the Czech nation on the basis of the right of nations to self-determination."[255] After the creation of the new Czechoslovak Republic, the Slovak National Council was abolished by the central government in January 1919, and Slovaks were represented only in the National Assembly sitting in Prague, especially after the adoption of the Constitution of the Czechoslovak Republic in 1920[256], which promoted the idea of single 'Czechoslovak nation'[257].

The situation changed under the circumstances of the coming Second World War, after the Munich Agreement and the Vienna Award, which considerably changed the territory

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252 Slovak National Council issued manifesto '*The Demands of the Slovak Nation*' calling for Slovak autonomy. For more information see e.g. Ibid. p.119.

253 "National Council: History," National Council of the Slovak Republic, http://www.nrsr.sk/Default.aspx?lang=en.

254 Kirschbaum, *A History of Slovakia : The Struggle for Survival*. p. 156.

255 "National Council: History."

256 The Constitution of 1920 was adopted by non- elected parliament based on principles of modern constitutionalism. The Constitution endorsed 'Czechoslovak nation' speaking 'Czechoslovak language' in its preamble. In Kortmann et al., *Constitutional Law of 10 Eu Member States : The 2004 Enlargement*. p IX -3.

257 See e.g. Jaroslav Krej*cí and Pavel Machonin, *Czechoslovakia, 1918-92 : A Laboratory for Social Change*, St. Antony's Series (New York: St. Martin's Press in asociation with St. Antony's College, Oxford, 1996). p 25

of Czechoslovakia[258]. On 6 October 1938, Slovak political parties declared autonomy, with their own government and assembly recognized by the central government in Prague[259]. The process of becoming more autonomous continued and on 14 March 1939 members of the Slovak Assembly declared the independent Slovak Republic under the 'protection' of Germany[260]. The independence from the Czechoslovak state was enforced by Nazi Germany, and the debate to what extent nationalistic feelings played a role would be a topic for a separate thesis. The Slovak Constitution of 1939 "reflected the ideology of a corporate state and authoritarian government as well as some of the ideas of the papal social encyclicals.[261]" The Assembly consisted of 80 members and was elected for a 5-year term. Due to the political situation, elections never took place and the powers and functions of the Assembly were very limited due to war[262].

During the Second World War, the Slovak National Councils had been established as bodies of resistance in London, Paris, and most importantly in Banska Bystrica[263]. The Slovak National Council established in Banska Bystrica called the nation to rise against the oppressor and encompassed the political leadership of the Slovak National Uprising of 1944[264]. During the liberation of the country from German occupation, the Slovak National Council (SNC) operated as a central national body with both executive and legislative powers. Representatives of the SNC firmly supported Czechoslovak unity, but

258 Ibid. p 26.
259 Ibid. p 26.
260 Ibid. p 26.
261 Ibid. p 27.
262 "National Council: History."
263 Ibid.
264 See Josef Korbel, *Twentieth-Century Czechoslovakia : The Meanings of Its History* (New York: Columbia University Press, 1977). p. 163, p. 209.

at the same time called for autonomous Slovakia in a future state arrangement[265]. After the War, matters of common interest such as foreign policy, defense, or finances remained in the hands of central institutions re-established in Prague with power over whole of Czechoslovakia. Asymmetrical state arrangement, represented by the SNC meant that certain issues like transportation or social issues were under the jurisdiction of the SNC, and some were shared with the National Assembly[266].

After the *coup d'etat* on 25 February 1948, the communist regime sponsored by Moscow was established, followed by a new Constitution in May 1948[267]. The Constitution put again in place an asymmetrical model, with Slovak bodies with limited autonomy; however, since the Communist Party lost the last free elections in the Slovak territory, the gradual subversion of powers of the SNC took place and turned the SNC into a purely formal body[268]. The asymmetrical constitutional arrangement was codified also in the socialist Constitution of 1960[269], which was a result of belief that the country qualified as a socialist state and the National Assembly changed the name of the Republic into the Czechoslovak *Socialist* Republic[270]. However, one has to keep in mind that the regime endorsed a one party system, in which parliaments were just a communist party rubberstamp. This is important in order to realize that although formally there was a

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265 See Ibid. p 194.

266 See Ibid. from page 229.

267 Hans Renner, *A History of Czechoslovakia since 1945* (London ; New York: Routledge, 1989). p1-18.

268 See Korbel, *Twentieth-Century Czechoslovakia : The Meanings of Its History*. from page 259. Also see Krej*cí and Machonin, *Czechoslovakia, 1918-92 : A Laboratory for Social Change*.p. 45 -46; Carol Skalnik Leff, *The Czech and Slovak Republics : Nation Versus State*, Nations of the Modern World. Europe (Boulder, Colo.: Westview Press, 1996). p. 43.

269 According to the Constitution adopted on 11 July 1960 (100/1960 Coll) by the National Assembly, "[t]he function or mandate of the deputy of the Slovak National Council was considered to be compatible with function of the deputy of the National Assembly." In Kortmann et al., *Constitutional Law of 10 Eu Member States : The 2004 Enlargement*. p IX -5.

270 Leff, *The Czech and Slovak Republics : Nation Versus State*. p. 56.

parliament with the same functions as now, one cannot compare communist parliaments with the present one and search for continuity, simply because the regime was not democratic.

Democratization attempts in 1968 (known also as Prague Spring) resulted in the Constitutional Act on the Czechoslovak Federation, which introduced symmetrical federative and socialist arrangements of Slovak Socialist and Czech Socialist Republics, with a federal Assembly in Prague[271]. On 21 August 1968 armies of the Warsaw Pact entered Czechoslovakia, followed by an era of 'normalization' that halted any national demands, and strengthened centralization, which was the end of the installation of federation into practice[272].

The Czechoslovak socialist regime and *normalization* warmed up after the introduction of 'glasnost' and 'perestroika' in the Soviet Union[273]. Since November 1989 (the Velvet Revolution), the Czechoslovak Republic turned to the path of democratization[274]. In 1990 people could for the first time freely elect 150 deputies to the Slovak National Council[275]. Subsequently, in the following year the leaders of the Czech and Slovak governments discussed and agreed to the establishment of two independent republics.

Parliament in Slovakia, throughout its short history and self-determination movement, had compared to other countries, several roles. It could be argued that the Slovak representative bodies' role was especially centered on nationalistic aspirations of

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271 See Krej*cí and Machonin, *Czechoslovakia, 1918-92 : A Laboratory for Social Change*.p. 47.
272 See Ibid. p. 89.; Renner, *A History of Czechoslovakia since 1945*. Chapter 6.
273 Leff, *The Czech and Slovak Republics : Nation Versus State*.p 76.
274 Ibid.p 76.
275 "National Council: History."

Slovaks. After 1989, during the transitional period from the Communist regime, parliament also became a center of democratization. On the other hand, during the fascist and communist regimes, the significance and role of parliaments declined to a minimum.

2.3 Parliaments as Centers of Democratization

The second major general trend in the history of parliamentarism was its growing importance as a center of democratization. Democracy as an ideal consists of two simple rules: first, members of any group shall have control and influence on policy making, and thus the right to political participation, and secondly, within political participation, members of these groups shall be treated as equals[276]. "In modern states these ideals are exercised through a complex set of institutions and practices, such as citizens' rights, representative and accountable government, civil society, political parties and media".[277]

Thus, parliament, as a supreme representative institution is one of the core pillars of democracy. However, as was discussed in the first chapter, the representative form of government came into picture after revolutions in the 18th century, when people were made at least formally equal as well as a source of legitimate power. This shift in understanding of the role of the individual explains why parliaments from competing for power became sovereigns. As people started to be considered as a source of power, which is exercised through representatives in parliament, parliaments became the institutions with the highest level of popular legitimacy.

[276] Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*.

[277] Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*.

2.3.1 Citizens' Rights: Expansion of suffrage and emancipation of certain groups

At the end of the 18th century, however, we can hardly speak of representation or democratic character of assemblies, as still less than 3% of the total population had right to vote[278]. Parliaments represented aristocracy as opposed to the monarch. Surely its goal generally speaking was to limit the executive power, but only members of a certain class were considered to be affected by this struggle of power. This changed in the 19th century, when the Industrial Revolution spread from the United Kingdom and inspired more than just economic changes. Countries slowly opened up the right to vote, changing the source of legitimacy of parliaments.

Enormous changes happened during the 19th century in Britain. In 1832 the *Great Reform Act* was adopted[279]. The Act disenfranchised 56 boroughs in England and Wales and reduced another 31 to only one MP, it created 67 new constituencies, broadened the franchise's property qualification in the counties to include more people, and created a uniform franchise in the boroughs. The Act, however, did not revoke the property qualifications[280]. These qualifications denied the right to vote to the majority of working men.

In 1867 Parliament passed the *Representation of People Act* reducing the property threshold. Although it kept the property qualifications', the Act doubled the number of the

[278] www.parliament.uk, "A Changing House: The Life Peerages Act 1958," http://collections.europarchive.org/ukparliament/20090625150547/http://lifepeeragesact.parliament.uk/parliamentandthenation/landing.php?id=35.

[279] ———, "Living Heritage: The Reform Act 1832," http://www.parliament.uk/about/living-heritage/evolutionofparliament/houseofcommons/reformacts/overview/reformact1832/.

[280] Ibid.

electorate[281]. The Third Reform Act 1884 established a uniform franchise, and equalized franchises in the counties with a householder and lodger franchise for boroughs[282]. Parliament and the political landscape changed greatly over the 19th century, beginning with a small ruling elite in Parliament and gradually increasing to be more democratic and representative[283].

Women were disfranchised until the adoption of the People Act 1918[284]. This act also allowed women over the age of 30 that met property qualifications to vote. Only 40 % of the population of women in the UK met these criteria at the time of adoption of the law[285]. The Act extended the vote to all men older than 21 years. In 1928 Parliament adopted the Equal Franchise Act that entitled women over 21 to vote and equalized voting rights of women with men. Further changes included extension of the vote to men and women over 18 years in 1969.

State predecessors of Germany were, when it comes to extension of suffrage, one of the most progressive countries, as with the exception of France and Greece, no other country had such a broad franchise[286]. In the Northern German Confederation (1815) and later in the German Empire (1871) as of 1867, there had been a universal male suffrage of men age 25. Even in the Britain mentioned above, the universal manhood franchise without property qualifications was introduced only in 1884. After the First World War, and the

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281 ———, "Living Heritage: Second Reform Act 1867," http://www.parliament.uk/about/living-heritage/evolutionofparliament/houseofcommons/reformacts/overview/furtherreformacts/.

282 Ibid.

283 ———, "Living Heritage: Third Reform Act 1884," http://www.parliament.uk/about/living-heritage/evolutionofparliament/houseofcommons/reformacts/overview/one-man-one-vote/.

284 *Parliament (Qualification of Women) Act* (c.47)

285 ———, "Living Heritage: Women and the Vote," http://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/overview/thevote/.

286 Abrams, *Bismarck and the German Empire: 1871-1918*. p. 13

creation of the Weimar Republic in 1918, the universal suffrage was introduced including a right to vote for women. This was later restricted by the Nazi regime between 1935-1945.

In Turkey universal suffrage was introduced in 1934 for everyone. In 1877 the lower Chamber of Deputies was popularly elected, while the Chamber of Notables was nominated by the Sultan. Deputies into the lower chamber were proportionally chosen by local administrative councils. Ottoman parliaments during the second constitutional period (1908-1920) were elected in two-round elections by males older than 25, who chose electors, who then elected deputies. Electoral law in 1908, regulating the right to vote, established a universal manhood franchise. Electoral law was amended in 1930 by the Municipalities Law, which gave the right to women to vote and run in local elections. In 1934 suffrage for women was also opened to general elections. Electoral law as amended was used until 1949. When it comes to Slovakia, the first time it was recognized as an independent entity was during the first Czechoslovak Republic established in 1918. At the same time the universal franchise was introduced, which has been the norm since then.

2.3.2 Party democracy

2.3.2.1 Change of Political Parties

Political parties play a vital role in representative democracies as intermediaries between voters and the government. Beetham wrote that "[p]arliament not only represents citizens as individuals; through the presence of political parties it also represents them collectively to promote certain broad policy tendencies. Parties serve both to focus

electoral choice, and also to ensure that these choices are carried through into the work of parliament and into ongoing public debate.[287]"

Like parliaments, political parties have also been changing over time due to various reasons. These changes have been many times perceived as a decline in the type of political parties. Scholars have been identifying these changes and formulating new conceptual types of political parties in order to explain the alleged decline of political parties as a decline of a certain type of party, not political parties as such. For example, the decline of the mass party can also be explained by the rise of the catch-all party[288]. Thus, although there is a wide literature on the decline of political parties, in this section I will rather focus on their continuous change[289].

Klouwer summarizes existing typologies of party models into five general party types[290]. Elite and cadre parties were the first type of political parties to emerge in the 19th century, during times of franchise limited to wealthy male populations with small and elitist membership and an almost non-existent party organization[291]. With the broadening of the franchise towards the end of the 19th century, mass parties evolved attracting people

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[287] Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*. p.6

[288] Richard S. Katz and Peter Mair, "Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party," *Party Politics* 1, no. 1 (1995).

[289] Decline of political parties was discussed in e.g. Russell J. Dalton, David M. Farrell, and Ian McAllister, *Political Parties and Democratic Linkage : How Parties Organize Democracy* (Oxford, New York: Oxford University Press, c2011).

[290] Andre Krouwel, *Party Transformations in European Democracies* (State Univ of New York Pr December 2012).

[291] See for instance: Sigmund Neumann and Frederick Charles Barghoorn, *Modern Political Parties; Approaches to Comparative Politics* (Chicago: University of Chicago Press, 1956)., M. Ostrogorski and Fredrich Clarke, *Democracy and the Organization of Political Parties* (New York,: Macmillan Co., 1902).; or Gerald M. Pomper, "Concepts of Political Parties," *Journal of Theoretical Politics* 4, no. 2 (1992).

based on their association with a certain class, religion or ethnicity[292]. Mass parties, compared to elite parties, originated from outside of parliament and had a large, homogeneous, and actively recruited membership that provided parties with resources[293].

Catch-all parties originated in the 1950s from mass parties, with the goal to attract as many supporters as possible without adherence to a certain ideology[294]. Kirchheimer explains the decline of the mass party to its transformation into the catch-all party by diminishing social and political polarization in the 1950s and 1960s[295]. Membership in catch-all parties became marginalized, and interest groups and the state have been the source of funds. The cartel party is a type first introduced by Kirchheimer in the 1950s, but became widely discussed in the 1990s since its popularization by Katz and Mair[296]. The cartel party represents emerging parties who rely on the resources of the state to secure it's own survival. Political parties in this model tend to cooperate between themselves rather than compete. Cartel parties led to the evolution of so-called business firm parties[297]. For business firm parties it is typical that their membership is very limited, party administration is kept to a minimum, there is the absence of ideology and

[292] Andre Krouwel, *Party Transformations in European Democracies* (State Univ of New York Pr December 2012).
[293] Katz and Mair, "Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party." p. 18.
[294] Andre Krouwel, *Party Transformations in European Democracies* (State Univ of New York Pr December 2012).
[295] Otto Kirchheimer, "The Transformation of Western European Party Systems," in *Political Parties and Political Development*, ed. Myron Weiner and Joseph LaPalombara (Princeton, N.J.,: Princeton University Press, 1966).
[296] Katz and Mair, "Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party."
[297] Andre Krouwel, *Party Transformations in European Democracies* (State Univ of New York Pr December 2012).

reliance on opinion polls in policy making. If the party looses power, it is highly possible it ends up unable to function, as the party lacks a loyal electorate.

As could be seen from the account on the main typologies of political parties summarized by Krouwel, one type of political party led to another. We can generalize a few core trends in this evolution. First, since the fade of mass parties, the membership of political parties has been declining. Secondly, as a response to declining membership, political parties have turned to the state for funding and have become dependent on it, or alternatively, in the case of business firm parties, to corporate and commercial activities. And lastly, it seems that political program or adherence to a certain ideology has been diminishing as of the rise of catch-all parties.

One cannot expect to find all the typologies in specific countries. First of all, the parliamentary tradition varies from country to country. For example, while in the United Kingdom we would see elite parties of the 19th century, this cannot be the case of Slovakia or Turkey. Also, many countries such as Germany, Slovakia and Turkey, have experienced some form of autocratic one-party regime, which has had an enormous impact on the political party culture. However, it is also crucial to keep the mentioned general trends in the evolution of political parties in mind while discussing the political party systems in specific states.

2.3.2.2 Political Parties in Germany, Slovakia, Turkey and the United Kingdom

Change of political parties discussed in the preceding section provides us with the general features of political parties in certain periods of time. Against general trends of development of political parties outlined in the previous section, this section aims to

portray the particular development of political parties in Germany, Slovakia, Turkey and the United Kingdom.

Germany

German political parties started to evolve with the expansion of franchise in 1871; however there were no mass parties during the Empire. During the short existence of the Weimar Republic (1919-1933), around 40 political parties were represented in the Reichstag. Several political parties from the Empire continued to exist, such as the SPD, which was the strongest political party during the Weimar Republic. Catholics were represented by the Centre Party (Zentrum), and liberals by the German State Party (DStP). Although these mass parties shared 70 percent of the vote in 1919, in 1920 they lost their majority, and the Weimar Republic is known for its minority coalitions and chronic instability[298]. From the outset of the Weimar Republic, there had also been political parties working for constitutional change of the system: the monarchist German National People's Party (DNVP), the Communist Party of Germany (KPD) promoting the Soviet type of regime, and the National Socialist German Workers' Party (NSDAP), which had become popular as of 1930.

Since WWII, political parties in Germany are one of the defining elements of politics in the Federal Republic of Germany, and their status is recognized in the Basic Law as one of the measures of rationalized parliamentarism. This regime is called the "party state" (*Parteienstaat*) and means that not only are they defined as constitutional actors, but they

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[298] "The Empire (1871-1918)" http://www.bundestag.de/htdocs_e/artandhistory/history/parliamentarism/empire/index.html(Last Accessed on September 18, 2013).

also receive generous public funding. The main political actors in West Germany have been the Christian Democratic Union (CDU), which has been operating in all the Länder except Bavaria; the Christian Social Union (CSU) operating only in Bavaria; the Social Democratic Party (SPD); the Free Democratic Party (FDP); and since the beginning of the 1980s, the Alliance '90/The Green party.

After unification, another political party, the socialist PDS, and later its successor, die Linke, entered the political arena. Based on this, it is clear that one of the changes in the German party system is the coalition potential of political parties. While until the 1980s the sole 'kingmaker' was the FDP, since the presence of the Green Party and die Linke, its role is less central[299]. The second ongoing transformation is the turn from a three-party system to a four-party system in the 1980s, and to a five-party system after unification. Since 1998, the overall vote share for the CDU/CSU and the SPD has been decreasing, while the three smaller parties (Greens, die Linke and FDP) achieved in 2009 historical success[300]. To sum up, there are four types of change: 1. Overall decline of vote share for the CDU/CSU and the SPD; 2. Increased levels of party fragmentation; 3. Thanks to the presence of the Greens and die Linke, a shift of the party system to the left; 4. Emergence of new cleavage after unification (east-west)[301].

With regard to typology of political parties, Charles Lees considers the CDU/CSU and the SPD to be catch-all parties; however, other authors, such as Detterbeck argue that at

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299 Charles Lees, "The Paradoxical Effects of Decline: Assessing Party System Change and the Role of the Catch-All Parties in Germany Following the 2009 Federal [Parliamentary] Election.," *Party Politics* 18, no. 4 (2012). p. 553

300 Ibid. p. 558

301 Ibid. p. 559.

the present time with advanced public funding for political parties and strong intra-party cooperation, German political parties fit the cartel party theory[302].

Slovakia

Slovakia as a post-communist country became an independent state with only a couple years of experience with multipartism and democracy. Right after the break up ofthe Communist regime, the political scene was controlled by a citizen's movement lacking organizational structure or consistent programs. They appeared spontaneously with the aim to reform or topple the communist regime, and later on they entered the political spectrum. The incentive to form an external party organization appeared in some political parties on the scene during the first parliament, which led to the relative stabilization of some parties[303].

Several characteristics can be generalized regarding the short history of free party competition in Slovakia. First, there have been a high number of political parties established and then closed or inactive since the establishment of Slovakia. For instance, in 1992 there were 91 registered political parties, out of which 23 ran for elections, and 5 made it to parliament. In 1994 out of 64 officially registered political parties, 18 ran in parliamentary elections, and 7 parties entered parliament[304]. At the present time there are 149 registered political parties, out of which most are inactive; 26 ran in 2012 general

[302] Ibid; Klaus Detterbeck, "Party Cartel and Cartel Parties in Germany," *German Politics* 17, no. 1 (2008).p.27

[303] Darina Malova and Danica Sivakova, "The National Council of Slovak Republic: Between Democratic Transition and National State-Building," in *The New Parliaments of Central and Eastern Europe*, ed. David M. Olson and Philip Norton (London: Portland, Ore.: Frank Cass, 1996). p114

[304] Ibid. p114

elections and 6 parties made it to parliament[305]. Secondly, political parties since the beginning have had a low membership and organization basis. And lastly, there is a high number of cases when parliamentarians either change political party affiliation or leave and establish a new one. This situation is quite controversial, as emancipating parliamentarians receive their mandate on the ticket of one political party, thus a newly created parliamentary political party lacks popular legitimacy.

Turkey

Turkey was a one party state since its establishment in 1923. Ataturk's Republican People's Party (RPP) ruled alone until the end of WWII. From it's own initiative, the RPP allowed the formation of the Democratic Party (DP) and directed the state towards a multiparty system with the first elections held in 1950. However, as Akgun points out, "[i]n contrast to its first phase of relatively smooth transition, however, the Turkish political system in later years experienced a cyclical pattern of authoritarian regressions and democratic breakdowns.[306]" What the author meant was mainly that Turkey in the multiparty period has experienced so far three military takeovers starting in1960, which introduced a new element to Turkish politics – the military[307].

The most serious and unprecedented involvement of the military into the party system of the Turkish Republic emerged after the *coup d'état* in 1980. With the aim to reestablish the political party system, the National Security Council (the military body) banned all

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[305] Registry of political parties is kept by Ministry of Interior

[306] Birol Akgun, "Aspects of Party System Development in Turkey," *Turkish Studies* 2, no. 1 (2001).p. 71

[307] Ibid.P. 74

existent political parties and their leaders from political life[308]. In 1983 the first elections were held; however, none of the previous political parties were allowed to participate. Old political leaders returned to the political scene after the referendum in 1987. The NSC also redesigned electoral districts and in the name of stability introduced a 10% threshold for political parties to enter the Assembly.

Sabri Sayari categorized the evolution and change of the party system in Turkey and identified four stages after the opening Turkish political scene towards multipartism: bipartism (1950–1960), moderate multipartism (1961-1980), moderate multipartism with a dominant party (1983-1991) and the present extreme multipartism with no dominant party[309]. Observing elections since 2002, one has to note the recent return to moderate multipartism with a dominant party (third category)[310]. The Justice and Development Party in a previous electoral term ruled alone with a stabile majority in parliament. The last elections on 12 June 2011 resulted in four political parties in parliament, the Justice and Development Party taking a bit more than 50 percent of the votes. Other parties were the CHP (Republican People's Party), the MHP (nationalist) and the BDP (Kurdish party).

The AKP has won three elections in a row, with the ability to avoid a coalition government with another political party. The AKP is a descendant of the dissolved Islamic Welfare Party (*Refah Partisi*) and the Virtue Party (*Fazilet Partisi*), as a lot of its

[308]Sabri Sayari, "Political Parties, Party Systems, and Economic Reforms: The Turkish Case," *Studies in Comparative International Development* 31, no. 4 (1996). p. 31; See also Akgun, "Aspects of Party System Development in Turkey."

[309] In the middle of 90s, there were altogether five political parties, the strongest one controlling only quarter of the seats in the TGNA. In Akgun, "Aspects of Party System Development in Turkey."P. 74

[310] Sabrı Sayari, "Towards a New Turkish Party System?," *Turkish Studies* 8, no. 2 (2007). p 205.

members were previously members of these parties. However, leaders of the AKP try to avoid calling themselves 'Muslim democrats', preferring the label 'conservative democrats'.

The Turkish political scene had been, besides military interventions, also disrupted by the party closure cases at the Turkish Constitutional Court[311]. Since its establishment in 1961, the Court has closed 28 political parties, which was formally possible due to the 'convenient' dissolution procedure[312]. The first wave of changes was adopted by parliament in the form of a constitutional amendment in 2001 and introduced a new majority 3/5 requirement: out of 11 judges, 7 had to vote for dissolution (instead of the previous 6) and the constitutional definition of the criterion 'to become a centre'[313]. The former measure helped the ruling AK Partisi during the proceedings against it in 2008. In this case six judges voted for dissolution, 4 were in favor of the funding cut and one judge was against the proceedings as such. Thus, the case did not end with dissolution, but with a partial deprivation of state funding for the party[314]. The dissolution process was further amended by the referendum of 2010 amending relevant constitutional

311 Legal basis for dissolution are in the Constitution and in the Law on Political Parties. The latter contained even more reasons for dissolution than former.

312 Constitutional Court dissolved parties for statements in the program or becuase of hte name chosen. Not for unicostitutional activities. Bulent Algan, "Dissolution of Political Parties by the Constitutional Court in Turkey: An Everlasting Conflict between the Court and the Parliament," *AUHFD* 60, no. 4 (2011). p.818.

313 Last political party dissolved up to date was the case against *Demokratic Toplum Partisi* (DTP-the Democratic Society Party) K: 2009/4; judgment of 11 December 2009; the party was dissolved for activities aiming destroy the unity of the state and for supporting of the PKK.

314 K:2008/2, Judgment of 30.07.2008

provisions, which changed the composition of the constitutional court as well as the majority needed to approve the dissolution[315].

The United Kingdom

The birth of the British party system reaches back to the end of the 17th century. The division over the extent of royal power first led to two camps: royalists and parliamentarians, and later resulted in an establishment of the two major parties: the Tories (the supporters of the crown) and the Whigs (supporters of restriction of royal legislative power)[316]. Party organization of Whigs and Tories was very basic, with the aim to ensure sufficient support for the government of the day to enable it to survive and win elections. Expansion of the electorate in 1832, 1867 and 1884 contributed to the gradual formation of the modern party system, as the previous limited electorate did not require as complex a bureaucratic apparatus as an enlarged one at the end of the 19th century[317]. Three political parties emerged at that time: the Liberal, the Conservative, and the Labour Party.

The first half of the 20th century marked the steady decrease in the electorate of the Liberal Party, resulting in the post war years to be known by the overwhelming domination of two parties: the Labour and the Conservative[318]. Although these parties were dominant, some scholars have argued that it is not a two party system, as this was

315 Constitutional amendment in 2010 raised the number of judges from 11 to 17, and at the same time changed the majority requirement from 3/5 to 2/3, making it more complicated to dissolve party or cut its funding.

316 Stephen Ingle, *The British Party System: An Introduction*, 4th ed. (Routledge, 2008). p6.

317 Moshe Maor, *Political Parties and Party Systems: Comparative Approaches and the British Experience* (Routledge, 2005). p81.

318 Ingle, *The British Party System: An Introduction*.p16.

never fully developed in the United Kingdom and there have often been third parties playing a crucial role in the creation of government[319]. Then again, others define Britain as an example of not a pure majoritarian system with two predominant parties, relying on the share of votes of the two parties in Parliament[320]. Single party cabinets: the Labour party from 1945 to 1951, 1964 to 1970, 1974 to 1979, and from 1997 on, and the Conservatives from 1951 to 1964, 1970 to 1974, and from 1979 to 1997.

It has to be noted that the two or three main parties' dominance is a reality for the territory of England. In Wales, Northern Ireland or Scotland these parties do not hold the first places of popularity[321]. For example, the Conservatives are the third party in Wales and fourth in Scotland[322]. Another important fact is that the party system in Britain continues to evolve. For instance, there are many smaller political parties which we can see succeeding in other types of elections, like elections to the European Parliament. We can just speculate how the party system would change had the referendum in May 2011 been successful, and had the Alternative Vote replaced the FPTP system.

Since the 1950s, however, the overall influence of the two main political parties has been in constant decline[323]. In the 2010 general elections the overall support for the Conservatives and Labour failed to reach 65.1 percent of the popular vote, the lowest figure since 1918 (in 2005 it was over 67 percent). In the same elections, the third

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319 Ibid.p21.

320 Philip Lynch, "Party System Change in Britain: Multi-Party Politics in a Multi-Level Polity," *British Politics* 2, no. 3 (2007).

321 In Scotland, there is the Scottish National Party, in Wales Plaid Cymru, and in Northern Ireland the Democratic Unionist Party. These parties operate only of the territories of Scotland, Wales and the Northern Ireland, respectively.

322 Russell Deacon, The British Party System: An Introduction, Parliam Aff (2010) 63(3): 577-581 first published online May 31, 2010 doi:10.1093/pa/gsq011, p. 578.

323 Lynch, "Party System Change in Britain: Multi-Party Politics in a Multi-Level Polity."

political party, the Liberal Democrats, secured 23 percent of the vote, while the Labour Party in second secured 29 percent. All the rest of the minor parties secured 12 percent of the vote altogether. Lynch argues that "[t]hese performances are part of a 30-year trend, which indicates that a two-party system no longer operates in the nationwide electoral arena.[324]" It seems that the British party system is steadily moving towards a multiparty regime, and if that is too strong a statement, we can certainly talk about the decline of the two-party system in the United Kingdom in the case of national parliamentary elections.

In the United Kingdom, the membership of political parties has been in constant decline since the end of WWII. Party membership used to be a "source of cultural identity and pride for millions of British people"[325]. However, at the present time with a little bit over 1% of the population having political party membership, it is becoming a minority pursuit and the media note there are more members of the Royal Society for the Protection of Birds than in political parties[326]. This fact makes the United Kingdom one of the countries with lowest rates of political party membership in Western Europe[327].

Conclusion: Is There an Ideal Type of Parliament?

The first parliaments were established in the 12th century in different Spanish Kingdoms and southern Italy[328]. Towards the end of the 13th and beginning of the 14th century, parliament as an institution spread to the rest of Europe (e.g. General Estates in France

[324] Ibid.

[325] Brian Wheeler Political reporter, Can UK political parties be saved from extinction?, BBC News, 19 August 2011, http://www.bbc.co.uk/news/uk-politics-12934148

[326] Brian Wheeler Political reporter, Can UK political parties be saved from extinction?, BBC News, 19 August 2011, http://www.bbc.co.uk/news/uk-politics-12934148

[327] Lower figures are only in Poland, where only 0.99% of voters was member of a party in 2009, and in Latvia, an estimated 0.74% in 2004. In http://www.parliament.uk/briefing-papers/SN05125

[328] Modern parliaments as defined by Marongiu, explained in section 2.2; First

were convened in 1302, England in 1275). Parliament convened in Leon, Spain, by King Alfonso IX in 1188, had a power of taxation and coinage, which was the original power of all European parliaments, and the reason why they would be convened, and why monarchs would be willing to constrain their power[329]. The power of taxation was a strong constraint of rulers.

Connected to the emancipation of parliaments and them becoming sovereigns of power as described in the first two sections of this chapter, one can argue that the scope of their powers had been gradually expanding. British parliament according to parliamentary sovereignty firmly established after the Glorious Revolution in 1688 could make and unmake any law, and regulate even things naturally impossible if it chose to. Empowerment of parliaments continued especially with emancipation of the electorate, universal suffrage, and mass parties, which shifted the power balance towards parliaments due to the popular legitimacy.

After the Second World War, the executive was strengthened at the expense of parliaments, which were considered to be in crisis. It was argued that the "unprecedented growth of the importance of the assemblies led to a very grave crisis of parliamentarism[330]". Mass parties turned out to be inefficient, thus the post Weimar and post war arrangement focused on the struggle between efficiency and legitimacy of political regime not only in Germany. The new term, parliamentarism rationalized, which

[329] Van Zanden, Buringh, and Bosker, "The Rise and Decline of European Parliaments, 1188-1789." p. 838

[330] Daniel Smilov, LLM thesis p4

means strengthening of the government while preserving the parliamentary form of government, turned into standard of constitution making in parliamentary regimes[331].

With all political and economic developments, it seems that in the last decades parliaments are rather losing their prerogatives, which brings us back to the whole parliamentary decline thesis analyzed in the first chapter of this thesis. Have parliaments been really disempowered, or rather has the society been changing, and was Wheary right when he argued that in absolute terms, parliaments have been declining, but relatively speaking they continue to evolve and adapt to new circumstances?

Ideal Parliament

After discussing major trends in the development of parliamentarism, the question stands what the current trend or ideal with regard to parliamentarism is. Jeremy Beetham writing for the Inter-Parliamentary Union publication *Parliament and Democracy in the Twenty-First Century* identifies five key features of democratic parliaments. First, democratic parliaments shall be representative; they shall represent the diversity of people and provide equal opportunities for all its members. This presupposes a fair and free electoral process, reflecting society especially with regard to gender and minorities. The IPU suggests using special procedures to guarantee representation of minority groups. Furthermore, content of this first feature includes transparent and democratic party procedures, rights for opposition, freedom of speech and association, parliamentary

[331] Term coined by Boris Mirkine-Guetzevitch Les nouvelles tendances du droit constitutionnel second edition Paris, 1931

immunity, and equal opportunity for all MPs with regard to all available parliamentary procedures and resources.

Secondly, parliaments shall be transparent, open to diversity of media and open about their own business. Transparency encompasses public parliamentary proceedings, information on business of parliaments, availability of documents in relevant languages on user-friendly tools (such as the Internet), a parliamentary PR agency and the right to information procedure. Third, democratic parliament shall be accessible, involving citizens and non-governmental organizations in its work. Not only shall citizens have access to their representatives, but they should also be involved in the work of parliament through consultations, and petitions of pre-legislative scrutiny. Lobbying shall be allowed, but regulated in order to assure transparency.

Fourth, parliaments shall be accountable, in the sense that parliamentarians shall be held responsible for their work by the electorate. Behavior of parliamentarians shall be regulated by the enforceable code of conduct; parliamentarians shall also have an adequate salary, transparent and registered income from outside parliament and clear rules for fundraising and party funding.

And lastly, parliaments shall be effective. Effective parliament according to the IPU means that parliamentary business shall be organized according to democratic values, and performance of parliamentary functions, especially legislative and control, and shall serve

the needs of the whole society[332]. It includes tools to ensure parliamentary independence and autonomy, control of the parliamentary budget, available professional staff, research facilities, business committee, it's own agenda setting measures, and self-assessment procedures. On the national level, effective parliaments shall have procedures for executive accountability at their disposal, including control tools for committees, and accountability of public bodies and commission to parliament. Another dimension of effective parliaments is effective involvement of parliament in the budget approval including the audit of final accounts.

Besides the main research question, if there is a decline in parliamentary functions, further chapters will also try to answer the question to what extent do parliaments live up to those five mentioned ideal parliamentary characteristics that are encompassed within three researched parliamentary functions.

[332] Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*. p. 7.

PART II: REPRESENTATIVE FUNCTION

Introduction

According to the constitutions of not only researched states, but also many others, the source of power is the people or the nation. German Basic Law stipulates that "[a]ll authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies."[333] The Constitution of the Slovak Republic says: "State power is derived from citizens, who execute it through their elected representatives or directly."[334] Turkish Constitution stipulates that"[t]he people exercise their power directly through referendum or indirectly through elected representatives"[335]. Thus, as modern constitutions are based on presumption that all power emanates from the people or the nation and they transfer their power to their representatives to act as their mediators, representative function is the precondition for all other functions of parliaments.

When, however, can one argue that the parliament is truly representative? Constitutions do not provide any answer to this question, and representation can be approached from many different angles. Hannah Pitkin in her seminal work *The Concept of Representation* presented four different contextual ways of understanding representation in a political sense, namely formalistic, descriptive, symbolic or substantive representation[336]. Formalistic representation in general deals with the institutional arrangements that are a

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333 Article 20(2) of *The Basic Law.*
334 Article 2 (1) of*Ústava Slovenskej Republiky [Constitution of the Slovak Republic]*.
335 Article 6 of *The Constitution of the Republic of Turkey*, (1982 As amended in 2010).
336 Pitkin, *The Concept of Representation*.p 10.

precondition of representation[337]. Symbolic representation, as defined by Pitkin, answers the question of what kind of response representatives invoke in those being represented[338]. Descriptive representation is an approach dealing with the extent to which representatives resemble those who are represented[339]. Lastly, substantive representation is concerned with the activity of representatives[340].

Pitkin's four approaches to representation have been revisited by many scholars since the 1960s and the representation was again analyzed and classified from different perspectives[341]. Nevertheless, none of them provide for one clear indicator based on which the argument that parliament is doing well in a representative function could be made. In the present dissertation, in which the focus is on parliamentary functions, I propose to assess parliaments using two methods: the formalistic and descriptive methods. In my opinion, the formalistic approach to representation is the most important approach for understanding the current form of representative government in chosen jurisdictions as it outlines not only the process of creation of parliaments, but also the system of their accountability. Importance of the formalistic approach is strengthened by the fact that unlike in the case of the other three approaches to representation, unrepresentative parliament from the formalistic view lacks the legitimacy. Contrary to that, as will be shown in Chapter 4, the fact that parliaments are not descriptively representative does not formally undermine their formal legitimacy. In addition, the

337 Ibid.p 10.
338 Ibid.p 10.
339 Ibid.p 10.
340 Ibid.p 10.
341 For instance: see the summary of work of *Jane Mansbridge* and *Nadia Urbinati* and *Philip Pettit* in 1.3.1.1 Different concepts of representation.

concerns of the descriptive, symbolic and substantive forms of representation are addressed by formalistic representation in the design of electoral systems as a means of authorization, which supports the centrality of the formalistic aspect.

Therefore, in order to analyze the representative function of parliament I rely on one central approach, the formalistic approach, which is complemented by the descriptive approach taken in Chapter 4.Assessing the representative function from these two methodological points of views, can one argue parliaments are representative? What are the general trends in relation to formalistic and descriptive representation?

Chapter 3: Representative Function: Formalistic Approach

Formalistic representation, as defined by Pitkin, is concerned with institutional position of the representative, and has two dimensions: authorization and accountability[342].The main question of formalistic representation is what the institutional position of a representative is. The first dimension, authorization, is a method of selection of the representative for office, and the issue here is the process of how the representative gets into office and power. Accountability on the other hand, is the ability of constituents to punish their representatives if they are dissatisfied with their work. Out of the four approaches presented by Pitkin, the formalistic take on representation is the most important one, as lack of representation taken from the formalistic point of view undermines the legitimacy of parliaments as such.

3.1 Authorization: The Mode of Selection

Authorization is one of two dimensions of the formalistic approach to representation. Authorization is the question of how the representative gets into office. It is a norm in current world democracies that representatives are selected in general elections, although in history there was an equal alternative in the form of a lottery, for instance in Athens or Italian city-states. Nevertheless, elections are the norm when it comes to selection of parliamentary representatives.

Proportionality and stability are the two main desired featured of the modern electoral process. Proportionality shall guarantee that composition of parliamentarians in the

[342] Pitkin, *The Concept of Representation*.p 10.

smaller scale reflect the political views of their constituents. On the other hand, stability is equally important as we saw that purely proportional systems may turn out to be volatile and fragile. Thus the main questions to be answered in this section are: what is the proportionality of researched electoral systems? Secondly, what is the balance and relation between proportionality and stability?

3.1.1 Evolution of electoral systems

Germany

Germany is an example of a country where features of the existing electoral system intended to compensate for the flaws of the previous one. During the German Empire, the system of the absolute majority (Two Round System) was used. After the First World War, during the Weimar Republic, a pure proportional system was introduced[343]. This system, although producing extremely representative assemblies, resulted in a high number of political parties elected, which added to constant political instability, which ultimately resulted in the Nazi regime. Following WWII, in 1949 the Parliamentary Council adopted a new electoral system, which has been in force without major changes until now, and is designed to prevent instability of the political system. The German mixed electoral system, also called the personalized PR system, combines a personal vote of single member districts with the PR Land party lists, and it also contains a national five percent threshold. Thus in recent German history there is not such a long tradition of one electoral system, as we will see is the case of the United Kingdom. However, the

[343] Michael Krennerich, "Germany: The Original Mixed Member Proportional System," http://www.idea.int/esd/upload/germany.pdf.p. 76.

electoral system introduced in 1949 has not been seriously challenged and basic principles have stayed unaltered since then[344].

Slovakia

Following the fall of the Communist regime in 1989, the first post Communist federal electoral law in the Czechoslovak Federal Republic introduced the proportional electoral system with reference to the interwar Czechoslovak Republic, and brought an end to the majoritarian system used during the Communist regime[345]. Thus, it was clear that the new Czechoslovak state tried to prevent continuity with the previous communist regime. However, the first Czechoslovak Republic established in 1918 had, as the Weimar, a pure proportional system, which as in the German case, led to extreme pluralism and fragmentation of the political scene. Therefore, the new law brought in the electoral threshold of five percent for political parties to overcome in order to be eligible for the allocation of seats in the Federal parliament[346].

The electoral system for elections to the Slovak National Council within the federation was slightly different. Parliamentary elections were governed by Law No. 80/1990 on elections to the Slovak National Council[347]. The threshold for entering the National Council was three percent. After 1990 elections, 7 out of 36 political parties became

344 Some minor changes, however have taken place: switch to separate votes in 1953 (before the voter had only one vote). There were however attempts to amend the system, especially in 60s, when there were voices to introduce FPTP system to enhance the position of the strong political parties. Ibid.

345 Malova and Sivakova, "The National Council of Slovak Republic: Between Democratic Transition and National State-Building."; David M. Olson and Philip Norton, *The New Parliaments of Central and Eastern Europe* (London ; Portland, Ore.: Frank Cass, 1996). P 112,

346 Malova and Sivakova, "The National Council of Slovak Republic: Between Democratic Transition and National State-Building." p. 112.

347 It stayed in force also after the separation and the Act was amended several times before the adoption of current legislation in 2004: by Acts No. 8/1992, No.104/1992, No. 518/1992, No. 157/1994, No.81/1995, No. 187/1988, No. 223/1999.

eligible for allocation of seats in the parliament. In order to decrease fragmentation of the political scene, for the elections in 1992, the electoral threshold was increased to five percent for a political party, to seven percent for a coalition of two or three political parties, and ten percent for coalition of four and more political parties[348]. At the same time, the Slovak Republic was divided into four electoral districts: Bratislava (12 seats), Western Slovakia (50 seats), Central Slovakia (47 seats), and Eastern Slovakia (41 seats)[349].

The Czechoslovak Federative Republic's separation came into force on 1 January 1993.In May 1998, during Prime Minister Meciar's term of office, the electoral law was amended shortly before elections, merging all constituencies into one, and changing the rules on the electoral threshold. This hastily adopted amendment of the electoral law was interpreted as an attack on the five opposition parties forming an alliance against Meciar, as it introduced a five percent threshold requirement for each political party running within a coalition (note that before the amendment it was seven percent for a coalition of 2 or 3 political parties, and 10 percent for a coalition of four and more political parties)[350]. It was expected that three out of the five parties in the coalition would not receive enough electoral support according to the new rules[351]. To cope with the new law,

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348 Law 80/1990 was amended in March 1992 by the Law No. 104/1992, par. 41.

349 Law No. 80/1990 on elections to Slovak National Council, s. 9, 10.

350 Five parties forming a Slovak Democratic Coaltion (in July 3, 1997) against Prime Minister Meciar were: Democratic Union (*Demokratická únia*), Christian Democratic Movement (*Kresťanskodemokratické hnutie*), Democratic Party (*Demokratická strana*), Social Democratic Party of Slovakia (*Sociálnodemokratická strana Slovenska*), and the Green Party (*Strana zelených na Slovensku*). In Matúš Krištofik, "Volebný Systém Do Národnej Rady Slovenskej Republiky," *Středoevropské politické studie - Central European Political Studies Review* 3, no. 4 (Autumn 2001).; č.187/1998; http://spectator.sme.sk/articles/view/1378/1/

351 Martina Pisárová, "Mečiar Election Law to Remain on Books, ," *Slovak Spectator* 17 September 2001.

the five political parties merged and created one – The Slovak Democratic Coalition (*Slovenská Demokratická Koalícia)*. Shortly after 1998 elections, which resulted in the SDK forming a government, the threshold requirements were changed to the existent form before Meciar's changes. Slovakia, however, remained a single electoral district[352].

It is difficult to talk about evolution in the case of the twenty-year-old independent Slovak Republic. Nevertheless, there is continuity with the inter-war Czechoslovak Republic, and post-communist Czechoslovakia, and later Slovakia also adopted a rationalized version of the PR electoral system as post-war Germany did. Amendments of electoral law in 1998 show how easy it could be to misuse electoral laws to secure a better electoral result, especially in countries in transition from the autocratic regime to democracy. The reason is obvious, electoral rules are usually enshrined in the statute, not constitution, and thus simple majority rules apply.

Turkey

Turkish electoral rules have been shaped by a transition to democracy and three military coups, which has resulted in considerable changes to the previous electoral systems[353]. The Constitutional Court has been involved in determining the electoral rules twice so far, in 1968 and 1995[354]. The system was extremely volatile especially in the 1960s and 1980s[355], when changes of the electoral system were very common. Compared to two democratic decades in Slovakia, the volatility of electoral rules has been much higher.

352 Ibid.

353 Burak Cop, "Extreme Instability in Electoral System Changes: The Turkish Case," *Turkish Studies* 12, no. 1 (March 2011).

354 Ibid.

355 Four radical formula changes between 1961 and 1983. Ibid.

Two changes – in 1961 and 1983 – were the result of military coups. The other two, in 1965 and 1968, were adopted under normal political circumstances.

The first elections in the Ottoman Empire were held in 1876, with a plurality system and multimember constituencies. After the establishment of the Republic, the state was run by a single party, the Republican People's Party (*CumhuriyetHalkPartisi - CHP*)[356]. In 1945 several new political parties were established with the permission of the CHP. So this process did not happen as opposed to the CHP's will, but rather with its blessing. What the CHP did not expect was the overwhelming support the newly established Democratic Party had received. Despite that, the CHP expected to win the 1950 election and the retained plurality electoral system was supposed to secure it. However, the DP scored 85.2 percent of the seats with only 52.7 percent of votes, as opposed to 14.2 percent of seats with 39.4 percent of vote of the CHP. Even more intense disproportionality followed elections in 1954. The CHP, being in opposition, had started to advocate for enhanced representativeness achieved by a new electoral design.

The electoral formula used in the first Ottoman elections in 1876 was in force until the first amendment in 1961[357]. After the first military takeover in the 1960s, the electoral system was changed to a proportional system with the D'Hondt method of calculating seats, which has been in force up until now. What has been changing since the 1960s is either the threshold, or the quota requirements or both. For the 1961 elections there was the D'Hondt PR system with a district threshold in place. In 1965 the PR system was

[356] CHP was established by Ataturk and until the end of the Second World War was the only political party permitted in Turkey.

[357] The debate on PR system was already in 50s.

amended and the existing district threshold was complemented with the National Remainder method. The coalition government of the day led by the CHP tried to prevent the overwhelming gain of seats by the Justice Party (*AdaletPartisi),* who claimed to be a successor of the banned Democratic Party, by introducing the National Remainder rule into the system. This rule made the results of the 1965 elections the most proportional in Turkish history[358]. However, the party that came into power in 1968 changed the system back to the D'Hondt method with a district threshold. This was challenged at the Constitutional Court, which in 1968 pronounced it unconstitutional and Turkey had the PR system without any threshold until the military coup of 1980.The electoral system adopted after the 1980 *coup d'état* was less liberal[359].

The PR electoral system was complemented with a double threshold requirement. Besides the district threshold (previously struck down by the Constitutional Court), the new ten percent national electoral threshold was introduced. It is argued that it was introduced due to the decade-long political instability preceding the 1980 military takeover, which was allegedly caused by the high number of political parties in parliament[360]. The military that took over the administration of the country for two years following the takeover aimed for creating a system with only two or three major political parties, in order to prevent creation of weak coalition governments[361]. The effect of the

358 Cop, "Extreme Instability in Electoral System Changes: The Turkish Case."

359 The constitution of 1961 is said to be very progressive and liberal, included human rights.

360 Sabri notes that despite this high threshold after elections in 1990s as many as five parties entered the parliament, and crowded political scene "proved to be detrimental for the stability of the state" . In Sabri Sayari and Yilmaz R. Esmer, *Politics, Parties, and Elections in Turkey* (Boulder, CO: Lynne Rienner Pub., 2002). p.18

361 Cop, "Extreme Instability in Electoral System Changes: The Turkish Case."

national threshold in practice, however, especially in the 1990s, was the elimination of Kurdish parties from parliament.

In a nutshell, Turkish electoral rules have been reflecting violent Turkish political developments. Electoral rules seemed to be amended to serve the purpose of maximizing the electoral result for political parties in place. They were amended in times of crisis, resulting from military intervention, as well as during "peace" times, serving the interests of governments of the day. Although in the case of Slovakia there are only two decades of independence now compared to Turkey with more than sixty years of a multi party regime, comparatively speaking we see much less turmoil when it comes to the electoral changes. Slight similarity can be seen in the amendments passed by Vladimir Meciar prior to the 1998 elections, when worrying about the electoral result, his government tried to prevent coalition parties from running together. What happened in the short Slovak transitional history once happened several times in Turkey, as the system was changed and a threshold introduced and re-introduced to secure better results for government.

The United Kingdom

The British First-Past-The-Post (FPTP) system as we know it now became the rule from the 1884-1885elections. Before this time, until 1867, MPs were elected by the Block Vote. The Second Reform Act of 1867 introduced the Limited Vote, later abolished by the Third Reform Act of 1884-1885, which introduced the FPTP, ultimately became the dominant system[362].However, despite the introduction of the FPTP system with the Third

[362] "United Kingdom: Electoral System Experimentation in Cradle of Fptp," (2009), http://aceproject.org/ace-en/topics/es/esy/esy_uk.

Reform Act, the single member constituencies were not a rule until 1950[363]. Until this year, constituencies had two-members, the city of London four members, and thirteen large cities with three-member constituencies[364].

The FPTP is not the sole electoral system used in elections within the United Kingdom. The proportional electoral system is used in elections to the European Parliament, and a mixed electoral systems for devolved assemblies of Scotland and Wales (see Table 6).

Table 6: Voting systems currently used in the United Kingdom

Voting System	Where used
First Past the Post (FPTP)	House of Commons Local elections in England and Wales
The Supplementary Vote (SV)	Mayor of London and for all other elected Mayors in England and Wales where there are more than two candidates
Single Transferable Vote (STV)	Local elections in Northern Ireland European Parliament elections in Northern Ireland Northern Ireland Assembly Local elections in Scotland
Additional Member System (AMS)	Scottish Parliament National Assembly for Wales London Assembly
Closed Party List System	European Parliament elections (except in Northern Ireland)

Source: UK Parliament[365]

In the past, there have been several attempts for reforming the electoral system. Already in 1884 the Proportional Representation Society was established with the goal to change the FPTP system, endorsing the ideas of English lawyer Thomas Hare[366]. In 1917, the

363 Secretary of State for the Home Department by Command of Her Majesty, "The Report of the Independent Commission on the Voting System," (October 1998). par.21

364 Ibid.

365 Mary Durkin and Isobel Mary White, "Voting Systems in the Uk," in *Standard Note: SN/PC/04458;* (Parliament and Constitution Centre, 10 March 2008).

366 Thomas Hare was promoting the idea of the whole country as a single constituency, which was supported also by John Stuart Mill. IN "Voting Systems: The Jenkins Report," in *RESEARCH PAPER 98/112* (10 December 1998).

all-party Speaker's Conference proposed the introduction of the *Alternative Vote*[367] for 2/3 of the parliamentary seats (in counties) and the *Single Transferable Vote*[368] (STV) for the remaining 1/3 (in cities and large towns)[369]. Another unsuccessful suggestion to adopt AV was presented by the Labour government in 1931. The bill succeeded in the House of Commons but was refused by the House of Lords[370]. The latest serious attempt for reform was in 1976 as a reaction to the highly disproportional electoral result after 1974 elections (see

Table 7).

From Table7one can see two problems. First, the Conservative Party received more votes than the Labour Party, but it had fewer seats in Parliament. Another striking fact of these elections, as a result of the FPTP system, is the 2 percent of seats held by the Liberal Party, which secured more than 19 percent of the vote. In response, the Hansard Commission on Electoral Reform proposed in 1976 an electoral reform of parliamentary

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367 The Alternative Vote (AV) is also based on single member constituencies, but unlike in FPTP system, the winner has to receive support over half of voters in the constituency. Voters vote with expressing their preferences to candidates, in other words by ranking them. In case no candidate receives the absolute majority, the candidate with fewest first preferences is eliminated and the second preferences are distributed among rest of candidates. This continues until there is the candidate with absolute majority of votes. IN "The Report of the Independent Commission on the Voting System," (Secretary of State for the Home Department by Command of Her Majesty, October 1998).

368 The Single Transferable (STV) "Vote system is essentially preferential voting in multi-member constituencies. Voters are to able to rank as many candidates, both within parties and across different parties, as they wish in order of preference. Any of those candidates who reach a certain quota are deemed to have been elected. The surplus votes of candidates elected on the first count and the votes of those with fewest votes after subsequent counts are distributed on the basis of preferences to the remaining candidates until sufficient candidates reach the quota and are, as a result, elected." IN Ibid.

369 Ibid. par.22.

370 Ibid. par.22.

elections, which would introduce a mixed member proportional system[371]. However, even this attempt for a reform was not successful.

Table 7: Elections of 1974, example of the most disproportional electoral results in the UK parliamentary elections up until 2010

Elections 1974	% of vote received	Number of seats	% of seats*
Conservative Party	38.2	296	46
Labour Party	37.2	301	47.40
Liberal Party	19.3	14	2.20

Source: Interparliamentary Union – IPU database[372]
* Total number of seats was 635

After tight results of 2010 elections to the House of Commons, the coalition Government of the Conservative and the Liberal Democratic Party was created by signing the Conservative – Liberal Democrat Coalition Agreement. At the outset of the term, both parties aimed to carry out their election promises regarding political reform. The manifesto of the Liberal Democratic Party contained a call for a reform of the electoral system from the FPTP to Alternative Vote. The Conservatives were for keeping the FPTP electoral system. The parties agreed in coalition agreement that there will be a referendum on the electoral system and both parties will campaign on opposite sides. Also both parties called for revision of boundaries of constituencies and decreasing the number of MPs[373]. *The Parliamentary Voting System and Constituencies Act 2011* is a statute based on the adopted Coalition Agreement, which represents a compromise between manifestos of the Conservatives and the Liberal Democrats[374]. Part one of the Act established a date for referendum on change of the electoral system to the Alternative Vote system. The second one changed the boundaries of the constituencies, and their

371 "United Kingdom: Electoral System Experimentation in Cradle of Fptp."
372 "United Kingdom - Election," (Inter Parliamentary Union, 1974).
373 "The Coalition: Our Programme for Government," (London: HM Government, May 2010).
374 The Bill was introduced to the Commons in July 2010, and it passed third reading at the beginning of November of the same year. Lords passed the Bill on 14 February 2011, with few amendments.

number was decreased from 650 to 600. The referendum took place on 5 May 2011, and the result confirmed the current electoral system[375].

3.1.2 Current Legal Framework of Electoral Systems

Germany

Legal basis for elections to the Bundestag in Germany is in Article 20(2) of the Basic Law, which says that "[a]ll state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.[376]"Furthermore, the Basic Law stipulates that "representatives shall be elected in general, direct, free, equal and secret elections, and they should have non binding mandate.[377]" The Basic Law refers to more detailed regulation to be adopted by a federal law, the Federal Elections Act (FEA)[378]. The FEA is a comprehensive act which outlines the electoral system, establishes electoral bodies, stipulates conditions of eligibility to vote and to stand for elections, describes conduct of elections including their preparation and result, special cases such as by-elections, and loss of mandate.

Germany, as established by the FEA, has a mixed electoral system consisting of single member constituencies and proportional representation with party lists[379].Half of the MPs are elected from nominations in constituencies and half from Land nominations (Land

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375 The question asked in referendum was: "At present, the UK uses the "first past the post" system to elect MPs to the House of Commons. Should the "alternative vote" system be used instead?"

376 Article 20(2) of *The Basic Law*.

377 Article 38(1) of Ibid.

378 *The Federal Elections Act*.

379 Some scholars consider this system as personalized PR system, other as an Additional Member System (*Robert Johns, University of Strathclyde*).

Lists/party lists)[380].Each voter has two votes: the first vote (*erstimme*) is a personal vote for electing a member of parliament for the constituency and a second vote (*zweitstimme*) for a political party.[381]. In the case of the first vote, the candidate receiving the majority of votes is elected (*direktmandate* or Direct seats)[382]. The second vote determines how many MPs will ultimately go to parliament from the political party list[383]. Direct seats are subtracted from the total number of allocated seats to political parties on the federal level[384]. The rest of the seats are then filled from among names on the closed party lists.

It is a possible that political party will win more direct seats than the number of allocated seats based on the second vote. These extra seats are called surplus seats (*Überhangmandate*), and the total number of Bundestag representatives is increased by the number of these mandates for the particular legislative period. Thus, although the Bundestag should be ideally composed of 598 members; in reality this number is increased by the number of surplus seats for the particular period[385]. In its decision delivered in 2008 the Federal Constitutional Court (FCC) ordered a reform of surplus seats and another feature of the German electoral system called the negative vote value (discussed below) and gave the government time until 30 June 2011. The Bundestag

380 Section 1.2of *The Federal Elections Act*.
381 Section 4 of Ibid.
382 Section 5 of Ibid.
383 Section 6(1) of Ibid.
384 Section 6(4) of Ibid.
385 Article 1 of Ibid.: "The German Bundestag shall, subject to variations resulting from this Law, consist of 598 members. They shall be elected in a general, direct, free, equal and secret ballot by the Germans eligible to vote, in accordance with the principles of proportional repre-sentation combined with uninominal voting."

adopted a new amendment to the FEA in December 2012 and introduced compensation for surplus seats[386].

Lastly, the German electoral system contains a five percent national threshold for the valid second votes cast. As the system for elections to the Bundestag is mixed, political parties that do not secure enough votes to cross the threshold may still participate in the allocation of the seats, provided that they win in at least three constituencies[387]. On the federal level as well as in some of the Lander, the threshold does not apply to political parties representing national minorities.

Slovakia

The principles of the electoral system in Slovakia are enshrined in the Constitution, which stipulates that elections shall take place within periods of time provided by a law, and that voting shall be exercised "through universal, equal and direct suffrage by secret ballot.[388]" Article 74 of the Constitution furthermore specifies that elections to the National Council shall take place every four years. Detailed regulation of parliamentary elections is in the Law on Elections to the National Council[389]. The Law defines basic provisions, electoral registers, and electoral constituencies and polling districts, creates

386 Erik Kirschbaum, "Germany Passes New Election Law to Help Small Parties," *Reuters* 21 February 2013.

387 Article 6 of *The Federal Elections Act.*

388 Article 30(2) and (3) of *Ústava Slovenskej Republiky [Constitution of the Slovak Republic]*.

389 *The Act on Elections to the National Council* No. 333/2004 (as amended, last amendment 204/2011); Further applicable acts: the Act on Broadcasting and Retransmission (No. 308/2000), Act on Limitation of Expenditure of the Political Parties on Advertising before Election to the National Council (No. 239/1994), Act on Political Movements and Political Parties (Coll. 85/2005).

electoral bodies, specifies the process of submission and registration of candidates, and the process of elections[390].

The proportional system with preferential voting is in place in Slovakia. Unlike in Germany, voters have one vote they can give to a chosen party list. Thus, in practice, voters are presented as many party lists as there are political parties running in elections, and they choose one of them. If they wish, they can, besides giving a vote to a political party list, use the option of preferential voting. Each voter can circle up to four names on the party list s/he chose and this way influence the final position of the candidates on the list. There can be fewer than four preferential votes, but not more than that. If a voter gives more than four preferential votes, none of them are taken into account.

Furthermore, Slovak territory forms, unlike Germany, Turkey and the UK, a single electoral constituency[391]. Based on all cast and valid votes, political parties' seats are allocated using the *Hagenbach-Bischoff method*[392]. Seats are distributed in accordance with the order on the ballot, except when the candidate on the ballot obtained more than 3 percent of preferential votes received by the political party[393].

390 *The Act on Elections to the National Council* No. 333/2004 (as amended, last amendment 204/2011)
391 Article 11 *Ibid.*
392 Article 43 (1) *Ibid*
393 Article 43 (5) *The Act on Elections to the National Council*

Section 42(2) of the Law on Elections to the National Council stipulates the national electoral threshold of 5 percent for political parties, 7 percent for coalitions of 2 or 3 political parties, and 10 percent for coalitions of a minimum of four political parties[394].

Turkey

As in Germany and Slovakia, the Constitution of the Turkish Republic stipulates the right to vote and the basic principles of suffrage[395]. The nature of the electoral system is established by a law on basic provisions on elections and voter registers[396].This law determines the principles of elections, methods and procedures, electoral districts, and eligibility.

Turkey has a PR electoral system with a closed list. Out of the total number of 550 deputies, each of the 81 provinces has at least one deputy, and the remaining representatives are divided among provinces based on their population[397]. Political parties competing in elections for parliamentary seats have to be organized in at least half of the provinces not less than 6 months prior to parliamentary elections[398].

The seats are distributed based on the *d'Hondt* method with restricted options and a barrier. Article 33 of the Electoral Law provides for a 10 percent electoral threshold[399].

394 Article 42 (2) *The Act on Elections to the National Council*

395 Article 67 of *The Constitution of the Republic of Turkey*.
396 *Parliamentary Elections Law [Turkey]* (10 June 1983).
397 Article 4 Ibid.
398 Article 14 (11)*Parliamentary Elections Law [Turkey]* (10 June 1983).
399 Article 33 of the *Parliamentary Elections Law [Turkey]* (10 June 1983).

Those political parties that do not cross this barrier of received valid votes are not permitted to participate in vote allocation[400].

Turkey has the highest national threshold from among European countries, which applies to political parties, ten percent. Small parties have two strategies at their disposal of how to enter parliament and circumvent the threshold. First, independent candidates are exempted from the national threshold. Secondly, small political parties are allowed to run on the party list of other political parties.

The United Kingdom

British electoral rules are defined in the *Representation of the People Acts of* 1983 and 2000. The electoral system used for elections to the House of Commons, the First-Past-The-Post system (FPTP), is a plurality system with single member constituencies[401]. This means that each voter completes one ballot, on which the vote for chosen candidate is submitted. The elector has to choose from the candidates presented. In order to win a seat in the House of Commons, the winning candidate has to secure at least one vote more than other candidates.

For the purpose of parliamentary elections, the UK is at the moment divided into 650 constituencies[402]. This number was decreased, however, by the adoption of the *Voting System and Constituencies Act 2011,* where the number of MPs was lowered in the House of Commons[403]. As of the next elections the number will be lowered from 650 to 600[404].

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400 Hikmet Sami Turk, "Electoral Systems and Turkish Experience,"(1993), http://dergiler.ankara.edu.tr/dergiler/38/299/2803.pdf.

401 "The Report of the Independent Commission on the Voting System."

402 *Parliamentary Constituencies Act*

403 *Parliamentary Voting System and Constituencies Act*.

There is one MP elected from each constituency for the term of 5 years. Current coalition parties, the Conservatives as well as the Liberal Democrats, had the reduction of the size of Commons and redistricting as part of their manifestos. The Liberal Democrats had proposed even more drastic change, the decrease of number of representatives by 150[405]. The reduction is part of cost-cutting and transparency measures. In 2009 Cameron said

> *Today, we've got far too many MPs in Westminster. More people sit in the House of Commons than in any other comparable elected chamber in the world. This is neither cost-effective nor politically effective: just more people finding more interfering ways to spend more of your money. I think we can do a better job with fewer MPs: we can, to coin a phrase, deliver more for less.*[406]

Calling for decreasing the number of representatives in parliaments is not the case only in the United Kingdom. This trend can be observed in other European countries as well, where politicians either lead the debate on lowering the number of representatives as a cost-cutting measure such as in Slovakia. The strongest political party in Slovakia, the SMER-SD, declared in March 2012 their willingness to decrease the number of MPs in Slovakia from 150 to 100[407]. Two months later a constitutional bill was proposed unsuccessfully by the opposition party, the SaS, decreasing the number of MPs to the same number[408]. The main argument backing up the bill was the economic crisis and 13 million euro that could be saved on only the salaries of 50 MPs per one electoral term. Coming from the opposition the bill was rejected, however, the debate remains.

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404 All about debate surrounding the process: Isobel White and Oonagh Gay, "Reducing the Size of the House of Commons," in *Standard Note: SN/PC/05570* (Parliament and Constitution Centre, 28 July 2010).

405 "Liberal Democrat Manifesto," (2010).

406 David Cameron, "Fixing Broken Politics (Speech),"(26 May 2009), http://www.conservatives.com/News/Speeches/2009/05/David_Cameron_Fixing_Broken_Politics.aspx. (Last Accessed September 23, 2013).

407 "Smer Je Za Zníženie Počtu Poslancov V Parlamente [Smer Is in Favor of Decreasing the Number of Mps in Parliament]," *Pravda* 26.03.2012. (Last Accessed September 23, 2013).

408 "Návrh Sas Neprešiel, Počet Poslancov V Parlamente Sa Nezníži [the Proposal Sas for Decreasing the Number of Mps in Parliament Rejected]," *Pravda* 16 May 2012. (Last Accessed September 23, 2013).

3.1.3 Proportional Representation: To what extent are the studied electoral systems proportional?

As was displayed above, Germany, Slovakia and Turkey have proportional electoral systems. The system shall provide political parties with a percentage of seats in parliament corresponding to the percentage of received votes. British electoral system, on the other hand, is based on First-Past-the-Post system, which is not trying to be proportional and from the votes vs. seats ration is extremely disproportional. As a consequence the British electoral system cannot, from the formalistic point of view, be considered representative. The following section analyzes the issue of the proportionality of seat distribution and relevant constitutional issues raised most recently in Germany and the UK, which will ultimately help us to understand the views on proportionality of the electoral systems in the respective countries.

Germany: The Constitutional Litigation Regarding Surplus Seats

Table 8 shows the high degree of proportionality of the German electoral system based on results of the last federal elections held in September 2009. As was pointed out earlier, the German electoral system has been quite stable since its introduction in 1949 with only minor amendments. Following last three federal elections in Germany, however, a new challenge has arisen concerning the number of surplus mandates/overhang mandates (*Überhangsmandate*). The problem is that the Federal Electoral Law until February 2013 did not provide for compensation for the high number of awarded surplus seats, causing two problems: disproportionality and the negative vote value (*negatives Stimmgewicht*).

Table 8: Proportionality of the German electoral system (September 2009)

	% of received votes	% of received seats	% Difference	Number of seats
Christian Democratic Union (CDU)	27.3	31.2	+ 3.9	194
Social Democratic Party (SPD)	23.0	23.5	+ 0.5	146
Free Democratic Party (FDP)	14.6	15.0	+ 0.4	93
Left Party	11.9	12.2	+ 0.3	76
Green Party	10.7	10.9	+ 0.2	68
Christian Social Union (CSU)	6.5	7.2	+ 0.7	45
Size of theASSEMBLY*				**622**

* Bundestag has 656 representatives, excluding possible surplus seats.

Surplus mandates/ overhang mandates are those seats that a party gets when the amount of constituency seats is higher than the total amount of seats received according to the principle of proportionality. Until the reunification of Germany, surplus seats were a marginalized phenomenon. For example, in 1949 there were two, in 1953 three, in 1961 five, and in both 1980 and 1987 there was only one surplus seat[409]. However, since the 1990s their number has been constantly rising, reaching 24 seats in 2009 elections.

The existence and the rise of the number of surplus seats in recent decades is caused by several reasons, which were intensified after the reunification of Germany. Three main reasons would be: the discrepancy between data that are the basis for a calculation of a number of constituency seats in each Land, and the data for calculation of the number of seats that a Land receives based on second votes; the difference in the number of constituencies in each Land in relation to its population; and split voting[410].

409 *Nachrücken in Überhangmandate (Succeed in Overhang Seats) - 2 Bvc 28/96 (Bverfge 97, 317)* (26 February 1998).
Überhangmandate I (Overhang Seats I) - 2 Bvc 4/88 (Bverfge 79, 169),(24 November 1988).

410 See more in Geoffrey K. Roberts, "By Decree or by Design? The Surplus Seats Problem in the German Electoral System: Causes and Remedies," *Representation* 37, no. 3-4 (2000).

In 1997 minor parties challenged the constitutionality of surplus seats at the FCC, arguing that these extra seats violate the principle of proportional representation. In the *Overhang Mandate Case,* an abstract judicial review initiated by Lower Saxony, the court in a four to four decision upheld the surplus seats, as the electoral system as such fostered a personal relationship between voters and their elected representatives[411]. The FCC came to the conclusion that "surplus seats at best may be a necessary evil, and the effects are not necessarily a cause for concern. They are consciously embedded in the electoral landscape of Germany."[412] In this case, the FCC applied the principle of equality enshrined in Article 38.1 differently to the two votes each elector has[413]. For *erstestimme* or direct votes, the FCC applied the principle of equality as opportunity, which means that each vote has the same chance to influence the election of the representative. For the second votes cast for the party lists, equality is applied as equality of representation of each vote. Thus, every vote helps to elect an MP. In this second application of equality, the Court allowed for two deviations, namely the threshold and situation of existence of three seats as a qualification for parliament. Using this analysis the Court upheld surplus seats as an inevitable consequence of the FEA, and declared that it does not violate the

411 *Überhangmandate 2 (Overhang Seats 2) - 2 Bvf 1/95 (Bverfge 95, 335)*,(10 April 1997).– What happened in this case was that the second senate consisting of eight judges was evenly divided on the issue of constitutionality. This meant that the status quo could not be amended, and so the 4 judges in favor of constitutionality prevailed, and were considered as a majority. In Roberts, "By Decree or by Design? The Surplus Seats Problem in the German Electoral System: Causes and Remedies."

412 Roberts, "By Decree or by Design? The Surplus Seats Problem in the German Electoral System: Causes and Remedies."

413 Ibid.

principle of equality. Dissenting judges argued that surplus seats violate the principle of equality, and called for change of the federal law[414].

The negative vote value is an unwanted outcome changing an elector's vote to the opposite of their intended political will expressed with that vote. This feature of the German electoral system came to the center of attention in 2005, when a candidate for the NPD in Dresden (a safe CDU district) died during the campaign, which meant new elections in the district two weeks after the national vote took place. The CDU strategist calculated that based on the number of votes already cast for the CDU, the CDU could lose a seat in another Land, if the CDU won with too great a margin in Dresden. Based on calculations, if the CDU won with more than 42,000 votes, they would loose a seat in North – Rhine Westphalia. So two facts come out of the present case: first, this kind of calculation can be made in elections that take place after the national vote; and second, what the practical consequence is that voting for a party in this case actually may hurt the party[415]. This situation led to litigation at Federal Constitutional Court.

On 3 July 2008 the FCC decided that negative voting weight was unconstitutional, breaching the principle of equality and directness of elections (Article 21 (1) of the Basic Law)[416]. Equality requires contribution of each vote whatever party it was cast for, and at the same time the vote must have a positive effect for the party it was cast for. Thus, an electoral system designed in a manner that permits a situation in which an increase in the

414 The change of the Federal Electoral Law would require amendment of the Federal Electoral Law, the change would concern procedure for allocation of the seats to parties. Donald P. Kommers, "The Federal Constitutional Court: Guardian of German Democracy," *The Annals of the American Academy of Political and Social Science* 603(2006)., p. 111.

415 *David Conradt, "Electoral Law Blues,"(9 August 2012), http://www.aicgs.org/issue/electoral-law-blues/.*

416 *Negatives Stimmgewicht (Negative Weight of Votes) 2 Bvc 1/07, 2 Bvc 7/07,* (3 July 2008).

number of votes can lead to a loss of mandate, and requires special tactics from political parties to avoid votes to keep their mandates, is paradoxical. Moreover, the principle of direct elections is violated if voters are unable to recognize the positive impact of their votes on the party and its candidates from a negative one. To come to the point, the FCC declared provisions of the FEA causing the negative vote value to be unconstitutional[417].

At the same time, however, despite declared unconstitutionality of negative voting weight, and error impacts on the composition of the 16th *Deutscher Bundestag*, the FCC did order the dissolution of the parliament and new elections, as it was "outweighed by the interest of maintenance of the *status quo* of the representation of the people composed in confidence in the constitutionality of the Federal Electoral Act.[418]" The FCC, however, set the obligation to the parliament to change the existing law latest by 30 June 2011[419].

Although the government had three years to amend the electoral law, the amendment was adopted in 2011 without an all-party consensus. The solution proposed by the CDU-FDP government was to avoid the negative vote by the distribution of seats not on the federal, but on the states' level, and at the FDP's suggestion introduced a remainder vote (*Reststimmenverwertung*)[420]. The SPD disagreed and wanted compensatory mandates for surplus seats, which would mean proportional seat-compensation for each surplus seat, as it is common in state elections. The Act was adopted in Fall 2011 and came into force on

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417 The FCC declared § 7.3 in conjunction with § 6.4 and § 6.5 of the Act to be unconstitutional insofar as the equalizing of constituency and list mandates which it ordered could cause the effect of negative voting weight.

418 *Negatives Stimmgewicht (Negative Weight of Votes) 2 Bvc 1/07, 2 Bvc 7/07*.

419 "In connection with the complaint requesting review of an election that was lodged, the Second Senate also had to rule on the question of whether the non-public re-count of votes in some constitutions by the district returning officer violated the principle of the public nature of elections. The Senate stated that it did not." – Ibid.

420 Conradt, "Electoral Law Blues."

3 December 2011. However, not only was the government five months past the deadline, but it also failed to reach an all-party consensus, which had been called for by the FCC.

The constitutionality of the Act was challenged immediately at the FCC not only by opposition parties and interest groups, but by more than 3000 citizens' petitions[421]. The hearing in front of the second senate took place on 5 June 2012, and the FCC criticized the late and party line adoption of the bill. The Court delivered its unanimous decision on 25 July 2012 and held that 2011 amendments (state allocation of votes, remainder votes, plus existing surplus seats) violate the principle of equal and direct elections of Article 21 (1) and the principle of equal opportunities of the parties of Article 38 (1) of the Basic Law[422]. More precisely, the FCC declared sentence 1 of Section 6(1) and Section 6(2a) of the amended FEA to be null and void, and stated the provision regarding the awarding of surplus without compensation (Section 6(5)) to be incompatible with the Basic Law.

The Court ordered government to draft a new law by Autumn 2013, adopted based on an all-party consensus. Until the adoption of the new law, the Bundestag could not be dissolved, as new elections would be open to constitutional challenge. The all-party consensus was reached on 20 February 2013. The Bundestag amended the FEA for 22nd time and introduced the system of compensatory seats, which means a fairer distribution of seats and strengthening of the principle of proportional representation over direct

421 Abstract review at the FCC was initiated by SPD, and Alliance 90/the Greens parliamentary party groups

422 *Revision of the Electoral Law 2 Bvf 3/11, 2 Bvr 2670/11, 2 Bve 9/11*,(25 July 2012).

mandates[423]. Thus, the number of MPs can be increased considerably due to compensatory seats; however, it shall solve the disproportionality of surplus seats and the paradoxical negative vote value.

Slovakia

As in Germany, Slovak electoral system favors winners: the more votes party gets, the more additional seats are allocated to it; the difference in votes and seats for the winning political party in 2011 was almost 11 percent. Although 11% is not a small number, the proportionality of the electoral system has never been raised as an issue (see Table 9). There have no been serious proposals to amend the electoral system so far, either.

Table 9: Proportionality of the Slovak electoral system (March 2011)

	% of received votes	% of received seats	% Difference	Number of seats
Direction –Social Democracy (Smer-SD)	44.42	55.3	**+ 10.88**	83
Christian Democratic Movement (KDH)	8.82	10.66	+ 1.84	16
Ordinary People and Independent Personalities	8.56	10.66	+ 2.10	16
Most-Hid	6.90	8.66	+ 2.56	13
Slovak Democratic Christian Union- Democratic Party (SDKU)	6.10	7.33	+ 1.23	11
Freedom and Solidarity (SAS)	5.88	7.33	+ 1.45	11
Size of the ASSEMBLY				150

Source: IPU

Turkey

The following tables show the degree of proportionality of the system projected in the last general elections in Turkey in June 2011 (Table 10) and in 2002 (Table 11). In 2011 elections of three political parties out of twenty-seven crossed the ten percent electoral barrier. The rest of the MPs entered the parliament as independents. Looking at the 2011

[423] Luicy Pedroza, "Voting Rights of Transnational Citizens Moving Forward in Germany,"(25 February 2013), http://eudo-citizenship.eu/news/citizenship-news/810-voting-rights-of-transnational-citizens-moving-forward-in-germany. (Last Accessed September 23, 2013).

elections one would conclude that the electoral system favors winners, as the AKP was allocated more than 9 percent more seats in comparison with received votes.

Table 10: Proportionality of the Turkish electoral system: elections in 2011

	% of received votes	% of received seats	% Difference	Number of seats
Justice and Development Party (AKP)	49.90	59.27	+ 9.37	326
Republican People's Party (CHP)	25.91	24.54	- 1.37	135
Nationalist Action Party (MHP)	12.99	9.63	- 3.36	53
Independents	6.65	6.54	- 0.11	36
Size of the ASSEMBLY				**550**

Source: IPU

Table 11: Proportionality of Turkish electoral system: elections in 2002

	% of received votes	% of received seats	% Difference	Number of seats
Justice and Development Party (AKP)	34.28	66	+31.72	363
Republican People's Party (CHP)	19.50	32.36	+12.86	178

Source: IPU

However, 2002 elections were even more disproportional, leaving almost half of voters without representation. After elections in 2002, only two political parties, the AKP and the CHP became eligible for seat distribution. While the AKP received only more than 34 percent of the votes, it was allocated 66 percent of the seats in parliament. The CHP gained less, but still 12,86 percent more seats than the percentage of votes cast. The 2002 electoral result is by far the most disproportional in Turkish history. The main reason for such a high disproportionality is the extremely high electoral threshold, which is discussed in the next section.

The United Kingdom

The current FPTP system in the British realm is mainly criticized for its highly disproportional results[424]. Here the term disproportionality has two meanings: first, disproportionality towards political parties when it comes to the distribution of seats, and second, disproportionality towards citizens, especially minorities. The first can be seen through the comparison of received vote vis-à-vis seats of third parties, such as the Liberal Party, the Liberal-Social Democrats, or Liberal Democrats. For instance, in 1983 25.4 percent of the vote received by the Liberal-SDP Alliance turned merely to 3.5 percent of the seats, and the same situation repeated itself in the following elections[425]. Another example is the situation when a party winning the most votes receives fewer seats than another one and goes to opposition[426]. The latter concern is when the FPTP system favors two, maximum three political parties.

The proponents of the FPTP system defend it on three grounds: first, the current electoral system results in two dominant political parties, preventing coalition governments and fragmentation of the political scene leading, which could lead to instability; secondly, the FPTP secures the relationship between the voter and their MP; and lastly, the FPTP keeps extremist parties out of parliament[427].

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424 Ron Johnson, David Rossiter, and Charles Pattie, "Disproportionality and Bias in the Results of the 2005 General Election in Great Britain: Evaluating the Electoral System's Impact " *Journal of Elections, Public Opinion & Parties* 16, no. 1 (2006). p. 37.

425 "United Kingdom: Electoral System Experimentation in Cradle of Fptp," (2009), http://aceproject.org/ace-en/topics/es/esy/esy_uk.

426 This situation happened in 1951, when the Labour Party won more votes but the Conservatives having most seats formed the government, and in 1974 the indignity was reversed between the same political parties.

427 "The Report of the Independent Commission on the Voting System.", par.22.

Table 12 shows the degree of disproportionality of the system projected on the last elections based on received votes. The FPTP system is by far the most disproportional of the four electoral systems. While the difference between votes and seats of Conservative and Labour Party is almost the same, the Liberal Democrats, who received 23 per cent of the votes, were allocated not even 9 percent of seats in Commons.

Table 12: Proportionality of elections to House of Commons (September 2009)

	% of received votes	% of received seats	% Difference	Number of seats
Conservative Party	36.1	47.07	**+ 10.97**	306
Labour Party	29.0	39.69	**+ 10.69**	258
Liberal Democrats	23.0	8.77	**- 14.23**	57
Democratic Unionist Party	0.6	1.23	+ 0.63	8
Scottish National Party	1.7	0.92	- 0.78	6
Sinn Fein	0.6	0.77	+ 0.17	5
Plaid Cymru	0.6	0.46	- 0.14	3
Social Democratic and Labour Party	0.4	0.46	+ 0.06	3
Greens	1.0	0.15	- 0.85	1
Alliance Party of Northern Ireland	0.1	0.15	- 0.05	1
The Speaker	na	na	na	1
Independents	1.1	0.15	0.95	1
Size of the ASSEMBLY				**650**

The electoral reform and the intentions to hold a referendum were for the first time presented by government after 1997 elections. The independent commission on the Voting System was set up at the end of 1997 to report within 12 months. The commission recommended a mixed system, in which approximately 80 percent of the House would be elected by the AV, and the remaining would be elected by a party list[428]. However, this reform was not pursued further.

During the electoral campaign in 2009 the Liberal Democrats made the electoral reform their main goal. After elections in 2010, the referendum on the electoral system reached

[428] "Voting Systems: The Jenkins Report."

the agenda of the Conservative-Liberal Democrats coalition. As a result, the Voting System and Constituencies Act 2011 ordered a referendum on introducing the Alternative Vote system[429]. The referendum was held on 5 May 2011 asking constituents this question: "*At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?"* The proposal failed, as it received the support of only 32 percent, while it was opposed by 68 percent. The turnout was only 42 percent. It is argued that the decisive result of the referendum has settled this question and for some years this issue will most likely not be reopened again[430]. So despite the high disproportionality of British parliamentary elections, for years to come there will not be any change that will improve the situation.

3.1.4 Electoral Threshold: Balance between Proportionality and Stability

Electoral systems frequently contain rules which essentially restrict candidates and parties either from running for elections, or from participating in the distribution of parliamentary seats. Candidates in most countries need to reach a certain age, or pay a sum of money, while political parties have to collect a required number of signatures in order to be registered. Reasons for these *ex ante* restrictions are various, and they are not discussed in this section. Instead the aim of the section is to discuss one of the *ex post* rules which constrain the rights of candidates and political parties – the *electoral threshold*, the situation when a political party or a candidate fulfils all legal obligations

[429] Conservatives were in their manifesto against the change of the electoral system, they promised to keep FPTP electoral system. As the elections did not result in one party government, the referendum (first from 1975) was a compromise between the coalition partners. At the same time, the two political parties agreed to campaign on the opposite sides of the debate. In Paul Whiteley et al., "Britain Says No: Voting in the Av Ballot Referendum," *Parliamentary Affairs* 65, no. 2 (2012).p.301.

[430] Ibid.p.319.

and is still excluded from the distribution of seats. The electoral threshold can be either imposed by law, by formal thresholds, or be part of the mathematical formula used in certain electoral systems, as an effective/natural threshold[431].

The formal electoral thresholds are legal barriers invented to correct the deficiency of the proportional electorate system resulting in an extensive number of political parties in parliament, and thus ensuring greater parliamentary stability. After the Weimar experience, this barrier was adopted by many states with the PR electoral system, and the constraint of the principle of representativeness was justified by the goal to ensure stability, which would be endangered by the excessive fragmentation of the legislature.

The existence of the threshold has positive and negative effects. The positive side of this tool is the limitation of the number of political parties in parliament, thus contributing to the stability of the government[432]. On the other hand, the negative effect of the threshold is paradoxically the same as the positive one, as it contradicts the principle of parliamentary representativeness and equality of votes and political parties, and limits participation of regional and minority parties in parliament. Therefore, the stability of the government, and the equality of the cast votes, and political parties need to be properly balanced. The proper balance is a task first for legislators, and if that is challenged, for the judiciary.

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431 Andrew Reynolds, Ben Reilly, and Andrew Ellis, "Electoral System Design: The New International Idea Handbook." (International Institute for Democracy and Electoral Assistance, 2005). p. 119.

432 Sinan Alkin, "Underrepresentative Democracy: Why Turkey Should Abandon Europe's Highest Electoral Threshold," *Washington University Global Studies Law Review* 10, no. 2 (2011).

An example of the failure to balance the two goals (representativeness and stability) and possibly also of the misuse of the electoral barrier can be seen in the case of Turkey. The Turkish national barrier of a ten percent threshold was officially introduced as a stability measure, and unofficially as a measure to prevent the Kurdish minority political party to enter parliament. An expressive example of the negative impact of the threshold are elections of 2002, which resulted in allocation of the seats in parliament only among two political parties that were able to cross the ten percent threshold, and excluded more than 46 percent of votes from the seat distribution process.

According to the European Court of Human Rights, the European practice related to the electoral threshold is 5 percent, although there is no binding regulation adopted either by the Council of Europe or by any other European institution. The Council of Europe, however, calls for a fine balance between fair representation and effectiveness in parliament and government with a threshold not exceeding 3% in well-established democracies[433]. With regard to different states, Turkey has the highest threshold of 10%. Lichtenstein has 8%, and Russia and Georgia 7%. The most common figure is 5 or 4%. There are also several states which did not opt for any barrier (see Table 13).

Table 13: Electoral threshold throughout European countries

Threshold	Country
10%	Turkey
7%	Russia (since 2007, previously 5%)
5%	Germany, Belgium (by constituency), Estonia, Georgia, Hungary, Moldova, Poland, Czech Republic, Slovakia
4%	Austria, Bulgaria, Italy, Norway, Slovenia, Sweden
3%	Spain (by constituency), Greece, Romania, Ukraine
2%	Denmark

433 "Resolution 1547 State of Human Rights and Democracy in Europe,," (18 April 2007). par. 58; "Recommendation 1791 State of Human Rights and Democracy in Europe," (Parliamentary Assembly 18 April 2007).par. 17.10.

0 %	Sweden, Finland, Iceland, Ireland

Source: Venice Commission

Out of researched jurisdictions, Germany was the first to introduce an electoral threshold of 5 percent in 1949[434]. The Federal Constitutional Court reaffirmed the threshold a couple of times in its case law. Slovakia has had since its independence a threshold of 5 percent for one political party, and 7 and 10 for coalitions depending on the number of parties running together. Although the threshold was at one time amended to weaken the opposition (described in 3.1.1), it was not constitutionally challenged in Court. Consequently, the following paragraphs look at constitutional challenges of the Turkish and German electoral barrier. The aim of the present section is thus to analyze the Turkish regulation in comparison with the German one, where the threshold of 5 percent also introduced as a stability tool represents the balanced approach.

3.1.4.1 Turkey: 10 per cent

Following the period of instability of the coalition governments in the 1970s, and the *coup d'Etat* in 1980, Turkish parliament adopted Law no. 2839 on the election of members of the National Assembly, which lays down the rules of the system for parliamentary elections[435]. Section 33 of this law establishes an electoral barrier, which applies to political parties, as well as independent candidates running on the list of a political party:

434 Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 2nd ed. (Durham, N.C.: Duke University Press, 1997).p. 186.

435 After elections in 1973 and 1977 neither of the political parties was able to receive majority in the TGNA. In 1973 total 8 parties participated in distribution of seats, and a coalition Government formed in January 1974 resigned in September 1974. A caretaker government was created followed by a four-party Nationalist Front coalition. Early elections were called in spring of 1977. The elections brought to TGNA 7 political parties, and Mr. Demirel became Prime Minister, forming a three-party (JP, NSP, National Action Party) coalition. Source: IPU

> *No candidates of a political party which has not obtained more than 10% of all of the valid votes in Turkey as a whole or, in the case of mid-term elections, in all of the mid-term election districts shall enter the parliament. The election of an independent candidate who has stood for elections in the list of candidates of a political party shall also depend on that political party's surpassing this 10% barrier.*[436]

The independent candidates are exempted from the duty to overcome the 10% threshold; however, they have to deposit a guarantee (a sum of money), which is not returned in case the candidate fails to receive a sufficient amount of votes[437].

The Turkish Constitutional Court ruled on the constitutionality of the 10 percent threshold a few times. In a judgment delivered in March 1984, the Court expressed deference to the decision of legislature regarding the type of electoral system. The Court came to the conclusion that as the constituent assembly in 1982 did not specify the type of electoral system; it is the sole role of legislature to adopt the electoral system within the constitutional limits of Article 67[438].

Another case related to the electoral threshold was decided by the Turkish Constitutional Court in 1995. The case challenged Section 34a of the Electoral Law[439]. The challenged section referred to Section 33 (on electoral threshold), as it imposed this barrier on the allocation of the parliamentary seats elected in the national constituency. The Court declared the section establishing national constituency null and void, but at the same time it ruled that the 10 percent national threshold, Section 33 per se, is compatible with the requirements of Article 67 of the Constitution, namely the requirement of governmental

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436 Article 33 *Parliamentary Elections Law [Turkey]*

437 Article 21 Ibid.

438 Par. 41 of *Yumak and Sadak V. Turkey, Application No. 10226/03, Grand Chamber Judgement*,(8 July 2008).

439 Case No. E. 1995/54, K. 1995/59 from 18 November 1995.

stability and fair representation[440]. This was opposed by three dissenting judges who argued that electoral threshold of 10 percent was incompatible with Article 67 of the Constitution[441].

In the same decision the Court annulled a provincial electoral barrier of 25 percent[442]. It came to conclusion that: "Although a national threshold is imposed in parliamentary elections in accordance with the principle of 'governmental stability', imposing in addition a threshold for each electoral constituency is incompatible with the principle of 'fair representation"[443].

The excessive electoral threshold was also challenged at the European Court of Human Rights (ECtHR). In 2008 the ECtHR ruled on the Turkish threshold in the decision *Yumak and Sadak v. Turkey*, and decided by the majority of thirteen judges to four that there had been no violation of right to free elections (Article 3 of Protocol No. 1) of the Convention[444].

The ECtHR in *Yumak and Sadak v. Turkey* ruled that the national electoral threshold of 10% constituted interference with the applicants' electoral rights. The legitimate aim of the mechanism was to avoid parliamentary fragmentation and strengthening of the governmental stability. The ECtHR acknowledged that the threshold was exceptionally high and recommended that it should be lowered (as 5% is common European practice). It noted that effects of the thresholds can be different from one country to another, and

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440 Article 67 of *The Constitution of the Republic of Turkey*.
441 Section 42 *Yumak and Sadak V. Turkey, Application No. 10226/03, Grand Chamber Judgement*.
442 Section 42 *Yumak and Sadak V. Turkey, Application No. 10226/03, Grand Chamber Judgement*.
443 Ibid.
444 Ibid.

their role depends on their level and party system. Besides that, the ECtHR noted that any electoral system must be assessed through the lenses of the overall country's political evolution.

The Court then examined the correctives and other safeguards present in the Turkish system and their effects. With regard to the possibility to run as an independent candidate, the Court emphasized the unique role of political parties; however, it noted that this method had been effectively adopted in 2007 elections. The other strategy was to form an electoral coalition with other political groups. Thus, although the ECtHR considered the 10 percent threshold excessive, it did not decide on violation of Article 3 of Protocol No. 1. The Court merely recommended lowering the threshold, because the threshold forces political actors to use mechanisms that do not contribute to the transparency of the electoral process.

3.1.4.2 Germany: 5 per cent

The German electoral threshold is, as in Turkey, enshrined in ordinary law. The introduction of the threshold was linked to the negative experience of the pure PR system of the Weimar period. The threshold was challenged at the Federal Constitutional Court (FCC) several times since 1949. The first challenge came with the *Schleswig-Holstein Voters Association case* in 1952[445]. In this case the Schleswig-Holstein Land raised the threshold and introduced a 7 percent rule. The FCC ruled that this heightened number violated the principle of equality as applied to political parties. The second senate of the

[445] Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*. p. 186.

Court declared that only a very compelling or special reason would justify a rule "exceeding the common German value of 5 percent"[446].

In 1954 the court upheld Schleswig–Holstein's case application of the rule to the state's Danish minority in the *Danish Minority Case*. The state parliament could, if it so wished, exempt a national minority form the 5 percent requirement; although in its view the BL does not require such special treatment. Schleswig-Holstein soon afterwards amended the state electoral code, and the Danish minority was exempted from the 5 percent rule altogether.

Another case that the FCC dealt with was the *Bavarian Party Case* in 1957[447]. In 1953 the Bavarian Party won 20.95 percent of the vote in Bavaria, but it failed to secure the necessary national vote with only 4.2 percent of the national vote, and thus it was excluded from seat allocation in the Bundestag. The party claimed violation of the Basic Law's provisions in equality (Article 3.1), direct elections (Article 38.1), and political parties (Article 21.1). The Court rejected all claims and said that "the goal of elections is not only to assert the political will of voters as individuals… [but] also to create a parliament which is an effective political body". Moreover, the FCC said that "if the principle of exact proportional [representation] as the reflection of [all] popular political views were carried to its logical extreme, parliament might be split into many small groups, which would make it more difficult or even impossible to form a majority". The 5% clause was vindicated as a reasonable and fair way to establish the ability of parties to act responsibly in the legislature.

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446 Ibid. p.186.
447 Ibid.p.187.

The issue of the threshold was again reopened after the reunification of the Eastern and Western part of Germany in the *All Germany Election Case*[448]. At the end of September 1990, the Second Senate of the FCC ruled that proposed solution for the first elections in the reunited Germany, namely the possibility of fusion of party lists in order to overcome the negative impact of the five percent barrier on the former Easter Germany, offends the principle of election equality and equality of chances[449]. The Court stated that all German elections are of special circumstances and that they do not permit preservation of the traditional barrier. For these particular elections only, the FCC divided the territory of Germany again into former parts for the application of the barrier due to the different starting conditions of the party system in two previously separated states[450].

The most recent decision regarding the electoral threshold was released on 9 November 2011 (*Five percent barrier clause for European elections case*)[451]. The FCC declared the 5% threshold for the elections for European Parliament unconstitutional and therefore the provision of s.2.7 of the European Elections Act (*EEA*) void[452]. The Second Senate of the FCC ruled 5:3 that the threshold violates the principles of equal suffrage and of equal opportunities of the political parties.

448 *The All Germany Election Case- 2 Bve 1/90 and Others*,(29 September 1990).

449 Raymond Youngs, *Sourcebook on German Law* (London: Cavendish Pub., 1994).

450 *The All Germany Election Case- 2 Bve 1/90 and Others.*

451 *Fünf-Prozent-Sperrklausel in § 2 Abs. 7 Euwg (Five Per Cent Barrier Clause in the Law Governing the European Elections) - 2 Bvc 4/10, 2 Bvc 6/10, 2 Bvc 8/10*,(9 November 2011).

452 The EEA is a German federal law based on the Council Decision 2002/772/EC. The EEA introduced a proportional electoral system for the elections to the European Parliament with 5% electoral threshold.

This case departed from the previous case law regarding threshold. As in previous cases, the FCC balanced the interference with the constitutional rights of parties and the legitimate aim. The FCC stated that the violations of constitutional rights have to be legitimized by compelling reason, suitable and necessary for pursuing its objectives. In the case of the EEA, the Court rejected the justification of the threshold, which was to prevent the difficult opinion-forming. The FCC pointed out that instead of 162 political parties, there would be 169 without a German threshold, and thus practically, due to the specific character of the European Parliament, the disruption of proceedings would be unlikely. The decision was not unanimous and justices *Di Fabio* and *Mellinghoff* submitted dissenting opinions. They were not convinced by the weight of the affected rights and pointed out that the threshold is a mechanism that complements proportional representation, to avoid fragmentation of the political parties.

Turkish regulation is criticized to be way above European standards, while German regulation is a classic example of the five percent rule promoted by the ECtHR. European standards are those, which gives us guidance of what the barrier shall be, as terms such as proportionality or stability can be easily justified by legislators or judges on the national level depending on national circumstances. From the European standards perspective, thus, the Turkish ten percent is a restrictive measure towards minorities. From the Turkish perspective there would have to first be a recognition of minorities(national circumstances).

3.1.5 Conclusion

Germany and the United Kingdom's electoral systems could be seen until recently as fairly stable and not contested. Germany since WWII has used the mixed electoral system (personalized PR system), including the five percent electoral barrier as a stabilizing measure, while the United Kingdom has used the First-Past-The-Post electoral system. In both cases, however, recently there have been major challenges. In Germany, the Federal Constitutional Court invalidated the whole electoral law due to the unconstitutionality of overhang seats and negative vote value, and the United Kingdom held a referendum on the nature of the electoral system. While in Germany new electoral law was adopted to satisfy the ruling of the FCC, in the United Kingdom citizens voting in referendum in May 2011 confirmed the FPTP electoral system, and it seems that this will silence criticism for a while.

I distinguish Slovakia and Turkey from the above mentioned cases. In the case of Slovakia, due to the previous Communist regime, we cannot talk of continuity of electoral rules, thus the Slovak electoral system is fairly new and I believe it is too soon to predict how stable it will turn out to be. Nevertheless, in it's short history, there is already a case of manipulation of the rules on threshold in order to ease the electoral victory. In the case of Turkey, throughout its turbulent history, electoral rules have been regularly changed, especially when it comes to electoral barriers.

When it comes to the question of proportionality of the electoral systems of the four researched countries, several times it was shown in this chapter that the United Kingdom's electoral system leads to the most disproportionate results when it comes to

percentages of votes in relation to seats allocated to political parties and unrepresented votes. The Turkish electoral system also produces disproportionate results; however, this is not caused by the electoral system per se as in the United Kingdom, but by the unprecedented ten percent electoral threshold. The proportionality of the German electoral system has been questioned in the last few years due to the surplus seats without compensation and the negative vote value effect. This has led the Federal Constitutional Court to invalidate the electoral law, and an introduction of the system of compensation for surplus seats into German electoral system. The German, Slovak, as well as Turkish electoral systems favors winners, in the sense that the more votes a party receives, the higher the difference is between cast votes and the number of allocated seats.

Having mentioned the Turkish electoral threshold and its impact on proportionality, it has to be noted that the electoral threshold or barrier is actually a stabilizing tool. Comparing the Turkish arrangement with German one, one can see how the Federal Constitutional Court actually balances this stabilizing tool with principle of equality as applied to political parties. The Turkish Constitutional Court had done the same, and this brings us to the problem of the definition of the terms proportionality, stability, and efficiency. National courts give content and meaning to these words, so from the Turkish point of view, the extensive threshold would be justified. However, comparing it to the European standards, the Turkish threshold does not seem well balanced, and effectively disqualifies smaller and regional political parties from running.

3.2 Accountability

3.2.1 The nature of parliamentary mandate

Accountability is the ability of constituents to punish their representatives if they are dissatisfied with their work. Accountability is thus directly related to the nature of mandate, which can be either imperative or free. Imperative mandate means that representatives are bound by a mandate given to them by their electors and they can be also removed by them in case of their dissatisfaction as the form of punishment. Free mandate, on the other hand, means that parliamentarians are independent of the directions of the voters. Edmund Burke said in his famous speech to the electors of Bristol:

> *Parliament is not a congress of ambassadors from different and hostile interests; ...; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament.*[453]

In most countries nowadays, the free mandate is a rule and the imperative one is mostly expressly prohibited. The features of the free mandate are: first, free mandate is general, which means that parliamentarians do not represent their constituency, but the nation as a whole. For instance, the Constitution of Turkey says: "Members of the Turkish Grand National Assembly represent, not merely their own constituencies or constituents, but the Nation as a whole."[454] In this case the UK is an exception as it is an example of an arrangement where MPs represent their constituencies, but still their mandate is not imperative.

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[453] Edmund Burke, Speech to the Electors of Bristol IN Edmund Burke, William Willis, and Frank W. Raffety, *The Works of the Right Honourable Edmund Burke*, The World's Classics, 71, 81, 111-114 (London, New York,: H. Milford, 1925).

[454] Article 80 of *The Constitution of the Republic of Turkey*.

Secondly, free mandate is representational in the sense that representatives are absolutely free of their electorate. For example, German Basic Law says that "[t]hey [MPs] shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience."[455]The constitution of Slovakia has the same message: "Deputies are representatives of citizens. They execute their mandate personally according to their conscience and conviction and are not bound by orders."[456] Thus representatives are constitutionally prohibited to take orders, and at the same time they cannot be recalled by voters. Elections are the only way to hold representatives accountable.

As mentioned, nowadays imperative mandate is rather an exception. From among countries that this dissertation focuses on, however, it exists in Germany in the case of the *Bundesrat*. Members of the *Bundesrat* are not elected, they are appointed by the governments of the *Länder*. Consequently, representatives in the *Bundesrat* from each Land do not decide by themselves how to vote, but their respective governments provide them with a mandate. In the case of the *Bundesrat*, however, the imperative mandate is justified by the fact that the Bundesrat represents states and their governments, not the people. People in *Bundesländer* are represented in their national *Landtag* and in the *Bundestag*.

455 Article 38(1) second sentence of *The Basic Law*.
456 Article 73(2) of *Ústava Slovenskej Republiky [Constitution of the Slovak Republic]*.

3.2.2 Recall of Representatives

Imperative mandate shall be in theory enforced by the right of citizens to recall parliamentarians. However, recall of parliamentarians can also exist without imperative mandate, for instance as a disciplinary tool. The IDEA handbook defines recall as

> *a direct democracy procedure that allows the appropriate authority and/or a specified number of citizens to demand a vote for the electorate on whether an elected holder of public office should be removed from that office before the end of his or her term.*[457]

Two types of recall procedures can be distinguished depending on the involvement of citizens:

> *(a) full recall – recalls that require citizens' involvement both at the phase of initiation and at the approval or rejection of the recall; and*
> *(b) mixed recall – recalls that require citizens' involvement either in initiating the process or, at the approval stage, through a popular vote.*[458]

Recall procedures are quite rare. For the first time, they were introduced in the 19th century in Switzerland and the United States in order to increase public participation, and by 21st century they are used in approximately 24 countries[459].

Although recall procedures are rather the exception at the present time, in the UK elections in 2010 all three major political parties promised to introduce some form of recall procedure[460]. The Conservative Party in its manifesto *Invitation to Join the Government of Britain 2010* declared the goal to pass the bill on the recall of MPs to increase public confidence in politics:

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457 Virginia Beramendi et al., "Direct Democracy: The International Idea Handbook," (Stockholm: IDEA, 2008). p. 109.
458 Ibid. p. 114.
459 Ibid. p. 110.
460 "Recall of Mps (First Report of Session 2012-13)," (London: House of CommonsPolitical and Constitutional Reform Committee, June 2012).

> *At the moment, there is no way that local constituents can remove an MP found guilty of serious wrongdoing until there is a general election. That is why a Conservative government will introduce a power of 'recall' to allow electors to kick out MPs, a power that will be triggered by proven serious wrongdoing.*[461]

Government published the White Paper and a bill on the recall of MPs in December 2011[462]. The proposed recall of MPs is designed in a restrictive manner:

> *The Government proposes that constituents would be able to sign a petition to recall their MP in one of two situations:*
> *a) if the MP were convicted in the UK and received a custodial sentence of 12 months or less (MPs who receive custodial sentences of more than 12 months are already disqualified under the Representation of the People Act 1981); or,*
> *b) if the House of Commons resolved that the MP should face recall*[463]

The petition shall be subsequently signed by 10 percent of the representative's constitutions.

Conceptually recall is connected to accountability of representatives, and if voters are not satisfied with their representative, they should have right to recall him or her. The current British proposal is not adopted in line with this idea, as the recall is defined narrowly; it is viewed only as a disciplinary tool. The Political and Constitutional Reform Committee moreover pointed out on 15 December 2011 that the existing mechanism of removing

461 "Invitation to Join the Government of Britain the Conservative Manifesto 2010," (2010).

462 *Recall of Mps Draft Bill*.

463 "Once one of these two conditions had been met, the Speaker would give notice to the relevant returning officer that a petition should be opened. In the case of an MP subject to a custodial sentence, a petition would be initiated only once his or her right to appeal had been exhausted. Constituents would be able to sign the petition for eight weeks, either by post or at a single designated location in the constituency. If at least 10% of eligible voters on the electoral register for the constituency signed the petition, the MP's seat would automatically be vacated and a by-election would ensue, in which the recalled MP would be eligible to stand." "Recall of Mps (First Report of Session 2012-13)."

MPs guilty of serious wrongdoings (like in expenses scandals – check) and recommended government to abandon the bill[464].

Critics of the recall procedure argue that "the recall is considered a highly polarizing mechanism that triggers serious confrontation and disrupts the normal work of elected officials during their mandate."[465] Supporters, on the other hand, argue the recall encourages enhanced oversight of elected officials by citizens, and deepens relationship between citizens and representatives.

3.2.3 Parliamentary party groups and independent MPs in Parliament

Before existence of political parties as such, parliamentary groups or factions were essentially composed of those representatives who voted and acted similarly, and thus sat together. In the 19th century, an elected leader was the head of these groups. In the present modern party system, however, parliamentary party groups have become a decisive factor in the work of parliament[466]. PPGs are given various prerogatives that are often not provided for individual MPs or are provided to them at the expense of the individual MPs[467].

The different situation of PPGs and individual MPs has to be understood also through the affiliation of MPs to political parties. While constitutionally elected representatives shall be free to vote and make decisions based on their own conscience, and citizens cannot

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464 The Committee undertook the pre-legislative scrutiny on December 15, 2011. The Committee invited experts, campaign groups, MPs, House of Commons officials and others witnesses to give evidence. Ibid.

465 Beramendi et al., "Direct Democracy: The International Idea Handbook."p.144.

466 Sajó, *Limiting Government : An Introduction to Constitutionalism*. p.145.

467 Ibid.p.145

repeal their mandate, decisions of parliamentarians might be constrained by political parties, which are in parliament institutionalized in the form of PPGs. MPs may leave the PPG, however, as will be shown below, the position of individual MPs is weaker than those grouped in PPGs. Thus, although most constitutions secure free mandate to parliamentarians, one has to keep in mind that parliamentarians are mostly entering parliament on the party ticket.

Germany

Parliamentary party groups (PPGs) in German Bundestag (*Fraktionen*) are formed in the first few days after elections. PPGs must consist of at least of 5 percent of the Members of the Bundestag (32 MPs). The rationale behind minimum size of the PPG is to avoid small groups obtaining the status of PPGs and then making use of the powers it confers, so basically it is a stabilizing tool to avoid undue confusion and pressure in the *Bundestag*'s work[468]. Members of the group must belong to the same party or parties that have identical political objectives[469].

PPGs play a significant role in the work of the *Bundestag*, and its position is much stronger compared to independent MPs, as they have rights which are conferred exclusively on them or alternatively to 5 percent of the MPs, such as the right to introduce bills and table motions; to move amendment of bills on the third motion; to request postponement of items of business or of a sitting; or the right to demand a

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[468] Susanne Linn and Frank Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." (NDV, 2010), https://www.btg-bestellservice.de/pdf/80080000.pdf.p. 10.

[469] E.g. CDU – present in all Landers except Bavaria and CSU- only in Bavaria were since 1949 one parliamentary group

recorded vote. Alternatively the 5 percent rule signifies that even individual MPs or cross party MPs can join and together use these rights.

However, there are areas in which power balance is shifted much more to PPGs. For example, PPGs propose members to the Council of Elders on the proportional basis. Independent MPs do not have this right. Another area where PPGs have a strong influence is in parliamentary committees[470]. For example, when it comes to allocation of the seats in committees, PPGs not only nominate candidates, but they also retain the power to recall them. PPGs shape the day-to-day work of committees, as they establish working groups mirroring committee structure and thus they prepare common position before a committee is convened[471]. Independent MPs have a special status in committees allowing them to sit on committees and take part in the work of parliament based on the ruling of the Federal Constitutional Court. The President of the Bundestag decides which committee an independent MP sit shall on. He/she has a right to speak, table the motions but does not have a right to vote[472].

Following last elections in 2009 there were no independent MPs in the *Bundestag* (see Table 14).

Table 14: Distribution of seats after elections in 2009

Party Group	Members
Christian Democratic Union (CDU)	194
Social Democratic Party (SPD)	146
Free Democratic Party (FDP)	93
Left Party (Linkspartei)	76
Green Party	68
Christian Social Union of Bavaria (CSU)	45
Total	598+ 24 overhang seats

470 Bernhard Miller and Christian Stecker, "Consensus by Default? Interaction of Government and Opposition Parties in the Committees of the German Bundestag," *German Politics* 17, no. 3 (2008).p. 310

471 Ibid.p. 310

472 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation."

*Source:*IPU

PPGs in Germany dominate parliamentary business in almost every respect[473]. Their position is so strong that Uwe Thaysen in 1987 called the German political system a 'state of the parliamentary party groups'[474]. Not only are they powerful when it comes to parliamentary procedure, but also when it comes to decision-making. Majority decisions made in a PPG are expected to be followed by individual members despite the formal independence of MPs[475]. Saafeld notes that "[t]he extent of hierarchy and bureaucratization (of PPGs) at the expense of individual members' freedom of action and spontaneous debate in the plenary have been variously criticized[476]."

Slovakia

The Rules of Procedures of the Slovak Parliament in Article 64 stipulate that members may associate themselves in Parliamentary Party Groups according to their affiliation to political parties[477]. If during the electoral term the political party splits, or several political parties merge, respective PPGs change as well[478]. At least eight Members are required to form a PPG, while each Member of Parliament may belong only to one PPG. PPGs are entitled to use a room in the parliamentary building for their activities, and their costs are reimbursed from the parliamentary budget[479]. The amount is specified by the

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473 Thomas Saalfeld, "Bureaucratisation, Coordination and Competition: Parliamentary Party Groups in the German Bundestag," in *Parliamentary Party Groups in European Democracies: Political Parties Behind Closed Doors*, ed. Knut Heidar and R. A. Koole (London ; New York: Routledge/Ecpr Studies in European Political Science 2000).p23.

474 Ibid.p23.

475 Ibid.p. 23.

476 Ibid.p. 23.

477 Article 64.1 of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

478 Article 64.2 of Ibid.

479 Article 65.1 of Ibid.

Speaker for each financial year, and it is proportional to the number of members of each party group[480].

Besides PPGs there is also the *Gremium* of Members, a parliamentary body consisting of MPs delegated by PPGs[481]. The role of the body is to consider issues related to the political and procedural nature of activities of the parliament and its bodies[482]. Its opinions are deemed as recommendations for the parliament and the Speaker[483]. The Speaker convenes the *Gremium* as he considers necessary, each time at least two caucuses request so. Independent MPs are not eligible to participate.

The membership in committees is reserved to the PPGs only based on proportionality, as well as to independent MPs. Independent MPs, however, can not be members of parliamentary control committees. Further, there are rights that are exercised together in conjunction with other PPGs: e.g. a minimum of three PPGs can suggest a new item to the plenary agenda[484], or a minimum of two PPGs have a right to propose a setting of the limit to the debate[485], although this excludes independent MPs.

On the other hand, some rights are equally granted to PPGs as well as to independent MPs: for example, PPGs have a right to propose a candidate for the Speaker and Deputy Speakers, but so do MPs in general[486]. The Rules of Procedure on various places protect

480 Article 65.2 of Ibid.

481 Their number shall be determined by dividing the number of members of the parliamentary caucus by fifteen with the resulting number rounded according to statistical rules. Article 66.3 of Ibid.

482 Article 63.1 of Ibid.

483 Article 63.3 of Ibid.

484 Article 24.5 of Ibid.

485 Article 29a.1 of Ibid.; other examples could be found in following articles: 35.2,

486 Article 13.1 of Ibid.

the position of the Members of Parliament, who are not members of any PPGs, as it is in Article 29a.3:

> *Should the National Council make a resolution pursuant to paragraph (1), the Chair shall divide the time allocated for the debate between the parliamentary caucuses and Members who are not members of parliamentary caucuses proportionately according to the number of Members.*

According to the last electoral results (Table 15), there are no independent MPs in the National Council. However, one has to keep in mind two realities of Slovak legislature: first, independent MPs run on the party list of various political parties, and usually also join their PPG in parliament, without officially taking up membership in the respective political party[487]. Secondly, it is not exceptional for MPs to switch or establish new political parties throughout the electoral term. Thus, many times they remain in parliament as independent MPs after they leave their political parties.

Table 15: Distribution of seats after elections in 2012

Party Group	MPs as elected	Members of PPG
Smer-Social Democracy (Smer-SD)	83	83
Christian Democratic Movement (KDH)	16	14
Ordinary People and Independent Personalities	16	15
Most-Hid	13	13
Slovak Democratic and Christian Union (SDKU-DS)	11	11
Freedom and Solidarity (SaS)	11	11
Independent	0	3
Total	150	147

Turkey

487 The most recent examples: former Ministry of Interior Daniel Lipsic together with his colleague MP Jana Zitnaska left Christian Democratic Movement in May 2012, two months after last elections - see Zuzana Vilikovská, "Lipšic's 'New Majority' Formally Registers as a Political Party," *The Slovak Spectator* 26 October 2012.;
MP Alojz Hlina left Ordinary People and Independent Personalities in November 2012:see Radka Minarechová, "Hlina Leaves Oľano," *The Slovak Spectator* 29 October 2012.

In Turkey parliamentary party groups (PPGs) are exceptionally strong, due to the rights and privileges they possess according to the Constitution and Rules of Procedures[488]. The 1982 Constitution of the Republic of Turkey calls for the participation of each PPG in all the activities of the TGNA in proportion to its number of members, which means that most of the time the membership in a PPG is a prerequisite for possession of any kind of function in the TGNA[489].

PPGs have their own rules of procedure, and are strongly centered on a relatively small leadership[490]. The party leader is usually also the leader of the PPG, and there are typically between three and five deputy chairs, the group supervisors (two per group) and the group discipline councils (with normally around three to seven members)[491]. It is the party leadership who decides who should represent the party in the parliamentary bodies[492].

The position of MPs, which are not members of any political party group in parliament, is significantly weaker. For example, according to above-mentioned rules, independent MPs are not represented in the Board of Spokesmen, or in committees. The position of independent MPs is aggravated by the cohesiveness of Turkish political parties. Unless

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[488] SIGMA Peer Review Report, "The Administrative Capacity of Turkish Grand National Assembly," (2010). See also: Ilter Turan, "Volatility in Politics, Stability in Parliament: An Impossible Dream? The Turkish Grand National Assembly During Last Two Decades," *The Journal of Legislative Studies* 9, no. 2 (2003).p 164.

[489] Sabri Ciftci, Walter Forrest, and Yusuf Tekin, "Committee Assignments in a Nascent Party System: The Case of the Turkish Grand National Assembly," *International Political Science Review* 29, no. 3 (2008).p. 306.

[490] "In Turkish political life, political parties have a strong position and the decisions taken by the party leaders and the foremost people in the parties have influence on the decisions of the rest. Most of the times decisions are made by the party and so, MPs could not decide independently." Mustafa Durna, "Open Parliaments: The Case of Turkey," in *Open Parliaments: Transparency and Accountability of Parliaments in South-East Europe*, ed. Daniel Smilov (2010). p. 139.

[491] Ibid

[492] Ibid

all independent MPs form a PPG, or an MP acquires support for his proposal from one of the PPGs, he/she has little influence in the parliament. On the other hand, for most Kurdish MPs, running as an independent candidate is the only chance to get into parliament. Typically, what follows is that MPs returning to parliament as independent representatives come together and form one party group, as for instance happened after 2011 elections in case of the Peace and Democracy Party (see Table 16).

Table 16: Distribution of seats after elections in 2011

Party Group	**MPs as elected**	**MPs in respective PPG**
Justice and Development Party (AKP)	326	326
Republican People's Party (CHP)	135	135
Nationalist Action Party (MHP)	53	51
Independents	36	7
Peace and Democracy Party (BDP)		29
ParticipatoryDemocracy Party (KADEP)		1
Total	550	549

*Source:*IPU

The United Kingdom

Organization of parties in the House of Commons is long-established and central to the communication between party leaders and supporters in the House within the existing opposition mode of executive-legislative relationship[493]. PPGs in the House of Commons are called 'parliamentary parties'[494]. Each PPG consists of MPs listed on the particular party's 'whip', document, which content is a responsibility of political parties themselves[495]. Unlike in Germany, Slovakia or Turkey, there are no legal rules regarding

[493] Philip Norton, "The United Kingdom: Exerting Influence from Within," in *Parliamentary Party Groups in European Democracies: Political Parties Behind Closed Doors*, ed. Knut Heiar and R. A. Koole (London; New York: Routledge/Ecpr Studies in European Political Science 2000). p. 39.
[494] Ibid. p. 39.
[495] Ibid. p. 39.

formation and membership of PPGs[496]. In practice, once elected to the Commons, MPs receive the whip of the party under which they were running in elections. The whip may be withdrawn as an MP as a disciplinary measure by the party, or on the other hand, the MP may resign as the whip as a protest to adopted policy measures. In general, there is no requirement for an MP to be a member of a PPG[497]. After resignation, an MP can join another PPG, or stay independent, and because of lack of formal regulation of PPGs, two MPs can actually establish their own PPG. There is but one requirement concerning the formation of PPGs, which is the appointment of the MP who will act as a whip[498].

Party whips, originally known as 'whippers in' appeared for the first time in the 18th century, and their name is derived from foxhunting parlance. Their role is to make sure that supporters of the party turn up and vote. PPGs in the House of Commons are typical with their unity[499].

3.2.4 Conclusion: Electorate without tools to hold MPs accountable

The second query of the formalistic approach was into the issue of accountability, where I discussed the nature of the parliamentary mandate, recall of representatives and the role of parliamentary party groups (PPGs). Although representatives shall be free, de facto they may be restricted by the institutionalization within parliament in the form of PPGs. Representatives are not obliged to be part of PPGs in order to sit in parliaments; however,

496 Ibid. p. 39.
497 Ibid. p. 40.
498 Ibid. p. 40.
499 Ibid. p. 47.

as was displayed above, in all four countries the procedural and institutional position of PPGs is better than of individual representatives.

Overall, voters do not have an option in parliamentary democracies to hold their elected representatives accountable, with the exception of elections. Even elections are a problematic accountability tool in PR electoral systems, where voters are presented with party lists, and thus the responsiveness will come through rejection of whole party. Recall is a possibility of how to provide citizens with an accountability tool; however, recall would be a possible design for electoral systems with constituencies. Moreover, without connecting the recall to a binding mandate, recall remains only a disciplinary tool. Citizens, as for instance suggested in the United Kingdom, would not be able to recall a parliamentarian if he/she will not follow what was promised.

Chapter 4: Representative Function: Descriptive Approach

In descriptive representation, a representative resembles those represented. For instance, women MPs represent women constituents, ethnic origin MPs represent ethnic minorities and so on. Throughout the 20th century special efforts were made to include into representative bodies groups that were previously excluded, including women and ethnic groups[500].This chapter analyses the position of women and minorities in the parliaments of Germany, Slovakia, Turkey and the United Kingdom, as a part of the query on how representative these four parliaments are.

Descriptive representation has little support and is often challenged by or linked with substantive representation[501]. Substantive representation means that MPs act in the interest of the represented in a responsive manner and the important element is what MPs do, rather than who they are. This would mean that women or minorities' interests would be equally well represented by men or majority MPs. This was also the position taken by Pitkin, who argued that substantive representation is more important than a descriptive one[502].

On the other hand, feminists challenge this argument and claim that first, there is a numerical under-representation of women in politics and secondly, they claim the

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500 Mala Htun, "Is Gender Like Ethnicity? The Political Representation of Identity Groups,"(2004), http://www.quotaproject.org/other/HtunPOP2004.pdf. (Last Accessed September 23, 2013).

501 "Will Kymlicka writes, "[Tlhegeneral idea of mirror [descriptive] representation is untenable" (1995, 139) and Iris Marion Young concurs: "Having such a relation of identity or similarity with constituents says nothing about what the representative does" (1997, 354)". IN Jane Mansbridge, "Should Blacks Represent Blacks and Women Represent Women? A Contingent "Yes"," *The Journal of Politics* 61, no. 3 (Aug 1999).
Karen Celis and Sarah Childs, "Introduction: The Descriptive and Substantive Representation of Women: New Directions " *Parliamentary Affairs* 61, no. 3 (2008).

502 Celis and Childs, "Introduction: The Descriptive and Substantive Representation of Women: New Directions ".

relationship between the descriptive and the substantive components of representation – being a woman enables acting for women[503]. So basically what feminists claim is that when women are present in politics, they are more likely to act for women than men, although there is no guarantee for that[504].Celis and Childs concluded that "… whilst many of the authors reject the assumption that women's political presence is sufficient for substantive representation of women, they agree that women's political presence is a necessary end, in and of itself...women's unequal presence *should* trouble democrats and it *must* trouble feminists.[505]"

I agree with relevance of descriptive approach and thus I chose the descriptive approach for this chapter, where I analyze the position of women and members of ethnic/national minorities in parliaments as to their presence there. Furthermore, in this chapter I analyze the legislative and the constitutional framework and approach taken to improve the presence of women and minorities as disadvantaged groups in parliaments.

4.1 Women in Parliaments

One would expect that the fair representation of women in European parliaments would not be an issue for a dissertation written in the 21st century as women received suffrage in European countries gradually from the beginning of the 20th century. The need to address this matter, however, is a result of the significantly poorer percentage of women compared to men in legislatures and subsequently in governments as well[506]. According

503 Ibid.
504 Ibid.
505 Ibid.
506 Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*.p. 19.

to the data of the Inter-Parliamentary Union, the overall percentage of women legislators in the world's parliaments was only little more than 19 percent as of December 2011(see Table 17)[507]. The average for European parliaments (OSCE countries excluding Nordic countries) is around 20 per cent; the highest number of women in legislatures is in Nordic countries (over 42 percent) and the lowest in Arabic countries (around11 percent)[508]. And although in the past decade the situation of representation of women was slowly but continuously improving, women are still underrepresented in national legislatures (see Table 17).

Table 17: Average representation of women 1997-2011

	World Average (%)	OSCE countries (%)	Nordic Countries (%)	Arab countries(%)
Dec 2011	19,5	20,8	42,0	11,3
Dec 2006	16,8	17,4	40,8	9,3
Dec 2001	14,0	14,6	39,0	4,6
Dec 1997	11,3	12,3	35,9	3,7

Source: IPU, Women in National Parliaments database (since 1997)[509]

Several international instruments were adopted to enhance the participation of women in parliament[510]. In the European region the main role has been played by the European Union, which has made gender equality in general one of its main principles. It's approach goes beyond simple promotion of equality of opportunities, and supports

507 Ibid. p. 19.

508 "Women in National Parliaments Database," Inter Parliamentary Union, http://www.ipu.org/wmn-e/arc/world311211.htm. (Last Accessed September 23, 2013).

509 Ibid.

510 United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 18 December 1979 (Article 7); 1984 the European Council adopted a non binding Recommendation on the Promotion of Positive Action for Women calling for adoption of positive actions in Member States

equality of outcomes[511]. In spite of that, however, the improvement of the representation of women in parliaments has been very slow.

4.1.1 Causes of under representation

Women constitute half of the population of the world and each country. Women, according to the IDEA, encounter several obstacles preventing them from participation in the electoral process and entering parliament, such as political, socio-economic access, or ideological and psychological barriers[512].

With regard to political indicators influencing participation of women in politics, research has shown that the PR electoral system is more favorable to the percentage of women becoming parliamentarians than the majority/plurality electoral system[513]. Single member district political parties tend to nominate only one candidate, and they choose him or her in order to maximize their chances, without looking at the gender or minority balance overall. On the other hand, party lists reflect the incentive of political parties to maximize appeal to the electorate by including candidates from all major social backgrounds[514].

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[511] Gender equality is enshrined in Article 2 and 3 of the Treaty on EU, Article 8 of the Treaty of the Functioning of the EU and in Article 23 of the Charter of Fundamental Rights of the EU. 84/635/EEC, [1984]

[512] Julie Ballington, Azza M. Karam, and International Institute for Democracy and Electoral Assistance., *Women in Parliament : Beyond Numbers*, Rev. ed., Handbook Series (Stockholm, Sweden: International IDEA, 2005). p.99.

[513] See: Chapter 8, Pippa Norris, *Electoral Engineering : Voting Rules and Political Behavior* (Cambridge, UK ; New York: Cambridge University Press, 2004); ———, "Women's Legislative Participation in Western Europe." Western Europeanpolitics 8:90-101. ," *Western European Politics* 8(1985).Rob Salmond, "Proportional Representation and Female Parliamentarians," *Legislative Studies Quarterly* 31, no. 2 (2006).Ian McAllister and Donley T. Studlar, "Electoral Systems and Women's Representation: A Long-Term Perspective," *Representation* 39, no. 1 (2002).p3.

[514] Richard E. Matland, "Women's Representation in National Legislatures: Developed and Developing Countries " *Legislative Studies Quarterly* 23, no. 1 (1998a).p. 113; Norris, *Electoral Engineering : Voting Rules and Political Behavior*. p. 189.

The IDEA also identified the 'masculine model' of political life to be another obstacle to women's representation[515].

As to socio-economic aspects, working outside of the house was found to have a significant influence on women's political activity[516]. Level of education is also an important determinant, and it was several times suggested that increasing the university level of education would expand women candidates[517].Ideological and psychological barriers would include gender ideology, but also the perception on roles of both genders, lack of confidence of women, and the perception that politics is dirty[518]. In a nutshell, there are several reasons of women's underrepresentation in parliaments. The perception of the role of women is deeply rooted in the culture and one has to keep this in mind when addressing the issue of lack of women in parliaments.

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[515] Julie Ballington and Azza M. Karam, *Women in Parliament: Beyond Numbers a Revised Edition* (2005). p. 99.

[516] "It seems from these data that a specific group of women – those who are employed outside the home – has largely managed to overcome the traditional norms which have dissociated women from politics by causing them perceive themselves as politically impotent" in Kristi Anderson, "Working Women and Political Participation, 1952-1972 " *American Journal of Political Science* 19(1975).p. 444.

"… [w]omen are disadvantaged when it comes to the resources that facilitate political activity." Kay Lehman Schlozman, Nancy Burns, and Sidney Verba, "Gender and the Pathways to Participation: The Role of Resources," *The Journal of Politics* 56, no. 4 (1994).

"The situational variable of participation in the work force, however, does have an impact on participation, particularly on participation of the less educated." IN Susan Welch, "Women as Political Animals? A Test of Some Explanations for Male-Female Political Participation Differences," *American Journal of Political Science* 21, no. 4 (1977). p. 728.

[517] Robert Darcy, Susan Welch, and Janet Clark, *Women, Elections, and Representation* (1994).

[518] Ballington and Karam, *Women in Parliament: Beyond Numbers a Revised Edition* p.99; In the interviews during the research of participation of women in post communist CEE region authors found out that: "… respondents were of the view that the main barriers to women's political representation resided with women themselves. They identified these barriers as lack of confidence, problems in reconciling work and family life, and gender stereotyping." In Yvonne Galligan and Sara Clavero, "Prospects for Women's Legislative Representation in Postsocialist Europe: The Views of Female Politicians " *Gender and Society* 22, no. 2 (April 2008).p. 150.

4.1.2 Instruments to increase the number of women representatives

There are several suggestions how to solve the problem of low female representation in parliament, keeping in mind the specific cultural and political features of each country. Instruments can be direct or indirect. As for indirect instruments, it was mentioned that some electoral systems are more favorable to women representation than others: statistically, PR electoral systems with high district magnitudes result in more female MPs than any plurality/majority electoral system[519]. Thus changing electoral rules may indirectly lead to a higher percentage of women in legislatures.

Instruments that shall have direct impact could be divided into passive and positive actions[520]. *Passive actions* would be campaigns, speeches, and conventions, the goal of which is to raise awareness concerning the need of higher participation of women in legislative bodies, addressed not only to men, but also to women. *Positive (affirmative) actions* would represent statutory or voluntary actions taken by government or political parties to combat the situation. It can have the form of legal candidate quotas, reserved seats in parliaments, or voluntary quotas introduced by political parties themselves[521]. Quotas can be set at different levels; usually it would be around a critical minority, which is 30 – 40 percent[522]. In addition, a double quota ensures not only that a certain

519 Ballington, Karam, and International Institute for Democracy and Electoral Assistance., *Women in Parliament : Beyond Numbers*.p.99.

520 The classification of instruments or strategies is various, however usually involves three following categories, e.g. rhetoric, promotion and guarantees (quotas). This classification is from Sarah Childs, Joni Lovenduski, and Rosie Campbell, *Women on Top 2005: Changing Numbers, Changing Politics?* (Hansard, 2005). p. 24.

521 The state that introduced all three measures is e.g. Korea, as the consequence, the proportion of women in the Korean assembly doubled. In Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*.p. 19.

522 About Quotas at "Quota Project," International IDEA, http://www.quotaproject.org/index.cfm.

percentage of women get on the party lists, but also that they will be fairly distributed in the higher positions[523].

As all measures, quotas have their proponents and opponents. Proponents argue that quotas compensate women for barriers that prevent them from fair participation in a male dominated political system, women have right to equal representation, and the experiences of women are needed in political life. From among the arguments of opponents of quotas, the strongest are that women are given preference over men, and that quotas are essentially undemocratic, as they violate the notion of formal equality, as well as autonomy of political parties[524].

Quotas are one of the fastest and easiest solutions of the problem of lack of women in parliaments. Nevertheless, I agree with opponents of quotas that quotas are essentially undemocratic, and the system of quotas for women seems like a superficial and simplistic solution of a more complex problem.

4.1.3 Concept of parity democracy

Besides instruments that are trying to solve the problem on the surface (quotas), Ruiz and Marin introduced the redefinition of the whole concept of democracy in order to improve participation of women in parliaments. A parity democracy design proposes increasing of participation of women in politics by revisiting and disestablishment of the social-sexual contract, which "constructs the public sphere as a space for the interaction of citizens,

523 About Quotas at Ibid.

524 Interviews conducted with female MPs in CEE region showed they are not in favor of quotas, as it was argued that the change shall be social rather than political. In Galligan and Clavero, "Prospects for Women's Legislative Representation in Postsocialist Europe: The Views of Female Politicians ". p. 165.

conceptualized as independent individuals and as males.[525]"Ruiz and Marin assert that actually parity democracy is an inbuilt notion of the democratic state[526]. Their suggestion is that "by including an equal number of men and women in the public-representative realm, parity democracy provides the basis for the state to cease being the exclusive venue of individuals perceived as independent and allows it to open to dependence—managed mainly by women.[527]"

This approach disregards quotas claiming that they have a negative effect, as men perceive it as undue privilege and women refuse to be seen in politics because of the quotas rather than merits[528].

> *Quotas also create the risk that the traditional, gender-based division of tasks will be reproduced within representative bodies, a division that would ultimately consign women to the ministries, commissions, and committees most involved in dependence issues at the societal level (social affairs, environment, health, education), while reserving the supposedly hardcore issues of politics (economy, national and foreign affairs) for men. Ultimately, under the quota system independence continues to be assumed as the norm, while concessions are made to the representation of the management of dependence as an exception.*[529]

Ruiz and Marin consider parity as an inherent feature of the democratic state if it should be considered legitimate. Together with their argument against quotas, they claim that parity shall not be introduced only as a result of an equality issue, but it should be a

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525 Blanca Rodríguez Ruiz and Ruth Rubio-Marín, "The Gender of Representation: On Democracy, Equality, and Parity," *International Journal of Constitutional Law* 6(2008).

526 In article "Constitutional Justification of Parity Democracy" Marin argues that there are three types of right democracies. The first one, the deliberative democracy model supports quotas, the second one, mirror representative model based on the idea that one social group represents the other; and lastly the parity democracy model. Authors claim that democracy strictly applied cannot be based on anything else but parity model. In Blanca Rodrigues-Ruiz and Ruth Rubio-Marín, "Constitutional Justification of Parity Democracy," *Alabama Law Review* 60, no. 5 (2009).

527 Ibid.

528 Ruiz and Rubio-Marín, "The Gender of Representation: On Democracy, Equality, and Parity."p11

529 Ibid.p11

"structural prerequisite" of a democratic state[530]. Parity will not happen spontaneously, they admit, and propose enforcement in a law if needed[531].

4.1.4 Women in German, Slovak, Turkish and British parliaments

In *Germany* women received passive and active right to vote in 1918. However, on the party level, the Social Democrats (SPD) had suffrage rights for women in their program as early as 1891. The right to vote for women was integrated into the Weimar Constitution in Article 109[532], and in the Basic Law adopted in 1949 in Article 3 (2) stipulating that men and women shall have equal rights. In 1994 section 2 of Article 3 was amended in order to open the door to affirmative action[533]. However, positive actions in Germany are seen as the responsibility of political parties, rather than the state[534].

When it comes to the percentage of women in the Bundestag (see Table 18), the number is considerably higher than the OECD average (20.8 percent).

Table 18: Proportion of women in Bundestag (1994- 2009)

	Total number of MPs	Women vs. Men	Percentage of Women
1994	672	177/495	26.34%
1998	669	207/462	30.94%
2002	603	194/409	32.28%
2005	614	195/419	31.76%
2009	622	204/418	32.80%

Source: IPU election database

530 Ibid.p11

531 Ibid.p11

532 Article 109 of the Weimar Constitution: "In principle, men and women have the same rights and obligations."

533 Article 3(2) of *the Basic Law*, the Article reads as: "Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.

534 Alex Seeland, "European Database: Women in Decision Making: Germany," (August 2000).

The first quotas in Germany were included by Green Party after their establishment in 1980. They applied a 50 percent quota with a zipper system, which means that every odd numbered name on the list is given to a woman[535]. In 1988 the SPD, one of the two major parties, followed the example of Green Party and introduced a flexible quota into their statute requiring in all internal elections at least one-third female candidates[536]. Since 1994 at least 40 percent of all positions within the party have to be filled by women. For the electoral party list the requirement reached 40 percent by 1998[537]. Another major political party, the Christian Democratic Party (CDU), adopted a 1996 quorum of 30 percent for both inner party elections as well as national elections[538]. Christian social Party and Liberals do not want to introduce any measures. The Party of Democratic Socialism (PDS) adopted after 1990 a zipper system and a 50 percent quota such as Green Party. After the initial introduction of quotas by the Green Party, the number of women passed 10 percent and by 2009 rose to 32 percent. During the elections in 2009, official statistics showed that all political parties nominated women candidates close to their own quota.

Women in *Slovakia* received right to vote and to be elected for the first time in 1919, when Slovakia was part of first Czechoslovak Republic. During socialism, a high participation of women in assemblies was secured by quotas[539]. In the last socialist

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535 Meg Russell, *Women's Representation in Uk Politics: What Can Be Done within the Law?* (UCL Constitution Unit, June 2000).p.18.

536 Louise K. Davidson-Schmich, "Gender Quota Compliance and Contagion in the 2009 Bundestag Election," *German Politics & Society* 28, no. 3 (2010).p. 134.

537 Russell, *Women's Representation in Uk Politics: What Can Be Done within the Law?*p.18.

538 Davidson-Schmich, "Gender Quota Compliance and Contagion in the 2009 Bundestag Election."p.134.

539 Alexandra Bitušíková, "(in)Visible Women in Political Life in Slovakia," *Sociologický časopis/Czech Sociological Review* 41, no. 6 (2005). p. 1005.

assembly in Slovakia there were 29.5 percent women[540]. During socialism, women candidates' presence in the parliament was a mere formality, and Bitušíková notes that their impact on decision-making was negligible[541]. The quota system was abolished right after 1989 as a discredited symbol of the previous regime. After the first post communist elections, as happened in all CEE post communist countries, the representation of women in parliaments fell drastically[542].

The number of women during the following last parliamentary elections in 2012 was 16 percent (see Table 19). From political parties that got into parliament, only two political parties had two women in the first ten places on the party list. The current governmental party had woman within the first ten places on its party list.

Table 19: Women in the National Council of Slovak Republic (1998-2012)

	Total number of MPs	Women vs. Men	Percentage of Women
1998	150	19/131	12.66%
2002		29/121	19.33%
2006		24/126	16.00%
2010		23/127	15.33%
2012		24/126	16.00%

Source: IPU election database

As to the public opinion in Slovakia, the debate on the issue of women running in parliamentary elections was first time launched prior to elections in 2002 by women's organizations and female MPs[543]. There have been two unsuccessful proposals for the introduction of electoral quotas for women. The first was presented by MP Eva Rusnáková (SDKU) in September 2001, and it called for a minimum 30 percent quota of

[540] Galligan and Clavero, "Prospects for Women's Legislative Representation in Postsocialist Europe: The Views of Female Politicians ".p. 151.
[541] Bitušíková, "(in)Visible Women in Political Life in Slovakia." p. 1006.
[542] Galligan and Clavero, "Prospects for Women's Legislative Representation in Postsocialist Europe: The Views of Female Politicians ".p. 152.
[543] Bitušíková, "(in)Visible Women in Political Life in Slovakia." p. 1009.

women to appear on the candidate lists for the elections to Supreme Territorial Units; however, it was rejected by parliament.[544]. In February 2002 Minister of Interior Ivan Simko proposed to have every third candidate on the party lists of the other gender. This proposal was rejected by the government and did not reach the deliberation in parliament[545]. In 2003 Jozef Heriban, the Chair of the parliamentary Committee for Equal Opportunities and Status of Women, proposed an identical proposal to Minister Simko's; however, responses from the public were mainly negative[546]. Thus there has been a debate about the lack of women in politics; however, quotas for women were promoted only by individual MPs, and never by whole political parties. What is more, there is not only lack of consensus on quotas for women imposed by the state within political parties, but none of political parties also appear to have a conceptual approach how to improve the number of women in legislature.

Women received right to vote in *Turkey* in the early 1930s. For the first time they were able to run in local elections in 1930 and national in 1935, in which 18 women made it to parliament. Looking at last two decades, however, one can see that in the mid 1990s, the number of women in parliament was negligible. The past two elections of 2007 and 2011, their number raised considerably as compared to previous years (see Table 20).

Table 20: Women in the Turkish Grand National Assembly (1995- 2011)

	Total number of MPs	Women vs. Men	Percentage of Women
1995	550	13/537	2.36%
1999		23/527	4.18%
2002		24/526	4.36%

[544] Ibid. p.1009.
[545] Ibid. p.1009.
[546] Andrea Hajduchova, "Heriban Si Myslí, Že Kvóty Ženám Pomôžu [Heriban Thinks That Quotas Will Not Help Women]," *SME* 28 November 2003.

2007		50/500	9.09%
2011		78/472	14.18%

Source: IPU election database

For more than a decade now women civil organizations have been lobbying for more women in politics and introductions of quotas. In 2006 the UNDP executed a project "Women in Politics" in collaboration with KA-DER, a Turkish NGO, with a goal to raise the participation of women in the TGNA to 17 percent by 2015.

Political parties in Turkey take three different approaches to the issue of women's quotas. Some, especially political parties with low support, have already used quotas[547]. The winner of 2007 and 2011 elections, the representative Justice and Development Party (AKP) argued that although quotas were not embedded in their official program, they were in effect in practice. MP Fatma Şahin from Gaziantep (AKP) said that the AKP considers women in politics important, and although there are not official quotas, the internal aim was to reach 20 percent female representation[548]. The People's Republican Party (CHP) and the Nationalist Movement Party (MHP)are against the establishment of quotas for women, the CHP arguing judicial constraints and the MHP declared its position against any affirmative action[549].

The reality is that after the election in 2011, the number of women in the Turkish Grand National Assembly raised to 78. The AKP had 78 (45 elected) women on their list of Member of Parliament candidates, the CHP 109 (19 elected), the MHP 68 (3 elected) and

547 Political parties running in 2007 elections: Democratic Society Party (DTP), Freedom and Solidarity Party (ÖDP) and Socialist Democracy Party (SDP)

548 Ayca Orer, "Political Parties Lack Gender Awareness," *Bianet* 8 March 2007.

549 Ibid.

the Labour, Democracy and Freedom Block had 13 (11 elected)[550]. Nevertheless, the percentage of women in parliament is still very low.

Women in the *United Kingdom* received the active and passive right to vote in 1918 with age restrictions (women over 30 years), which were lifted in 1928 (lowered to the age of 21). The MPs in the House of Commons are elected by the FPTP system. Women havenot been selected as candidates in a high number of constituencies, and furthermore, in many constituencies there are so called 'safe seats', in which the voting is "well established and static"[551]. Since 1918, only 291 women have been elected as MPs in the Commons, which constitutes only 6% of all MPs over the period[552].

Elections to devolved assemblies are governed by different electoral systems, which result in a higher number of women in parliament, as can be seen in Table 6.Until the elections in 1997, women representatives constituted hardly 10 percent (see Table 21)[553]. The Labour Party, in order to increase this number, used all-women short lists (AWS) in 1997 in half their 'winnable' seats[554]. This resulted in a substantial increase of women in the Commons; however, the use of AWS met with criticism, and it was challenged in an employment tribunal. The employment tribunal found a breach of the Sex Discrimination

550 Burcin Belge, "Gender Imbalance in New Parliament," *Bianet* 4 June 2011.

551 Penny Spelling and Liz Bavidge, "European Database: Women in Decision Making: The United Kingdom," (August 2000).

552 Richard Kelly and Isobel White, "All-Women Shortlists," (Parliament and Constitution Centre, 21 October 2009)., p. 3.

553 Ibid.

554 The Labour Party introduced first internal quotas in late 80s. Following the failure in 1993 elections, in which party did not secure enough of women's vote, the party decided that the more radical measures are needed.

Act 1975 (the Jepson Case)[555]. The selection of candidates was not the issue, but section 29 (1) of the mentioned Act prohibits discrimination in the field when it comes to services to the public[556]. The tribunal came to conclusion that the women-only shortlist method violated the Act, as the selection of candidates is an authorization mentioned in the Section 13(1) of the Act for the profession of MP[557]. Thus, for the elections in 2001 the AWS could not be used by the Labour Party.

Following 2001 elections without any affirmative action, pressure from Labour women MPs as well as extra parliamentary pressure groups led to the adoption of the Sex Discrimination (Election Candidates) Act in 2002, which amended the Sex Discrimination Act of 1975 and allowed political parties to use all-women shortlists for selection of candidates for elections[558]. The law was adopted with a sunset clause, according to which it would expire in 2015. The Equality Act 2010 extended the time of the application of the provision until 2030[559]. The Labour Party was the only party that used positive (affirmative) action besides passive ones. In 30 constituencies the Labour Party used the AWS[560].

Table 21: Women in the House of Commons (1992-2010)

	Total number of MPs	Women vs. Men	Percentage of Women
1992	651	60/591	9.22%
1997	659	120/539	18.21%
2001	659	118/541	19.81%

555 Richard Kelly and Isobel White, "All-Women Shortlists," (Parliament and Constitution Centre, 21 October 2009).p. 3. Jepson and Dyas-Elliott v the Labour Party and others [1996] IRLR 16

556 Richard Kelly and Isobel White, "All-Women Shortlists," (Parliament and Constitution Centre, 21 October 2009).p. 3.

557 Ibid. p. 3.

558 For parliamentary elections, elections to the European Parliament, elections to the Scottish Parliament, to the National Assembly for Wales and most of local elections. Childs, Lovenduski, and Campbell, *Women on Top 2005: Changing Numbers, Changing Politics?* p. 28.

559 *Equality Act 2010*.

560 ———, *Women on Top 2005: Changing Numbers, Changing Politics?*p. 30.

2005	646	128/518	31.76%
2010	650	143/507	22.00%

Source: IPU election database

4.1.5 Conclusion: Not representative with respect to women

Based on the data presented in this section, one can see that the four researched parliaments are not representative from the descriptive point of view with regard to participation of women in parliaments. However, it was still worth looking closer at researched jurisdiction, where we could see different approaches available and chosen by states. Germany has been dealing with this issue through political parties, when one party's introduction of quotas on the party level created enough pressure to push other political parties to eventually follow the same path. Except for a few public debates, in Slovakia and Turkey there was no official attempt to introduce any compensatory tools for the number of women in politics, whether on the state or party level. The numbers in both countries are below the OECD average, although each general election they seem to be slowly improving. Lastly, in the United Kingdom, the leader of change the last decade has been the Labour Party. In 1997 the Labour Party used so called all-women short lists (AWS), which meant that in "winnable" districts there were only female candidates running. After initial hurdles the AWS became the lawful option to be used by the political parties if they so choose.

To sum up, we cannot talk of representative parliaments from the gender point of view; however, the situation has been steadily improving. At least when it comes to four researched states in this dissertation, quotas on the national level are not seriously considered. Good practice seems to be present in Germany and the United Kingdom,

where political parties are the motor of change without any legal obligations, and can serve as a good example for Turkish and Slovak political parties.

4.2 Representation of National Minorities

The present chapter's main research question is what the position of national minorities in parliaments is. The reason to look into this issue is that if parliaments are largely disproportional in general (in electoral part section) or when it comes to minorities, we can't speak of representative function of parliaments[561].

4.2.1 Consociational vs. integrationist conception

There are two major competing conceptions in relation to the protection of minorities that states can adopt. First, the *consociational approach* gives emphasis to group rights and requires particular constitutional provisions to be adopted to secure the participation of minorities in public life in order to secure peaceful coexistence[562]. Developed by Lijphart, this theory suggests that institutional arrangements like the type of electoral system that may lead to stable governments in the divided societies[563]. For example, the PR system is more effective in the case of minorities, as it reflects proportionally the support of political parties[564]. Second, the *integrationist conception* seeks to establish the system in which all citizens take part equally, focusing on individual rights[565]. It encourages people belonging of different groups to cooperate and establish multi-ethnic parties.

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561 Beetham, Lolo, and Inter-parliamentary Union., *Parliament and Democracy in the Twenty-First Century : A Guide to Good Practice*.

562 Yash Ghai, " Public Participation and Minorities," (Minority Rights Group International, 2003). p. 3; Norris, *Electoral Engineering : Voting Rules and Political Behavior*. p. 209.

563 Norris, *Electoral Engineering : Voting Rules and Political Behavior*.p. 209.

564 "The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note," (OSCE, 1999).par. 9.

565 Ghai, " Public Participation and Minorities." p. 3.

4.2.2 National minorities definitions in Germany, Slovakia, Turkey and the UK

Before discussing states' possible approaches to national minorities for the purposes of participation in parliaments, one has to ask the question how national minority is defined by each country and what is the scope of this definition. Three out of four countries: Germany, Slovakia and the United Kingdom adopted Framework Convention for the Protection of National Minorities. The Convention does not contain a definition of the national minority. Thus it is up to parties to the Convention to define it.

The *German* Basic Law does not mention specifically minority or national minority and their rights. The protection of minorities is subsumed under Article 2 (1), which in general stipulates a right to free development of personality, based on which the identification with national minorities is everybody's personal decision, and it is neither registered nor contested by state authorities[566]. In Germany, however, only those groups that meet five criteria are considered to be 'national minorities': 1. members of these groups are German nationals; 2. They have their own identity, they differ from the majority population with their language, culture, and history; 3. They wish to maintain this identity; 4. They are traditionally resident in Germany; 5. They live in the traditional settlement areas[567]. Thus the Convention applies to Danes, Frisians, Sorbs, Sinti and Roma. By this definition immigrants and non-citizens are not considered to be a national minority.

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566 Article 2 (1) of *the Basic Law* stipulates that "Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law".

567 "Third Report Submitted by Germany Pursuant to Article 25 Par. 2 of the Framework Convention for the Protection of National Minorities," (The Council of Europe, 9 April 2009).; par. 005.

The *Slovak* Constitution guarantees the right to freely choose the nationality (Article 12) and the comprehensive development of citizens belonging to national minorities or ethnic groups (Article 34). There is, however, neither legal definition of the term 'national minority' nor a system of recognition of national minorities. The Constitution provides for basic protection of human rights "regardless of sex, race, skin color, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be denied their legal rights, discriminated against or favored on any of these grounds"[568].

In *Turkey*, the only document regulating the question of minorities is the Lausanne Peace Treaty of 1923. Turkish Republic is based on unitary conception and so far all Turkish constitutions were written on this basis[569]. To be more precise, Article 3 of the Turkish Constitution states that Turkey "with its territory and nation, is an indivisible entity". What that means in practice is that although there are different ethnic, religious or linguistic minorities, they are considered to be part of national unity[570]. Furthermore, the Constitution says that "[e]veryone bound to the Turkish state through the bond of citizenship is a Turk"[571]. Thus, in Turkey, there is the state concept of Turkishness that is not based on ethnicity or race, and does not recognize constitutionally ethnic minorities. The only legal document recognizing minorities is the Lausanne Treaty, according to

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568 Article 12(2) of the of *Ústava Slovenskej Republiky [Constitution of the Slovak Republic]*.

569 Unitary conception means there is a presumption that the nation is indivisible; it suggests policies of assimilation. The approach not only denies minorities and their rights, but also punishes those who disagree with this conception.

570 Mustafa Baysal, "National Minorities in the Turkish Law," in *La protecció de les minories i els Tribunals Constitucionals* (Andorra2003).

571 Article 66(1) of *the Constitution of Turkey*

which only non-Muslim nationals are national minorities, which for Turkey meant Armenian and Greek Christians and Jews[572].

In *the United Kingdom*, the term national minority is not legally defined as well as in Slovakia. All minorities are protected by the Race Relations Act 1976, which operates with the term 'racial group' and defines it as "a group of persons defined by reference to color, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.[573]"

To sum up, Slovakia and the United Kingdom seem to have the same approach to minorities. Minorities in both countries are not legally defined, but they are protected by general constitutional provisions (Slovakia) or legal provisions (UK). Germany has a restrictive definition of national minorities, which, as will be shown in the next section, has an impact on the representation of minorities in parliament. Lastly, Turkey is the main outlier out of four researched jurisdictions, because the Turkish state conception does not recognize the existence of minorities, and Turkey does enforce this concept in practice.

4.2.3 National Minorities in German, Slovak, Turkish and British parliaments

Germany

German restrictive definition of national minorities under the Framework Convention for the Protection of National Minorities means that merely Danes, Sorbs, Frisians, Sinti and

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572 The scope of 'non-Muslim' does not mean that all other religions are included. For example the definition does not include Alevis, but also other smaller Christian groups like Syriacs, Caldeans, or Assyrians were excluded from protection. For more see e.g. Zehra F. Kabasakal Arat, *Human Rights in Turkey*, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2007).p. 35 -39.

573 Article 3(1) of *The Race Relations Act 1976*

Roma are recognized by Germany as national minorities. The Danish minority lives in the northern part of Schleswig-Holstein, which is their traditional settlement area[574]. The estimations are that there are approximately 50,000 of them. In the case of the Sorbian minority, estimates are that there are around 60,000 Sorbs, who are settled in Saxony and Brandenburg[575]. Frisians are located in Lower Saxony and the estimations are that there are 70,000[576]. The German Sinti and Roma population is estimated to be up to 70,000 people and live in capitals of Lander as well as in smaller towns[577].

Article 21 of the Basic Law ensures a right to establish a political party freely in accord with democratic principles[578]. Members of minorities and ethnic groups have a right to vote and be elected. Political parties of national minorities are exempted from the 5 percent threshold for the elections to the German Bundestag[579]. In addition, parties of national minorities are exempted from the requirement of a minimum amount of votes to qualify for state funding and from the requirement of a minimum 200 signatures for constituency nominations[580].

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574 "Third Report Submitted by Germany Pursuant to Article 25 Par. 2 of the Framework Convention for the Protection of National Minorities." par. 0031.

575 Ibid. par. 0036.

576 Ibid. par. 0038.

577 Ibid. par. 0050; however according to the Minority Rights Group International there is approximately 170,000–300,000 Roma in Germany. In "World Directory of Minorities and Indigineous People: Germany," (2007).

578 Article 21 of *The Basic Law.*

579 Article 6 (6) of *The Federal Elections Act*.; The Sorbian minority is moreover exempted from Land threshold in Brandenburg, and Danish minority in Land elections in Schleswig-Holstein.

580 Article 20 (2) of *the Federal Electoral Act.*

Germany has not been collecting statistical data based on ethnic criteria[581]. However, besides officially recognized national minorities, there are other ethnic minorities that do not meet the requirements of the definition[582]. According to estimates, there are 1.9million ethnic Turks and Kurds, 1.1 million former Yugoslavs, around 600 thousand Italians, 350 thousand Greeks, 320 thousand Poles, and other ethnic minorities living in Germany[583]. For the purpose of political rights it is important how many of these people received German citizenship. Estimations say that 660,000 Turks have taken up German citizenship since 1972[584]. This makes them the most numerous ethnic minority living in Germany, however, outside the protection of the Framework Convention.

Slovakia

The census of 2011 recorded 458,467 Hungarians, which makes 8.5 percent of the whole population of Slovakia, which is 1.2 percent less than in the census of 2001 and 2.3 percent less than in 1991. Besides Hungarians, the other significant ethnic minority in Slovakia is the Roma minority, which according to last census is 2 percent; however

581 "Third Report Submitted by Germany Pursuant to Article 25 Par. 2 of the Framework Convention for the Protection of National Minorities."

582 When it comes to post war migration, first migrants in West Germany were ethnic Germans from Poland, as well as East Germany. Their number reached 9 million by the time the Berlin Wall was built up. Both, West and East Germany were lacking industrial work force. West Germany turned to Yugoslavia, Italy, Greece, Spain, Portugal, Tunisia and especially Turkey to recruit guest workers (*Gastarbeiter*). East Germany employed workers from Vietnam, Mozambique, Angola and Cuba. Plan was to invite these workers temporarily, and it was not desired that these workers would come with their families. The primary immigration was halted in 1973. With time, family reunification increased, and led to community of non-citizens in Germany. Some *Gastarbeiter* are now German citizens. IN Frauke Miera, "Migration Citizenship Education: Immigration to Germany,"(2008), http://migrationeducation.de/22.0.html.

583 For instance Jews (est. 103,000), Vietnamese (87,207), Spanish, Tunisians, Portuguese and Mozambicans total 285,792. "World Directory of Minorities and Indigineous People: Germany."

584 Judy Dempsey, "Greens in Germany Pick Son of Turks as Leader," *The New York Times* 16 november 2008.

already estimations in 2001 were indicating the number of Roma between 350,000 and 500,000, which would be around 10 percent (Table 22)[585].

Table 22: Citizens of Slovak Republic according to census in 2011, 2001 and 1991

	2011		2001		1991	
	abs.	v %	abs.	**v %**	abs.	**v %**
Total	5 397 036	100,0	5 379 455	100,0	5 274 335	100,0
Slovak	4 352 775	80,7	4 614 854	85,8	4 519 328	85,7
Hungarian	458 467	8,5	520 528	9,7	567 296	10,8
Roma	105 738	2,0	89 920	1,7	75 802	1,4
Other*		0,6		0,4		2,0
Not specified	382 493	7,0	54 502	1,0	8 782	0,2

** Ukrainian, German, Polish, Croatian, Srbian, Russian, Jewish, Moravian, Bulgarian, including not specified*
Source: Slovak Statistical Bureau (http://portal.statistics.sk/files/tab-10.pdf)

At present there are six Hungarian parties registered with the Ministry of Interior. So far, the most successful Hungarian political party has been the Party of Hungarian Coalition, which was part of the ruling coalition between 1998-2006. In the last elections in 2012, however, the Party of Hungarian Coalition did not receive more than 5 percent of the votes (4.28 percent)[586]. Only one newcomer (established in 2009), the political party *Most–Hid*, which claims to be representing Slovaks as well as Hungarians and all other ethnic minorities, received 6.89 percent. So in the new parliament, there is no pure Hungarian political party. The striking fact about the elections in 2012 is that Hungarian political parties won only in two counties. The rest of the south of Slovakia with a predominantly Hungarian minority was taken by the ruling SMER, and Hungarian parties came second or third.

[585] "World Directory of Minorities and Indigenous People: Slovakia," (2007), http://www.minorityrights.org/3533/slovakia/slovakia-overview.html.
[586] In 2010 elections, SMK received 4.33% of the vote, in 2006 elections it was 11.6% of the vote.

Roma have their political parties, but no Roma political party has made it to parliament yet. Currently, there are six registered Roma political parties[587]. What is shocking is that according to the registry administered by the Ministry of Interior, 12 Roma political parties are in process of liquidation. Split votes may be a reason for the failure of Roma political parties to cross over the 5 percent electoral threshold, although the more probable reason is that Roma votes are often bought by local politicians[588].

For the purpose of general parliamentary elections, it can be argued that Slovakia endorses the integrationist theory. There are no special constitutional arrangements in order to accommodate ethnic or any other minorities. The proportional electoral system allowing preferential votes, however, contributes to the balanced representation. So overall, besides the electoral system, which results in proportional representation, there are no other specific steps taken. The same electoral rules apply to all minorities wishing to participate in elections.

Turkey

Due to the unitary concept of the state, Turkey does not officially recognize minorities and thus does not ask about ethnicity in the census. As was mentioned, the only minorities Turkey does recognize are Armenian Christians, Rum (Greek) Christians and Jews. De facto, however, the concept of the unitary state has not given any rights to any minorities in Turkey. Minorities have been denied basic rights like the use of education in

587 Register of parties: http://portal.ives.sk/registre/zoznamPS.do

588 *"Rómom Ponúkali Za Ich Hlas Tri Eurá [Roma Were Offered Three Euro for Their Vote]," Pluska 18 June 2010.; "Rómom Vraj Núkajú 8 Eur Za Hlas Vo Voľbách [Allegedly Roma Were Offered 8 Euro for Their Vote in Elections]," (11 June 2010).*

their mother tongue, and not speaking with official representation in parliament, which has been almost impossible due to the Constitution and the Law on Political Parties.

The largest and the most politically active minority in Turkey are the Kurds, with estimations that they make up to 20 percent of the population. Not speaking of ongoing armed conflict, I will discuss here only the legal possibility of Kurdish political parties to enter parliament. There are two main sets of problems such a political party will face: 1. the right to establish and maintain a political party, and 2. the existing electoral system.

First, the regulation of political parties is generally stated in Articles 68 and 69 of the Constitution and in Law No. 2820 on Political Parties. According to Article 68 of the Constitution, "[t]he statutes and programs, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation...". And no political party representing a minority can face this challenge, as the mere existence of the minority is contrary to "indivisible unity of the nation" of Turkey. The Law on Political Parties in Article 80 further specifies that "[p]olitical parties shall not aim to change the principle of the unitary state on which the Turkish Republic is founded, nor carry on activities in pursuit of such an aim"[589]. Moreover, Article 81 of the same law reads as follows:

> *Political Parties shall not, a) assert that there exist within the territory of the Turkish Republic any minorities based on differences relating to national or religious culture or religious sect or race or language, b) aim to destroy national unity by proposing, on the pretext of protecting, promoting or disseminating languages or cultures other than Turkish to create minorities on the territory of the Turkish Republic or to engage similar activities . . .*[590]

589 *Law No 2820* adopted on 26 April 1983

590 *Law No 2820* adopted on 26 April 1983, translation taken from article Olgun Akbulut, "The State of Political Participation of Minorities in Turkey – an Analysis under the Echr and the Iccpr," *International Journal on Minority and Group Rights* 12(2005).p. 375.

The Constitutional Court takes these legal restrictions seriously, which is supported by 11 dissolutions since 1991 on the accusations that they are a threat to national unity and integrity[591]. Altogether the Constitutional Court dissolved 28 political parties since it was established by the Constitution of 1961[592].

Secondly, the electoral system, which sets a ten percent threshold and requirement of registration in half of Turkish provinces is the first hurdle the Kurdish (or any locally based minority) has to overcome in Turkey if it wants to make it into parliament. So although Kurdish political parties have had overwhelming support in the southeast, they could not make it to parliament. Kurdish MPs can reach parliament as independent candidates, as in this way they are exempted from the threshold requirement. However, the position of independent candidates is much disadvantageous as opposed to political parties when it comes to media or distribution of the tickets at the border polling stations[593]. Following last elections 22 Kurdish candidates were elected as independents. In parliament they formed a parliamentary party group. Minority rights groups reported that after the criticism that there are no non-Muslims in parliament; the AKP placed four

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591 1. *United Communist Party of Turkey* case, 16 July 1991, no. E. 1990/1, K. 1991/1,
2. *Socialist Party* case, 10 July 1992, no: E. 1991 /2, K. 1992/1,
3. *People's Labor Party* case, 14 July 1993, no: E. 1992/1, K. 1993/1,
4. *Socialist Turkey Party* case, 30 November 1993, no: E. 1993/2, K. 1993/3,
5. *Freedom and Democracy Party* case, 23 November 1993, no: 1993/1, K. 1993/2,
6. *Democracy Party* case, 16 June 1994, no: E. 1993/3, K. 1994/2,
7. *Socialist Union Party* case, 19 July 1995, no: E. 1993/4, K. 1995/1,
8. *Democracy and Progress Party* case, 19 March 1996, no: E. 1995/1, K. 1996/1,
9. *Labor Party* case, 14 February 1997, no: E. 1996/1, K. 1997/1,
10. *Democratic Mass Party* case, 26 February1999, no: E. 1997/2, K. 1999/1,
11. *Democratic People's Party* case, 13 March 2003, no: E. 1999/1, K. 2003/1

In Ibid.

592 Ibid.

593 *Yumak and Sadak V. Turkey*, *Application No. 10226/03*, *Grand Chamber Judgement*.

Alevis on their party list[594]. So one can say that situation has been improving, however, it is still insufficient.

The United Kingdom

As mentioned above, national minorities are not a term used in the United Kingdom. National minorities are part of the concept of racial group defined in the Racial Relations Act 1976. There are various racial groups in the United Kingdom due to the British colonial past. Besides Scots, Welsh and Northern Irish, who have their own devolved assemblies now, there are Irish as the largest non-British minority, then Indians 1.05 million (1.8 percent), Pakistanis 747,285 (1.3 percent), Afro-Caribbeans 565,876 (1.0 percent), Black Africans 485,277, Bangladeshis 283,063, Chinese 247,403 and Roma/Gypsies 90,000 (2001 Census). The Irish have had free access to the UK, and since both countries are in the European Union, Irish as well as nationals of other EU countries have the right to live and work in the UK, and constitute now over half of the British foreign population[595].

The first MP elected who belonged to an ethnic minority was Mancherjee Bhownaggree for the Conservative Party in 1895[596]. However, it was not until 1987 when the first four post war ethnic minority MPs were elected to parliament[597]. Since 1987 the number of non-white MPs has slowly risen to six in 1992 (with 5 Labour and 1 Conservative), nine

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[594] Mousa Karami, "World Directory of Minorities and Indigenous People: Turkey,"(November 2011), http://www.minorityrights.org/?lid=4387&tmpl=printpage. (Last Accessed on September 24, 2013).

[595] Philip Hosking, "World Directory of Minorities and Indigenous People: The United Kingdom,"(July 2012), http://www.minorityrights.org/?lid=5402. (Last Accessed on September 24, 2013).

[596] Richard Cracknell, "Ethnic Minorities in Politics, Government and Public Life," (The House of Commons, Social and General Statistics Section, 5 January 2012).p.3.

[597] Ibid. p.3.

in 1997, twelve in 2001 (all from the Labour Party), fourteen in 2005 (12 Labour and 2 Conservative), and 26 in 2010 (16 Labour and 11 Conservative).After elections in 2010, the number of minority MPs increased to 26. In 2010 elections, the first three Muslim female MPs have been elected, all of them Labour candidates. So far, all ethnic minority MPs have been either Labour (15) or Conservative (11).

One would expect a higher number of ethnic minority MPs in parliament in the UK, as they welcome minorities, especially from their former colonies. If the composition of parliament was proportional to the ethnicity of the population, there would have to be 78 minority ethnic MPs. Legally, however, there are no restrictions to minorities to enter parliament.

4.2.4 Conclusion: Not representative with respect to minorities

Looking at Germany, Slovakia, Turkey and the UK, it is interesting to see different attitudes to minorities that reflects themselves on representation of minorities in parliament. First, Germany has a consociational approach, as on the federal level and in some states the electoral barrier is lifted for political parties of national minorities. However, the biggest ethnic minorities in Germany, Turks, are not considered to be a national minority, and members of these ethnic groups do not receive any preferential treatment.

Slovakia and the UK, as was mentioned at the end of the previous section, have a similar approach in the sense that there is no definition of national minorities, and citizens can be elected to parliaments as any others. This is the integrationist approach. However, there are more ethnic minority representatives in Slovak parliament than in the British one.

What makes difference is the nature of electoral system. While in Slovakia, thanks to the PR electoral system, Hungarian political parties were able to get into parliament and have been even part of three ruling coalitions so far, in the UK this is not the case. First of all, the FPTP prefers the two party system and so minority political parties are not likely to succeed. Secondly, in one-member constituencies, members of ethnic minorities are disadvantaged in the same way as women.

Turkey is a completely different story. In terms of electoral systems, Turkey can easily be compared to the other three countries. However, going deeper and taking into consideration all the restrictive legal rules when it comes to minorities, one has to conclude that Turkey denies equal rights of representation to minorities on its territory. I used the word equal on purpose.

Conclusions

Assessment of representation is a rather dubious task, as laws do not provide clear guidance to what a representative assembly shall look like. Academics, like Pitkin, offer us various perspectives on representation. Looking at two of them, formalistic and descriptive type of representation, we can in some cases, as for example in case of the United Kingdom and Turkey, conclude that they are not representative either from the formalistic, or from the descriptive point of view. Actually, none of the researched assemblies is descriptively representative. From the formalistic point of view, although the German and Slovak electoral systems give a slight advantage to major winners, it could be argued that they are representative.

In a second part of this chapter I took the second approach to representation mentioned by Pitkin, namely the descriptive approach, and focused on women and minorities in parliaments, to see if parliaments can be considered representative based on the descriptive representation perspective. Starting with the issue of gender, the negative answer to this question presented itself right from the outset when checking regional averages of women representatives in parliaments. The same situation is with national minorities' representation. Thus, to answer the research question, it can be concluded that none of the four researched countries can say their parliaments are representative from a descriptive point of view, although, the analysis has shown that the general trend in relation to descriptive representativeness is slowly improving.

Having the answer to the major research question of this chapter, we shall have a look at recent trends related to the representative function of assemblies, keeping in mind the pressure and declining trust in parliaments outlined in the first chapter. Declining trust brings in ideas on enhanced involvement of citizens in governance. One such example is for instance proposal common to all major British political parties on introduction of the system of the recall of MPs mentioned in this chapter. This may mean that political parties feel the need to address citizens' demands for more accountability and direct democracy, however, they are trying to do it in the way least changing to the current political arrangement. Thus, although citizens demand more control, this proposal does not seem to address their demands yet, and participation of citizens in disciplinary tools will not likely change the face of parliamentarism.

Another trend not discussed here is the size of parliaments and the proposals decreasing the number of representatives. Germany had until 2002 a parliament sized 670, but its size was reduced below 600[598]. In the United Kingdom the number of MPs is going to be reduced for the purpose of the next elections from 650 to 600[599]. Both proposals were connected to declarations related to cutting of costs and transparency of spending. Hungary and Italy reduced the size of their parliaments as well. Slovakia did not reduce the size of parliament; however, it is a topic politicians tend to return to.

Arguments for limiting the size of assembly are undeniably very compelling in the current economic situation. On the other hand, the question needs to be raised if there is a rationale behind a certain size of parliament. Jeremy Waldron points to the Marquis de Condorcet, who proved arithmetically that

> *majority-rule makes a group more likely to give the correct answer to some question than the average member of the group; what is more, the greater the size of the group, the more likely it is that the majority answer is right, provided the average competence of the individual members of the group (the chances of each coming up with the right answer to the question before them) is greater than 0.5*[600]

At the same time, however, Condorcet argued that individual competence tends to decline when the size of the assembly increases: "A very numerous assembly cannot be composed of very enlightened men"[601].

598 Based on the Federal Electoral Act, at the beginning of each electoral term Electoral Districts Commission (*Wahlkreiskommission*) revises the constituency boundaries. In 1995 in addition the Bundestag ruled on decreasing number of MPs as of elections in 2002 from 656 to 598.

599 *Parliamentary Voting System and Constituency Act 2011*.

600 Jeremy Waldron, *The Dignity of Legislation*, The John Robert Seeley Lectures (Cambridge ; New York: Cambridge University Press, 1999).p.32.

601 Ibid.p.32.

Throughout the history a lot of writers were worried about the size and incompetency of large assemblies doubting the ability of such a large body to deliver consensus[602]. Waldron himself, in the name of dignity of legislation, follows the contrary idea that numerous assemblies with diverse views of arguing parliamentarians are beneficial. The problem at the present time essentially is that citizens distrust parliaments and politicians do not see them worth the taxpayers' money. On the other hand, limiting the number of parliamentarians may influence the capacity of parliaments.

[602] For instance "The Federalist No. 55 on Representation [James Madison] Available At: Http://Press-Pubs.Uchicago.Edu/Founders/Print_Documents/V1ch13s30.Html ".

Part III: Legislative Function

Chapter 5: Agenda Setting Powers as Traditional Constrain of Legislative Power of Parliaments

Introduction

Theoretically, parliament shall determine policy outcomes in the form of laws, while government as the executive shall carry out parliament's decisions[603]. In practice, however, the interactions between parliament and government are much more complex. As was presented in the second chapter, after World War II, parliamentarism has evolved into its currently prevalent rationalized form, which means that the executive has been strengthened by powers traditionally belonging to parliaments, e.g. government acquired the right to initiate the legislation, participate on agenda setting, debate on the floor or legislate by decrees[604]. Therefore, analysis of these agenda setting tools of government can be used as an indicator of executive dominance over parliament, which was indicated in Chapter I. as one of the possible reasons behind the parliamentary decline thesis[605]. Hence the main task of this chapter is to answer the question if increasing dominance of

603 George Tsebelis and Bjorn Erik Rasch, eds., *The Role of Governments in Legislative Agenda Setting* (Routledge,2010). p.1.

604 Daniel Smilov, "Parliamentary Techniques for Strenghtening the Government : A Comparative Study of Three Eastern European Models : Bulgaria, Hungary, and Russia" (Central European University, 1995).

605 George Tsebelis, *Veto Players : How Political Institutions Work* (Princeton, N.J.: Princeton University Press, 2002).p 111.

governments in agenda-settings can be linked to the ongoing parliamentary decline claims.

Simply said, the agenda power of the setter can be defined as the power to decide which bills are going to be considered in the plenary, and the power to restrict a debate and proposals for amendments for these bills during the phase of consideration of the bill[606]. Herbert Döring is one of the scholars who focused on agenda setting powers of government, particularly on the time aspect of it. Döring argues for the negative relationship between agenda setting powers of government, and inflation of legislative powers of parliaments. Döring distinguishes seven variables of agenda settings:

1. Determination of plenary timetable;
2. Monetary bills as government prerogative;
3. Restriction of the committee stage of a bill by a preceding plenary decision;
4. Authority of committees to rewrite government bills;
5. Control of the timetable in legislative committees;
6. Curtailing of Debate before the Final Vote of a Bill in the Plenary,
7. Maximum Lifespan of a Bill Pending Approval after Which It Lapses if not Adopted. [607]

In this chapter, looking at Döring's variables, I argue that portraying only the time aspect of agenda setting powers does not provide a sufficient account of agenda setting powers of the executive and legislative branches, and that agenda setting powers are heavily determined also by other privileges of government or parliament, such as the power of committees to kill bills or initiate legislation, or factors such as available resources or the institutional set up of parliament and its bodies. For instance, in some parliaments, the government's proposals have priority; or there is a requirement of governmental

606 Gary W. Cox, Masuyama Mikitaka, and Mathew D. McCubbins, "Agenda Power in the Japanese House of Representatives," *Japanese Journal of Political Science, Vol. 1, pp. 1-21, 2000*. p2.

607 Herbert Döring, *Parliaments and Majority Rule in Western Europe* (Frankfurt: Campus, 1995).

consultation when the agenda is prepared. Moreover, not all Döring's criteria touch upon the time aspect, thus it is not clear why he would pick the right of committees to rewrite a bill, and would omit their rights to initiate or kill bills. Based on several scholarly articles on parliamentary organization I proposed the following additional variables to look at:

8. The right of committees to initiate legislation
9. Rights to acquire information and expertise from the government and experts
10. The ability of committees to kill bills
11. Question of confidence in a bill
12. Institutional set-up of parliament: Unicameral v. Bi-cameral legislatures
13. Administrative support[608]

To sum up, after merging variables proposed by Döring with those suggested above, the aim of the chapter is to see whether the regulation of the agenda setting changed since the end of WWII in four researched jurisdictions in a way to indicate support for the parliamentary decline thesis.

This chapter concludes that when it comes to the legislative function from the traditional point of view, we can see that not much has changed here. It is obvious in all four jurisdictions that government is dominant in a parliamentary agenda setting. The difference is merely that the form of the executive dominance is presented publicly. In general, however, executive dominance is not a recent phenomenon. Quite on the contrary, executive dominance in the parliamentary system is an inherent part of parliamentarism rationalized. Thus, although the executive dominance will be shown, it

608 Ingvar Mattson and Kaare Strom, "Parliamentary Committees " in *Parliaments and Majority Rule in Western Europe*, ed. Herbert Döring (St. Martin's Press, 1995); Tsebelis and Rasch, eds., *The Role of Governments in Legislative Agenda Setting*; George Tsebelis and Jeannette Money, *Bicameralism*, Political Economy of Institutions and Decisions (Cambridge, U.K. ; New York: Cambridge University Press, 1997); Herbert Döring and Christoph Hönnige, "Vote of Confidence Procedure and Gesetzgebungsnotstand : Two Toothless Tigers of Governmental Agenda Control," *German Politics* 15, no. 1 (2006).

does not represent a change, and one can hardly argue that there is a parliamentary decline because of the procedural executive dominance in parliaments. On the other hand, looking at legislative function from the perspective of non-traditional constraints discussed in Chapter 6, reveals the dynamics in relation to the legislative function of parliaments.

5.1 Parliamentary Agenda-Setting Powers

5.1.1 Determination of Plenary Timetable

In most parliamentary democracies parliaments determine their own work, either through the parliamentary body consisting of chairs of committees and leaders of political groups or via the Speaker of the house[609]. Rules governing plenary agenda-setting can vary with regard to the body which is responsible for the agenda setting, existence of the special steering committee arranging *ex ante* agenda of the day, and power of government to *ex post* amend agenda by majority vote in plenary[610].

In the German *Bundestag* the agenda is determined by the Council of Elders (*Ältesetenrat*), which consists of the President of the Bundestag, the Vice-Presidents, and twenty three members appointed by the parliamentary groups in proportion to their size[611]. The Council of Elders is not a decision making body; its role is "to assist the President in the conduct of business … to ensure the agreement among the parliamentary groups on appointments of chairpersons and deputy chairpersons of committees and on

609 International Centre for Parliamentary Documentation., *Parliaments of the World : A Comparative Reference Compendium*, 2nd ed. (New York, N.Y.: Facts on File Publications, 1986).
610 Döring, *Parliaments and Majority Rule in Western Europe*.
611 Article 6 (1) of *The Rules of Procedure of the Bundestag*.

parliament's work program"[612]. Plenary can discuss items not placed on the agenda after it was adopted only if there are no objections raised by any of the parliamentary groups or by 5 percent of the MPs present, or if the Rules of Procedure allow discussion on matters not included in the agenda[613]. Although the composition of the body is proportional, the Council seeks and usually achieves consensus among its members[614]. As a consequence, it is rare for parties to request to add an item to the plenary agenda, and usually such efforts fail[615].

Governmental parties in Germany are considered to be in hold of agenda control in the Bundestag. Chandler et al. offer three reasons of executive dominance in Germany: governmental parties control the majority of the seats in the chamber and other parliamentary bodies; although the Council of Elders aim for consensual decisions regarding the agenda, those are procedural decisions, not decisions on substance; and lastly,any potential confrontation of the agenda agreed on by the Council of Elders is decided by the majority vote in the plenary[616]. I argue that based on the following country-related information this simple reasoning could be used for Turkish and Slovak parliaments as well.

The Agenda of Sessions of *the National Council of Slovak Republic* is proposed by the President of the National Council, and then debated and voted on by the plenary[617].

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612 Article 6 of *The Rules of Procedure of the Bundestag*.
613 Article 20.3 Ibid.
614 William Chandler, Gary Cox, and Mathew McCubbins, "Agenda Control in the Bundestag, 1980–2002," *German Politics* 15, no. 1 (2006). p. 2
615 Ibid. p.2.
616 Ibid.p. 2.
617 *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.Section 24.1

During the session, upon a motion by any MP, the National Council may amend the agenda, as well as change the order of items on the agenda or join two or more items into one debate by vote in plenary[618]. If at least three parliamentary groups put forward a motion to include a new item in the agenda, the National Council votes on this motion without a debate[619]. Recently this rule was complemented with the separate right of the President of the National Council to put forward the motion to add items to the agenda, which is a strengthening of the agenda-setting power of President of the National Council, who traditionally comes from a governmental party[620]. Thus, ruling government commanding majority in parliament has a very strong agenda setting influence, since the governmental majority can vote for and against any proposal. The situation changes when a coalition government composed of two and more political parties is in power. The more political parties government consists of, the more veto players there are controlling each other, which is also reflected in parliamentary agenda setting[621].

The main institutions managing parliamentary business in *Turkey* are the Speaker[622], the Bureau of the Assembly[623] and the Board of Spokesmen[624]. In the legislative agenda the key role is played by the Board of Spokesman of the Turkish Grand National Assembly (TGNA). The Board of Spokesmen is composed by the Speaker (the Chair) and one

618 Article 24 (4) Ibid.
619 Article 24 (5) Ibid.
620 Act No. 330/2012 contains two sentences only, which amend Article 24 and 35 of the Rules of Procedure in relation to agenda setting both include a right of the President of the National Council to propose additional agenda into debate.
621 Tsebelis, *Veto Players : How Political Institutions Work*.
622 Speaker is elected at the start of the parliamentary session for two years in the first instance, chair of the Bureau and Board.
623 The Bureau consists of the Speaker, 4 Deputy Speakers, 7 secretary members, and 5 administrative members.
624 Article 19 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

representative of each of the party groups. The Board makes decisions on the allocation of time for plenary debates, questions, inquiries, legislative, and other business[625]. Usually plenary follows the proposal as agreed by the Board. If the Board does not unanimously agree on the agenda, the vote of the plenary is decisive. The Government has a strong position in proposing its legislation through parliament, since the governing party/parties control a key parliamentary position, which ensures the priority of governmental bills[626].

In the *United Kingdom* arrangement and timing of government business have precedence at every sitting, which distinguishes itself from the first three above-discussed countries[627]. As Thomas rightly points out, "this control of the timetable is an essential element in executive control of the legislative process and of the other functions of parliament[628]." In each session standing orders guarantee to opposition business allocation of twenty days, from which seventeen are given to the disposal of the Leader of the Opposition and three to the leader of the second largest opposition party[629]. During these days the matters selected by opposition have precedence over government business[630].

Special feature of British executive agenda-setting dominance is 'programming of bills'. Before the introduction of the system of programming of bills in 1997, there were two

625 Report, "The Administrative Capacity of Turkish Grand National Assembly."
626 Ibid.
627 Section 14.1of the *Standing Orders of the House of Commons*.
628 Graham P. Thomas, "United Kingdom: The Prime Minister and Parliament," *The Journal of Legislative Studies Quarterly* 10, no. 2 (2004). p 8.
629 Section 14.2 of *Standing Orders of the House of Commons*.
630 Section 14.2 of Ibid.

ways to timetable the various stages of a bill[631] . First was informal programming, when government and opposition leaders agreed on such a timetable for a purpose of passing the legislation. This was through a system known as "usual channels"[632]. The second way was through the 'guillotine motions', which was initiated by the Government to cut off the time spent on bills[633]. Since 1997, government ministers can give before the start of the second reading a so-called program motion, based on which House can adopt a program order, which sets the time that will be spent on each stage of a bill and which goes throughout the whole legislative process[634]. Starting after the bill's second reading, it outlines the timetable for stages in the Commons[635].

The reasoning of the executive for this arrangement was to bring more certainty to the legislative process and to decrease the number of situations when some clauses of an adopted bill would not be discussed. First, after 1997, there was a political consensus between the parties on programming; however, after 2001 this trend declined. Currently the practice is that almost all bills are programmed; however, the program motions are not debated, and the motion is carried by the Government without respecting the opposition[636]. This means that de facto this process strengthens the executive, since it deprives the parliament of the possibility to delay the proceedings. Moreover, the

631 Alex Brazier, Matthew V. Flinders, and Declan McHugh, *New Politics, New Parliament? : A Review of Parliamentary Modernisation since 1997* (London: Hansard Society, 2005). p.15

632 Michael Rush and Clare Ettinghausen, "Opening up the Usual Channels," (London: Hansard Society, 2002).

633 Ibid.

634 Section 83A. 2, 4 of *Standing Orders of the House of Commons*.

635 "Issues in Law Making 4: Programming of Legislation," *Hansard Society Briefing Paper*(2004), www.hansardsociety.org.uk. p.1.

636 Ruth Fox, *The Reform Challenge: Perspectives on Parliament: Past, Present and Future* (Hansard Society, 2010). p.11.

timetable is often so packed that a lot of legislation is passed without any debate or scrutiny[637]. In 2007 the Modernization Committee itself expressed that "the concern about the volume of legislation which passes undebated [as a result of programming] is entirely legitimate"[638].

Programming was supposed to introduce the effective scrutiny of bills with respecting both the government with goal to push for adoption of their bills, and parliament with aim to scrutinize and debate bills. However, the current practice seems to be not balanced and the Government seems to be better off.

Table 23: Determination of the plenary agenda

	Slovakia	***Turkey***	***Germany***	***The UK***
Who proposes the agenda	The President	Board of Speakers	Council of Elders	Government with exception of Opposition Days
How is the body created/ Composition	Elected by the Majority, traditionally the representative of the majority	Speaker elected by the majority and one representative per each party group	The President and the Vice-Presidents of the Bundestag, and 23 MPs appointed by the parliamentary groups in proportion to their size.	N/A
How is the decision on agenda made	N/A	Unanimously	Majority*	N/A**
Can plenary amend the agenda	YES	YES	YES	N/A

* The Council seeks (and achieves) the consensus among its members. As a consequence, it is rare for parties to request to add an item to the plenary agenda, and usually such efforts fail

** Programming of legislation: House can adopt a program order, which sets the time that will be spent on each stage of a bill and goes throughout the whole legislative process.

637 Ibid. p.11.

638 Meg Russell and Akash Paun "The House Rules?International Lessons for Enhancing the Autonomy of the House of Commons,"(October 2007), http://www.ucl.ac.uk/constitution-unit/files/publications/unit-publications/142.pdf , p17.

Assuming that parliaments are independent bodies, one would expect that they organize their own work. In three out of four presented countries this is so at least formally, as determining the agenda rests upon the body or a person elected by plenary (see Table 23). The United Kingdom is an exception, as the standings order clearly states that the parliamentary business is organized by the government, and the same rule saves a limited number of days for the opposition. So the debate to what extent the government in the United Kingdom controls the agenda of parliament is irrelevant, since it has full control of it, with exception of Opposition Days.

In Slovakia, Turkey and Germany, the parliamentary body formally makes the decision on the agenda, and in the case of all three countries parliaments have the final say. In Slovakia, the President of the National Council of the Slovak Republic is elected by majority, and so far the President was always an MP from the ruling coalition, which would make Slovakia the country with the second strongest executive agenda setting prerogatives out of the researched jurisdictions after the United Kingdom.

In Germany, the Council of Elders draws up the agenda of the Bundestag. As shown in Table 23, the political parties are proportionally represented in the Council according to their size in plenary, as compared with Turkey, where the Board of Spokesman organizing the agenda of the Assembly is composed of one member for each political fraction. Based on this formal arrangement, one can rank Germany third and Turkey as the country with least governmental control over the agenda from the four countries.

Yet, such a conclusion would be inaccurate, as it disregards practice and the opposition. For example, although the composition of the Council of Elders is proportional, some

authors agree that the decisions adopted are as a result of the compromise and aim to have a unanimous decision on the agenda, which explains rather rare changes of the agenda made ex post by plenary[639]. In the Turkish Grand National Assembly, last-minute changes of the agenda by plenary are normal practice.

Setting the plenary timetable is one of the several agenda-setting tools analyzed in this thesis. Similarly will be approached other tools that were discussed by H. Döring, and those complemented by me based on available literature.

5.1.2 Money Bills as Government Prerogative

Out of the four countries, only in the case of the British parliament is there a restriction when it comes to initiation of monetary bills. In Germany, Slovakia and Turkey there are no such limitations, apart from procedural requirements connected to the proposal of each bill.

In *Germany* the government has in accordance with Article 113 of the Basic Law a right to veto bills that would increase spending beyond the funds appropriated in the budget law or would decrease revenue[640]. This rule was introduced as the reaction to the adoption of laws increasing expenditure by opposition jointed by MPs from the majority in 1969; however, nowadays it is rarely used[641]. Instead of direct involvement of the government in bills regarding spending, there is an alternative way of executive control in Rule 96, which states that the Budget Committee examines compatibility of finance bills

639 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation."

640 Article 113 of *The Basic Law.*, Rule 87 of *The Rules of Procedure of the Bundestag*.

641 Ulrich Sieberer, "Agenda Setting in the German Bundestag: A Weak Government in a Consensus Democracy," *German Politics* 15, no. 1 (2006). p. 58.

with the budget, and if this examination shows that bills affect the budget, the Committee proposes a recommendation for covering the impact of finance bills on public finances[642]. If, however, the solution is not found either by the Budget Committee or the Bundestag after considering the Committee's report, the finance bill fails[643].

In *Slovakia*, the Rules of Procedure stipulate that each bill submitted to the National Council shall be accompanied by an explanatory report[644]. It shall contain the evaluation of the current social, economic and legal background, reasons why the bill is necessary, the method of implementation and its economic and financial impact, compatibility with legal system and law of the EU[645]. Furthermore, more detailed provisions on the explanatory report in the Legislative Rules state that in order to consider financial implications on the state budget and budget of local governments, drafts of bills shall always be discussed with the Ministry of Finance, whose position shall be attached to the explanatory report. Thus, there is no restriction to the right to introduce money bills, apart from the formal conditions of including the statement from the Ministry of Finance.

In the case of the *United Kingdom*, Section 48 of Standing Orders states that the Commons cannot receive any petition for an increase of public expenditure, unless recommended from the Crown[646]. Every charge on public revenue shall be approved by the resolution of the House[647].

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642 Rule 96 (4) of *The Rules of Procedure of the Bundestag*.
643 Ibid.
644 Article 67 (3) of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.
645 Article 68 (3) of Ibid.
646 Standing orders : http://www.publications.parliament.uk/pa/cm201011/cmstords/700/700.pdf
647 Section 49 of the Standing Orders.

Table 24: Introduction of Money Bills

	Slovakia	*Turkey*	*Germany*	*The United Kingdom*
Direct restriction to introduction of money bills	NO	NO	NO	YES

This restriction gives the government the prerogative to present monetary bills. Again, the highest governmental influence is seen in the United Kingdom, as it is the only one out of the present countries with this arrangement (see

Table **24**). The second strongest governmental influence would be in Germany, with the constitutional prerogative of the government to veto bills that increase spending. Although it is not used, there is an alternative scrutiny by the Budget Committee, which may lead to failure of the bill. Slovakia and Turkey do not have such restrictions. In Slovakia, each bill that has an impact on budget has to be presented with an attached statement from the Ministry of Finance; however, this is of informative character, which is part of the impact assessment of the initiated legislation.

5.1.3 Restriction of the Committee Stage of a Bill by a Preceding Plenary Decision

The aim of this chapter is to answer the question if executive dominance in agenda-settings can be linked to the ongoing parliamentary decline claims. For this purpose agenda-setting tools are analyzed including the question if committees can see and influence the draft of the bill before it gets to the plenary, as committees have a higher chance to propose changes and influence the draft bill before it is sent to plenary. The vote on the substance of a bill before it is sent to a committee is a sign of dominance of the executive, because the committee has a higher chance to influence and determine the

outcome if it is not predetermined by plenary meetings[648]. This is the case in the United Kingdom, where the general principle of a bill has to be approved in the plenary before referral to the committees. According to Döring's assessment, this represents more government control compared to countries without such a prior approval[649].

In most countries, however, general principles and details of bills are considered first by committees, and only afterwards by plenary[650]. In *Slovakia* legislative process consists of three readings[651]. The purpose of the first reading is to discuss the bill, particularly its merits, in which no amendments are allowed[652]. The National Council may by resolution either refer the bill back to the sponsor for more elaboration, or discontinue further debate on the bill or refer the bill to the second reading[653]. Resolution of the National Council, which sends the bill into a second reading, does not pose any prior limitation onto chosen committees deliberating on the bill.

In *Germany* legislative process also consists of three stages and is ended by a final vote. In the first reading of the bill, the general debate is taking place only upon recommendation of the Council of Elders, or on the demand of either a parliamentary group or at least 5 percent of the MPs[654]. Subject of the debate may be only the basic

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648 Döring, *Parliaments and Majority Rule in Western Europe*. p233
649 Ibid. p.234.
650 Ibid. p.235.
651 Article 73.1 of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.
652 Article 73.2 of Ibid.
653 Article 73.3 of Ibid.
654 Rule 79 of the *The Rules of Procedure of the Bundestag*.

principles of a bill, and substantive motions are not permitted[655]. Debates are usually held when the government wishes to present reasons for introducing a bill, or if parliamentary groups wish to publicly state their position on bills of topical interest or political significance[656]. The debate is not the occasion for parliamentary groups to convince each other, rather to present different stands on the bill to the public and media[657]. The aim of the first reading is to open the political debate on the bill, and at this stage parliament cannot reject the bill.

Turkey is an exception from other three mentioned parliaments, as there is no first or introductory stage of legislative process. Bills are submitted to the Office of the Speaker, examined, and if they meet formal requirements, they are sent directly to the committee(s)[658]. Thus the committees are not limited by any kind of prior decision of the plenary apart from the time limits set in the Rules of Procedure.

The *United Kingdom* with the approving general principles before the committee stage restricts the power of committees to amend the bill. In Germany and Slovakia, the first reading is not designed to limit the committee stage, but rather to open a political debate within and outside the parliament on the presented bill. Resolutions of the first reading do not pose any prior limitation to committees either in the Slovak National Council, or in the Bundestag. Turkey has a special arrangement, as each bill that fulfills formal criteria is sent directly to the committee stage (see Table 25).

655 Rule 79 of the *The Rules of Procedure of the Bundestag*.
656 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p.90.
657 Ibid. p 90.
658 Article 73 of the of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

Table 25: Restriction of Committee Stage by Plenary Decision

	Slovakia	*Turkey*	*Germany*	*The United Kingdom*
Restriction of Committee Stage by Plenary Decision	NO	NO	NO	YES

5.1.4 Authority of Committees to Rewrite Government Bills

The right to rewrite government bills by committees gives them an important agenda-setting advantage, as they "take over the agenda setting powers of the original initiator"[659]. Mattson and Strom consider this right to be a particular function of committees because parliament as a body has no capacity to elaborate on the bill due to its size[660].

In *Germany*, the bill can be referred to one or more committees. In the second case the lead committee is designated, which is responsible for the procedure. The (lead) committee must "recommend to the Bundestag definite decisions that may relate only to items of business referred to them or to questions directly connected therewith"[661].The recommendation of the committee is either acceptance of the bill or its rejection. If the committee suggests accepting the bill, it can be in its original version, or with amendments adopted by the committee, or as the version of the bill adopted by the committee and attached to the recommendation for a decision.[662] Amendments are

659 Mattson and Strom, "Parliamentary Committees ".p 286.
660 Ibid.p. 286.
661 Rule 62 of *The Rules of Procedure of the Bundestag*.
662 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation."p. 98.

adopted by simple majority of those present, and the amended version of the bill presented by the government forms the basis of all discussions from that point onwards[663].

After committees finish their deliberation, the recommendation is presented to plenary by rapporteurs in the form of a written report. Rapporteurs mainly focus on the explanation of reasons why the committee deviated from the initial bill. The report has to include the views of the minority that was outvoted in committee proceedings. Between the 8th and 15th legislative term committees have introduced amendments to more than every second bill[664].

In *Slovakia* committees have a right to propose amendments to the bill in the second reading. In a written report committees state their opinion with their recommendation whether to pass the bill or not, and with exact wording of amendments if the committee resolves to make them, and the committee submits the report to National Council[665].

In *Turkey* committees enjoy extensive right to amend bills, which is used even in the case of governmental bills[666]. Committees take decisions is by the absolute majority of the present members[667]. MPs, who are not members of the committee and members of the government may be present in the deliberation and speak; however, they cannot submit

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663 Ibid.p. 95.

664 Miller and Stecker, "Consensus by Default? Interaction of Government and Opposition Parties in the Committees of the German Bundestag." p. 308

665 Article 78 of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

666 Report, "The Administrative Capacity of Turkish Grand National Assembly." Par. 27.

667 Article 27of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

motions or vote[668]. Committees present outcomes of their deliberation in the form of a report, which is presented to plenary where the final vote is taking place[669].

In *the United Kingdom,* when the committee has considered all selected amendments and all clauses, the final question to decide, normally without a debate, is whether the bill (or bill as amended) shall be reported to the House[670]. If the bill has been amended, it would be reprinted as amended and given a new number. The House of Commons may overturn the verdict of the committee on the bill; moreover, the House of Lords may alter or reverse adopted amendments made by the public bill committee.

Table 26: Authority of Committees to Rewrite Bills

	Slovakia	***Turkey***	***Germany***	***The United Kingdom***
Authority of Committees to Rewrite Bills	YES	YES	YES	YES

5.1.5 Control of the Timetable in Legislative Committees

Another aspect of agenda setting with regard to committees is the control of the timetable in legislative committees. Essentially, the less external control means the greater committee autonomy[671]. In the *German Bundestag* the agenda of committee meetings is determined by the chair of the committee, unless the committee did not take a prior

668 Yasushi Hazama, "The Politics of Amendment in the Turkish Legislature," *The Developing Economies* XXX-3(1992). p 286.
669 Article 81 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*
670 "Parliamentary Stages of a Government Bill," in *Legislation Series* (House of Commons Information Office, 2010).
671 Mattson and Strom, "Parliamentary Committees ".p. 292.

decision thereon[672]. The committee may alter its own agenda by a vote of majority of its members[673]. Thus, the committees are free to decide the timing of their own agenda; however, the Rules of Procedure oblige committees to deal with referred matters without delay and give right to a parliamentary group or 5 percent of MPs to demand submission of a report on the progress of its deliberations after ten weeks pass since referral of the matter to a committee[674].

The plenary of *the National Council of the Slovak Republic* on the motion of the Speaker *shall* fix the time limit during which the bill shall be considered by committees to which the bill was referred. This time shall be not less than thirty days from the referral to committees[675]. In *Turkey*, when it comes to legislative proceedings for ordinary laws, the time span for deliberation is set in the Rules of Procedure. The deliberation of the committee starts not sooner than 48 hours after receiving the bill, and has to conclude within 45 days[676].

The *United Kingdom* has the highest governmental control, as the timetable is set by the government itself, and legislative proceedings in the committee are subject to program order[677]. Public Bill Committees exist only to examine specific bills, thus their agenda is

672 Rule 61 of *The Rules of Procedure of the Bundestag*.
673 Rule 61(2) of the Ibid.
674 Rule 62 (1) of the Ibid.
675 Article 74.2 of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.
676 Article 37 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*
677 83 B.1: Standing orders of the British parliament provide for programming committee consisting of not more than 9 members that shall allocate the time to proceedings in committee of the whole House on consideration and third reading and report in to the House. (5)

set by their purpose[678]. If the program order applies to the proceedings, the time allocated on consideration of the bill is limited. Within a committee, a programming subcommittee is created (Chairman and seven members nominated by the Speaker) and makes proposals regarding a timetable of the proceedings, which are subject to the committee's amendment and approval[679].

Table 27: Control of Timetable in Legislative Committees

	Slovakia	*Turkey*	*Germany*	*The United Kingdom*
Government				X
Speaker	X			
Chair of the Committee/Committee			X	
Legislative limitation of time deliberation		X		

5.1.6 Curtailing of Debate before the Final Vote of a Bill in the Plenary

This classification answers three questions: *First*, who has the power to limit a debate and at what stage of proceedings – if it is possible at all (e.g. unilaterally imposed in advance by the government or by the simple majority in the plenary). *Secondly*, is there necessary mutual agreement between the parties to limit a debate? *Lastly*, if there is neither prior limitation nor option to close down a debate, does it leave the open space for unlimited filibustering? Based on these questions, in general, we can distinguish three categories: 1. Limitation in advance by majority vote (Greece, UK, Slovakia); 2. Advance

678 Until 2006, there were Standing Committees, which responsibility was to examine public bills clause by clause and if they so wished. After 2006, standing committees were renamed Public Bill Committees and were given the additional power to take evidence from officials and experts outside of Parliament. This change has meant that a bill would no longer be assigned to a particular standing committee but instead to a public bill committee named for the bill. There are also Select Committees that control their own agenda, initiate their own inquiries, and decide on their own agenda.

679 "General Committees," in *Legislative Series: Factsheet L6*, ed. House of Commons Information Office (2009).

organization of debate by mutual agreement between parties (Austria, Germany, Italy); 3. Neither advance limitation nor closure (Sweden)[680].

Let us apply the classification on researched jurisdictions. In *the United Kingdom* there is a programming of legislation that limits the time for the legislative procedure from the presentation through committee stage, until the last vote. Thus,the time of most debates is fixed. However, where the time is not fixed, especially in the case of Private Members' bills or Opposition Days, the procedural device *closure* is used[681]. Closure is a proposal that, even though there are MPs willing to speak, the debate should be discontinued and the House shall decide on a question raised by the Chair[682]. It is at the discretion of the Chair to decide whether to discontinue proceedings or decline the motion considering that the matter was not debated enough[683]. If the Chair allows it, the question on the closure itself is put immediately, without debate. "If it is opposed, the question on the closure requires not just a majority but also at least 100 Members voting in favor; otherwise the original debate is resumed. If the closure is agreed to, the question that was being debated is then put immediately[684].

In the *German Bundestag*, the debate in the plenary can be curtailed by the vote of the Bundestag on the motion of the parliamentary group or by 5 percent of the Members of the Bundestag present, provided that each parliamentary group had a chance to speak at

680 Döring, *Parliaments and Majority Rule in Western Europe*.

681 "Business of the House and Its Committees – a Short Guide," ed. Department of Chamber and Committee Services House of Commons (2010)., p 27

682 The formula is: "The question be now proposed", and can be used by any MP anytime, even during the speaking of another MP. Ibid.p. 27.

683 See section 29,36 of *Standing Orders of the House of Commons*.

684 "Business of the House and Its Committees – a Short Guide."

least one time[685]. In practice, however, closure of the debate has not played an important role in the Bundestag, as the Council of Elders consensually allocates the speaking time on the consensual basis[686]. In *Turkey* the Rules of Procedure stipulates that unless plenary votes otherwise, speeches on behalf of political party groups, committees and government lasts 20 minutes and speeches of individual MPs are limited to 10 minutes[687]. The debate can be limited by the vote of the majority.

In *Slovakia* at a request of government, the National Council has been using a fast-track procedure[688]. The Rules of Procedure provide for this mechanism in the case of extraordinary circumstances, when fundamental rights and freedoms, or national security are at stake, or there is a threat that the state will suffer considerable economic damage. In the fast-track procedure the time restrictions applicable to the normal legislative process are not applied: e.g. a rule that the bill shall be delivered to MPs at least 15 days prior to the session during which the bill is presented for the First Reading[689]; or rule that the National Council shall fix the time limit for the deliberation in committees, which shall be not less than 30 days[690]; the rule that the bill may be considered by the National Council in the second reading no sooner than 48 hours following the delivery of the

685 Rule 25.2 of *The Rules of Procedure of the Bundestag*.
686 Sieberer, "Agenda Setting in the German Bundestag: A Weak Government in a Consensus Democracy." p. 59.
687 Article 81 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*
688 Article 89 of Ibid.
689 Article 72 (1) of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.
690 Article 74 (2) of Ibid.

committees' report[691]; or the rule that voting on amendments proposed by committees will happen not sooner than the next day after their distribution[692].

Ordinary debate during different stages of the adoption of the bill can be curtailed by the vote of plenary. In several places, the Rules of Procedure provide for an option to reduce the time limit by the vote of the National Council without a debate, and without applying the fast–track procedure: e.g. Section 83.4:

> *Upon a request by the lead committee or by the common Rapporteur the National Council may resolve without debate that the amendments do not have to be distributed or that the time limit be reduced*.

or Section 81.2:

> *The bill may be considered by the National Council in the second reading no sooner than 48 hours following the delivery of the committees' joint report or information by the common Rapporteur. Upon the proposal by the lead committee or by the common Rapporteur, in the case of uncomplicated bills, a shorter time limit may be decided by the National Council without debate*.

To sum up, debates in Slovakia, Turkey and the United Kingdom can be curtailed by the majority vote, which gives advantage to the government backed by parliamentary majority. More than that, all proceedings in Slovakia can be shortened through a fast-track procedure, which is being invoked outside emergency measures. The German consensual system, on the other hand, features lesser governmental agenda-setting dominance due to its consensual and working culture.

Table 28: Curtailing the Debate Before the Final Vote in Plenary

	Slovakia	***Turkey***	***Germany***	***The United Kingdom***
In advance / majority vote	X	X		X

[691] Article 81 (2) of Ibid.
[692] Article 83 (4) of Ibid.

In advance /agreement between parties	X

5.1.7 Maximum Lifespan of a Bill Pending Approval

The shorter the lifespan, the stronger the agenda setting powers of the executive. The time varies from 'end of session' through 'legislative term', to no limitation. In the *United Kingdom* bills die at the end of the parliamentary session, while in *Germany and Slovakia* at the end of the legislative term[693].In *Turkey* proposals that cannot be concluded within one legislative term are considered as null and void (*kaduk*). However, the government or MPs may renew these bills and the relevant commission may accept the previous work regarding the legislation as valid for the reintroduction of the bill[694].

As mentioned above, a shorter lifespan indicates strong agenda setting powers of the executive. The United Kingdom presents the highest amount of governmental control. From the three countries with almost similar arrangements to each other, Turkey seems to be under the least governmental control because although the bill is considered null and void by the end of the legislative term, and has to be reintroduced in the next term, committees have the right to accept previous work (see Table 29).

Table 29: Maximum Lifespan of a Bill Pending Approval after Which It Lapses if not Adopted

	Slovakia	***Turkey***	***Germany***	***The UK***
Bills die at the end of the session				X
Bills lapse at the end of legislative term	X		X	
Bills lapse at the end of the legislative term but carrying over is possible.		X		
Bills never die				

693 Döring, ed. *Parliaments and Majority Rule in Western Europe*.p.242.

694 Article 77 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

5.1.8 The Right of Committees to Initiate Legislation

The first seven variables I have looked at in this chapter are those specified by H. Döring[695]. From now on, analyzed variables are chosen by me based on read literature and my own conclusions drawn while researching the legislative agenda-setting topic. I start with the right of committees to initiate legislation, which is omitted by H. Döring. However, as Mattson and Strom point out, "the ability to set the legislative agenda is a crucial source of power"[696]. I agree with Mattson and Strom mainly because I believe that if Döring included the right of committees to rewrite legislation coming in front of them for review, there is no reason to omit committees' right to initiate legislation, which is a stronger agenda-setting tool of committees than the right to rewrite. One could argue that Döring's analysis was limited to the time aspect; however, the right to rewrite itself is not about the time constraint, either.

Slovakia is the only country out of the four in which committees have the right of the legislative initiative (see Table 30)[697]. According to Article 87.1 of the Constitution, bills can be initiated by committees, deputies, and the Government. Committees in the UK, Germany and Turkey have no right to initiate legislation[698]. Article 88 of the Turkish

695 ———, ed. *Parliaments and Majority Rule in Western Europe*.

696 Ibid. p. 258

697 Other countries where committees have legislative initiative are: Austria, Iceland, Sweden and Switzerland.

698 Article 76 (1) of the *Basic Law.* Article 88of the *The Constitution of the Republic of Turkey*.

Constitution also excludes committees from this right, and it states that only the Council of Ministers and deputies have the power to initiate legislation.

Table 30: Right of Committees to Initiate Legislation

	Slovakia	*Turkey*	*Germany*	*The UK*
Right of Committees to Initiate legislation	X			

5.1.9 Rights to Acquire Information and Expertise from the Government and Experts

To have the power to acquire information is an important part of the committee work because it compensates for the informational disadvantage that parliament has compared to the governmental administration. In *Germany*, the Basic Law gives this power to the Bundestag and its committees by giving them right to summon any member of the Federal Government and right to hold public hearings[699].

In *Slovakia*, committees have the right to invite members of the Government, heads of other state administration bodies and the Attorney General to their meetings and request their explanations, reports or necessary documents. When invited, they shall attend the committee meeting and submit their clarifications, reports and documents as required[700]. Rules of Procedure allow them to come accompanied by experts of their own choice and request chairman of the committee to allow such experts to address the committee. The President of the Republic, members of the Government, the Attorney General and the

699 Article 43 of *the Basic Law.* Rule70 of *The Rules of Procedure of the Bundestag*.

700 Article 53 (2) of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

Head of the Supreme Audit Office have a right to attend committee meetings, and upon request address the meeting[701]. Committees have a right to invite specialists and other persons to their meetings and request their opinions[702]. In addition, committees have the right to request experts, institutes of science or other authorities to prepare expert analyses and opinions, and request the expert(s) in charge of such reports to present an oral explanation at the meeting of the committee[703].

In the *Turkish* Grand National Assembly, Article 30 allows committees to call experts. In addition, there are other provisions giving such a power to specialized committees: According to Article 105 of the Rules of Procedure, research commissions have the right to acquire information from experts when they conclude it is necessary. Also according to Article 111, the investigation commission may summon evidence, witnesses, and experts.

In the *United Kingdom*, public bill committees acquired since 2006 the right to receive written and oral evidence[704]. The Scrutiny Office, which is part of the Committee Office in the House of Commons, coordinates the process of evidence taking time in public bill committees[705]. After the bill is first published, written evidence can be submitted by anyone, even before a committee is established. After being established, the committee can report written evidence to the House. As a part of its deliberation, committees can

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701 Article 53 (1) Ibid.
702 Article 54 (1) Ibid.
703703 Article 54 (2) Ibid.
704 "General Committees."p6.
705 Before reform of committee system in 2006, committees dealing with bills could not seek evidence from outside parliament, unless the bill was sent to special standing committees, where a limited number of evidence taking procedures could be held. In Ibid.

take oral evidence, in accordance with the time they can spend on them under time pressure of program order.

During the proceedings, the public bill committee has the right to take written and oral evidence. Amendments to the bill can be introduced by one or more MPs, Ministers, Opposition or backbenchers of any party. Not all submitted amendments are discussed. The Chairman has discretion whether to select amendments or not, and he can also group them for discussion. This power of selection comes from the 1930s, and it was designed to prevent obstruction of bills by a large number of amendments[706].

Table 31: The Right to Acquire Information from Experts and Government

	Slovakia	*Turkey*	*Germany*	*The United Kingdom*
Right to acquire information from experts and government	X	X	X	X

5.1.10 The Ability of Committees to Kill Bills

Usually committees can kill opposition or private member bills, by not reporting them to the plenary. In *Slovakia* committees cannot reject the bill and discontinue the legislative process. After the proceedings in a committee are over, the committee shall submit a written report containing the opinion of the committee and a recommendation to parliament whether to pass the bill or not, or exact wording of amendments, if the committee agreed on them[707]. If the committee recommends parliament to return the bill for further elaboration, postpone the debate on the bill or discontinue the debate on the

[706] Ibid.

[707] Article 78 *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

bill, the plenary will take the vote without a debate[708]. In the *German Bundestag*, in accordance with the Rules of Procedure, these committees prepare the deliberations and decisions of the Bundestag in a form of written report. They are not authorized to make final decisions on any matter; they may only make recommendations for decisions by the plenary. They cannot kill the bill themselves, they can only recommend to plenary to discontinue the proceedings on the bill.

In comparison, in *Turkey*, committees can kill bills. Undoubtedly, this rule gives committees in Turkish parliament a procedural independence that committees of other parliaments do not have. However, as was already mentioned, one has to consider all rules presented in this chapter through the lenses of the composition of leadership bodies and committees in parliaments (see Table 32). It was found that the power to kill bills in committees is in Turkish parliament usually used against opposition proposals or against private member bills[709].

Table 32: Right of Committees to Kill Bills

	Slovakia	***Turkey***	***Germany***	***The United Kingdom***
Right of Committees to Kill Bills		X		
How the Committees are created	Floating Rule: Negotiations	Fixed Rule: Proportionally/ All chairs from majority	Fixed Rule: Proportionally	Floating Rule: Negotiations

708 Article 82 Ibid.

709 Report, "The Administrative Capacity of Turkish Grand National Assembly."

5.1.11 Question of a Confidence to a Bill

This is, according to Döring, the most important agenda setting measure. The government can attach a vote of confidence to a vote on a bill, which essentially means the threat of the resignation and subsequent dissolution of parliament if the bill does not receive the support in plenary. John Huber argues that the procedural possibility of governments to invoke such an institutional prerogative as a confidence vote procedure plays a central part in policymaking processes in parliamentary democracies[710].

In the *United Kingdom* the government can initiate such a vote based on the constitutional convention. The well known example is from 1993, when the vote on the Maastricht Treaty was held. The Prime Minister faced the disapproval of the opposition Liberal Democrats and Labor Party, and needed full support from his own party. The motion to ratify the Treaty failed, as 20 MPs from the Conservative Party voted against ratification. Immediately afterwards, however, John Major tabled a motion of confidence on the Maastricht Treaty, with the announcement that if he lost the vote, new elections will be held. The Maastricht Treaty was ratified as desired by the Prime Minister[711]. This motion forced rebels from his own party to vote for the Treaty, as they did not want to take a risk of losing elections due to unexpected timing.

[710] John D. Huber, "The Vote of Confidence in Parliamentary Democracies," *American Political Science Review* 90, no. 2 (1996).

[711] William Tuohy, "Major Calls Vote of Confidence on Treaty : Britain: Prime Minister Loses Critical Commons Test on Ratifying Maastricht Pact on European Union," *Los Angeles Times* 23 July 1993.

As in the United Kingdom, also in *Germany* the Chancellor can initiate a vote of confidence and link legislative proposal to it[712]. According to article 81.1, the Federal Chancellor can combine the bill with the motion of censure under Article 68. This was, however, used only once by Chancellor Gerhard Schroder in a matter of confidence in November 2001, in the vote on sending troops to fight the war on terror, when his coalition partners and members of his own political party threatened to vote against deployment [713].

In *Slovakia*, the Government may request the National Council to take a vote of confidence at any time[714]. The Government may also require a vote on a bill or a vote on another matter concurrently with a vote of confidence in the Government (Article 108.2).Motion of censure in the *Turkish* Constitution is in Article 99; however, the procedure of attaching the vote of confidence to a bill does not exist.

Table 33: Question of a Confidence Attached to a Bill

	Slovakia	***Turkey***	***Germany***	***The United Kingdom***
Question of a confidence to a bill	X		X	X

A vote of confidence attached to a bill is without a doubt one of the strongest tools that government has at its disposal, with which it can force MPs belonging to a majority/coalition to obedience. As examples from the UK and Germany show, MPs voting against governmental proposal under normal circumstances supported government when the existence of government and possibility of new elections were at stake.

712 Article 68 of the *Basic Law.*

713 "Schroeder to Force Confidence Vote," *CNN.com/World News* November 13, 2001.

714 Article 108.1 of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

5.1.12Institutional set-up of parliament: Unicameral v. bi-cameral legislatures

5.1.12.1 Types of Bicameralism

The institutional set-up of the parliaments is, in my opinion, an equally important indicator of the agenda setting dominance of government. Whether the parliament is unicameral or bicameral changes the balance of agenda setting prerogatives, since the executive dominance in overall parliamentary agenda setting is more constrained.

In short, in the past, a multi-cameral system used to be a reflection of existence of various feudal estates[715]. Such a model was then easily adopted in the constitutional traditions of modern federal systems with popular representation[716]. The earliest example of a bicameral parliament occurred in England towards the end of 14th century, where it evolved over centuries out of the Great Council, an advisory assembly of the King.[717] Over time, the lower House turned into directly elected chamber, and the House of Lords remained, consisting of either hereditary or appointed Lords. Initially the Houses were equal in adopting the legislation. However, as the criticism regarding the Upper House legitimacy rose, parliament adopted Acts of 1911 and 1949, which restricted veto power of Lords to merely power to delay bills with which they disagreed. For the support of this kind of bicameralism spoke Montesquieu as well as John Adams, who adopted the Greek philosophy of mixed government and transformed it into bicameralism.

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715 Sajo writes that in feudal representative systems the estates did not meet in one, but separate bodies, and this practice was ceased by French Revolution. In Sajó, *Limiting Government : An Introduction to Constitutionalism*., p.151.

716 Ibid.p.149.

717 Tsebelis, while talking about institutional roots of bicameralism, goes back to Ancient Greek and early Rome, calling their government institutions as pre-bicameral. IN Tsebelis and Money, *Bicameralism*. p. 17.

Another example of parliament with two chambers is the United States. Congress is composed of the House of Representatives and the Senate, and this design is a "great compromise" of the Constitutional Convention of 1787[718]. The compromise provided that the House of Representatives would be created by elections on a basis proportional to the citizens of states, and the Senate would consist of equal number of Senators for each state. As both chambers are meant to be equal when it comes to the legislative process, interests of both small and big states are protected.

The justification of this compromise is expressed in the Federalist Papers, especially in No. 62, in which Madison points out two dimensions of the debate: the representation of interests and efficiency of an upper chamber. The dimension of representation guaranteed that the interests of states as well as the population will be respected (since it was argued their interests were specific and distinct from each other); the debate on the efficiency had two separate aspects: political stability and quality of legislation. Political stability as understood in a sense that a new majority will not overcome the old one; quality of legislation was supposed to be secured by Senators who over the time of their term become professional legislators[719]. Britain and the United States stand for two different models of institutional development, while other European states represent a combination of these two models[720].

At the present time, in federal states bicameralism reflects the dualist structure of the state, and bicameralism is obvious legislative arrangement and a convenient way to

718 Ibid. p. 27.
719 Ibid. p. 28.
720 Ibid. p. 32.

combine proportional representation with recognition of territorial integrity[721]. On the other hand, in unitary states the second chamber serve as a built-in mechanism of revising chamber and as a balance between legislative and executive, as the upper chamber is usually created differently than first one. It could be either a conscious or unconscious desire of framers to temper the democratic aggressiveness of the first chamber, with a representative body of a more conservative character[722].

In order to evaluate the position of upper chambers in bicameral parliaments, one has to look at the method used to create the second chamber. For instance, either house may be created by elections held simultaneously (Norway), or the lower chamber is created on the basis of direct elections, while upper chamber is a result of indirect elections (France), appointment (Germany, UK), or partial appointment (Spain). In federal states the upper chamber can represent territorial units (Switzerland, Germany). In most cases the two houses have a different political makeup and thus there is a high possibility they would disagree and refuse to adopt the legislation pushed by the government having majority in the lower house[723]. The manner of creation of the upper chamber may answer the question of the purpose of creating the second chamber, and its role.

From the procedural point of view, the main question is the role of the second chamber in the legislative (decision making) process, given that one has to take into consideration the problem of inter-cameral difference. The general method of resolving this difference is

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721 Saul Levmore, "Bicameralism: When Are Two Decisions Better Than One?," *International Review of Law & Economics* 12(1992). p. 159.

722 International Centre for Parliamentary Documentation., *Parliaments of the World : A Comparative Reference Compendium*.

723 George Tsebelis and Bjorn Erik Rasch, "Patterns of Bicameralism " in *Parliaments and Majority Rule in Western Europe*, ed. Herbert Döring (1995). p. 365.

the *navette system*, which means that a bill is transferred from one chamber to another (see Table 34)[724]. This continues until an agreement is reached, or the system is complemented by an additional final rule, e.g. decision of one of chamber prevails, or a special joint committee is convened[725].

Table 34: Bicameral parliaments: selection of members and overcoming decision problems

Country	**Mode of selection of upper house**	**Equivalence**	**Decision system**
Austria	Indirect election by provincial leg. proportional repr.	No	navette (lower house decisive)
Belgium	Direct proportional (4/7), indirect (2/7) cooptation by senate (1/7)	Yes	Navette
France	Indirect election by electoral colleges	No	Navette (followed by joint committee or lower house decisive)
Germany	**Appointed by state governments**	**No**	**Navette (followed by joint committee or lower house decisive)**
Italy	Direct election proportional rep.	Yes	Navette
Norway	Nominated by unified chamber after election from among its own members	Yes	Navette (followed by 2/3 maj. decision of combined chambers)
Spain	Direct election simple majority (208/256); appointed by regional assemblies (48/256)	No	Navette (followed by join committee)
Switzerland	Direct election two per canton	No	Navette (followed by joint committee)
UK	**Hereditary and appointed**	**No**	**Navette (lower house decisive)**

Source: Tsebelis, G., Rasch, B. E.. "Patterns of Bicameralism" in Döring, Parliaments and Majority Rule in Western Europe.

Despite the fact that *navette* as a method of reconciliation is mentioned by all parliaments mentioned in Table 34, the differences of between states are remarkable[726]. The

724 Ibid. p. 365.
725 Ibid. p. 365.
726 Ibid. p. 371.

differences rest in institutional details of the *navette*, such as how many rounds a bill can be exchanged among chambers, or who can make a final decision (See Table 35)[727].

Table 35: Legislation process and final decision in bicameral parliaments.

Country	Introduction of legislation*	Number of rounds	Final decision
Austria	Lower house	1	Lower house if upper house objects within 8 weeks (delay only)
Belgium	Either house	Indefinite	No stopping rules
France	Either house	Indefinite 3 (2 if urgent)	Joint committee then lower house (government decides where to introduce bills, number of rounds and whether lower house decides)
Germany	**Government bill in upper house, otherwise either house**	**1**	**Joint committee then either lower house decides, or mutual veto**
Italy	Either house	Indefinite	No stopping rules
Norway	Lower house	2	Plenary session of united chamber (2/3 majority)
Spain	Lower house	3	Lower house decides by absolute majority
Switzerland	Either house	3	Joint committee
UK	**Either house**	**2 or 3/2**	**Lower house after one year (delay only)**

Source: Tsebelis, G., Rasch, B. E. "Patterns of Bicameralism" in Döring, Parliaments and Majority Rule in Western Europe.
* Ordinary legislation excluding money bills, which in some countries have a special procedure of adoption.

Levmore claims that "[b]icameralism can … be understood as an antidote to the manipulative power of the convener, or agenda setter, when faced with cycling preferences. And it is noteworthy that bicameralism can better defeat a manipulative agenda setter than can the requirement of a supermajority"[728].I agree with Levmore, however, in order to confirm this generalization of bicameralism and its agenda setting influence, one has to consider the power distribution between two chambers and their role

[727] Ibid. p. 371.
[728] Levmore, "Bicameralism: When Are Two Decisions Better Than One?." p. 148.

in the legislative process. The German and British bicameral arrangements are good examples of why the generalization has to take into account the equality of chambers in the legislative process.

5.1.12.2 Bicameral Arrangement in Germany and the United Kingdom

Models of bicameralism based on the criteria mentioned above could be identified as follows: bicameralism with co-equal chambers (Italy, the USA), bicameralism with partially equal chambers (Germany); and lastly, bicameralism with the lower chamber taking the final decision and the upper chamber at most delaying the legislation (the UK). The first model represents the biggest obstacle to the legislative agenda of the government, and the third the least.

The Bundesrat is the upper chamber in *Germany* and it is a forum for the *Länder* to participate in the legislation and administration of the Federation and European Union matters[729]. The members of the Bundesrat are appointed and recalled by the *Land* governments[730]. The number of votes of each *Land* is allocated based on their population, starting from three votes up to six, which equals the number of representatives the *Land* may appoint; however, representatives of each *Land* may cast their vote only as a unit[731]. According to Article 52 of the Rules of Procedure, the Bundesrat elects the president for the term of one year, and takes decisions by at least a majority of its votes.

729 Article 50 of *The Basic Law*.
730 Article 51(1) Ibid.
731 Article 51 (2), (3) Ibid.

When it comes to the legislative process, the Government, the Bundesrat or at least 5 percent of the MPs may initiate bills in the Bundestag[732]. Federal bills are first submitted to the Bundesrat, which is entitled to comment on them within 6 (9) weeks[733]. Afterwards the bill is submitted to the Bundestag, and after its adoption, the President of the Bundestag submits the bill to the Bundesrat without delay[734].

In order to reconcile the dispute, the Bundesrat and the Bundestag convene a joint (mediation) committee consisting of 16 members of each chamber. From the Bundesrat, there is one representative for each *Land* not bound by instructions from their governments[735]. Quorum for a meeting is at least 7 members per chamber, and the decisions are made by a simple majority. Members from the Bundestag are chosen on a proportional basis to the strength of parliamentary groups. The joint committee is permanent, chosen by the coalition leadership; 16 members from lower house are chosen on a proportional basis, and from the Bundesrat there is one representative per state. The chair of the Mediation Committee rotates every 3 months between the members of Bundestag and the Bundesrat. Meetings of the Committee are strictly confidential, and minutes from the meetings are not available until the beginning of the new electoral term (generally four years have to pass)[736]. The frequency of the meetings of the Joint/ Mediation Committee shows the extent of disagreement between the majority of the

732 Article 76 (1) Ibid.
733 Articles 76.2 Ibid.
734 Article 77 (1) Ibid.
735 Article 77 (1) Ibid.
736 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p.115.

Bundestag and the Bundesrat, and actually also reflects the political composition on the federal and state level.

The United Kingdom and Germany are the only two states from the researched countries that have bicameral parliaments. Comparing the strength of the Upper Chambers of these two states, I conclude that position of the Bundesrat is stronger, and it presents a bigger obstacle to the legislative agenda of the government. While in the United Kingdom, due to the Acts of 1911 and 1949 the House of Lords may only delay the legislation they disagree with, the government is not pushed into negotiations over their policies and can proceed without their consent. On the other hand, in Germany, the government has to expect the negotiations conducted in mediation committees between the two houses in the case of laws where the Bundestag has an absolute veto[737]. In a worst-case scenario, if the government has no majority in the Bundesrat, the Bundestag is noticeably weakened, considering that approximately 60% of all federal bills need the consent of the Bundesrat.

To sum up, the UK fits the third model, where countries have prevalent lower chambers, and upper chambers having only suspensive veto. The German arrangement, on the other hand, fits into the model of partially equal chambers, as the Bundesrat uses both suspensive as well as absolute veto depending on the type of legislation proposed. Therefore, the German Bundesrat has a stronger role in agenda-setting than the House of Lords, and the German government's agenda-setting dominance is constrained by the

[737] The Bundestag has a power of suspensive veto in case of *Einspruchsgesetze* (Art. 77.4 BL), and absolute veto in case of *Zustimmungsgesetze* (Art.85 BL). In a first case, a veto can be overridden by the two-thirds majority of Bundestag. On the other hand, denial of a consent by the Bundesrat to bills that require agreement constitutes an absolute veto.8

Bundesrat. This is not the case in the United Kingdom, where the House of Lords can merely delay the legislation, and Lords do not constrain the agenda-setting dominance of the government of the day.

5.1.13 Administrative support

Administrative support of the parliament together with other resources is equally important to other factors. Parliament that is formally strong, but without any resources or administrative support would have only little impact on the legislative process[738].The less resources parliament has, the more constrained are its agenda-setting powers. Keeping this in mind and looking at the four researched jurisdictions, the difference of the resources and administration available to the researched parliaments is significant. The United Kingdom and German Bundestag have elaborate administrative organizations helping MPs, committees and leadership of the parliaments with effective exercising of their functions. On the other hand, the Turkish Assembly and the Slovak Council's organization are much less sophisticated, and do not provide parliamentarians with equally generous administrative and material support as can be seen in the UK and Germany. This claim is supported by the available data on parliamentary budgets (Table 36).

Table 36: Parliamentary Budgets

Country	Structure of parliament	Budget in local currency	# of MPs	Per MP
GERMANY	Bicameral	668,118,000	**622**	**1 074 144**
SLOVAKIA	Unicameral	29,059,302	**150**	**193 728**
TURKEY	Unicameral	217,985,000	**550**	**396 336**
UK**	Bicameral	461,234,480	**650**	**709 591**

738 Daniel Schwarz, André Bächtiger, and Georg Lutz, "Switzerland:Agenda-Setting Power of the Government in a Separation-of-Powers Framework," in *The Role of Governments in Legislative Agenda Setting* ed. George Tsebelis and Erik Bjorn (2009).

* The data in GPR are in Lira/Pound; I turned data into Euro for comparable purposes using exchange rate from May 17, 2013
** UKs budget does not include salary of parliamentarians and parliamentary staff is according to IPU: 410,665,000EUR.To have more accurate result, I added £65,738 times 650 as MPs' salaries: http://www.parliament.uk/about/mps-and-lords/members/pay-mps/
Source: IPU[739]

Data in the last column take the economic situation of the country into account and allows us to compare budgets of the German, Slovak, Turkish and British parliaments. The German budget is far upfront, both with whole parliamentary budget and tentative calculation of approximate costs of one MP. The British Parliament is second when it comes to parliamentary budgets. The Turkish parliamentary budget is third; however, Turkish parliamentary administration involves also administration of historical palaces and museums, which make up most of the personnel and financial costs. Lastly, the Slovak budget is the smallest, being not even 20 percent per MP of the German spending. I believe that more resources of parliaments translate into better positions *vis a vis* the executive when it comes to agenda setting.

5.1.13.1 Administrative Support: Germany

Out of the four parliaments, parliamentarians in Germany receive the best administrative and financial support. The principles of remuneration of members of the German Bundestag were established in 1975 by the Federal Constitutional Court, which served as a basis for the Members of the Bundestag Act of 1977, and the basic adopted idea is that all MPs should have the opportunity to perform their activities as effectively as

739 Power, "Global Parliamentary Report: The Changing Nature of Parliamentary Representation."

possible[740]. The salary is fixed in the above-mentioned statute, and is complemented with the allowances attached either to the higher position within a parliament (the President of the Bundestag or his deputies), or related to the expenses connected to parliamentary mandate[741]. MPs are reimbursed, for example, for office expenses, travel costs, and expenses from exercising representative functions, invitations, and constituency work. Each MP is reimbursed for the employment of staff that assists him/her with the work.

The Administration of the German Bundestag is an organization with approximately 2,500 staff, and its main function is to serve parliament within a framework of tasks assigned to it[742]. The head of the Administration is the Secretary-General of the Bundestag, who represents the President in business connected to the Administration. The Administration of the German Bundestag is divided into 4 directorate-generals: Central Services - *Z* (responsible for the budget, personnel management and legal affairs, matters that have a bearing on all parts of Parliament); Parliament and Members (provides assistance to the parliamentary work in the narrower sense and is divided into three directorates: Parliamentary Services; Services for Members; and Committees.); Information and Documentation; and Research and External Relations. The Research Services providing MPs with support by providing specialist information and

740 Remuneration of Members of the German Bundestag in "German Bundestag," http://www.bundestag.de.

741 *Members of the Bundestag Act (Abgeordnetengesetz)*. S. 11.

742 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p. 131.

analysis.Expert opinions are an organizational part of the Research and External Relations directorate general[743].

5.1.13.2 Administrative support: the United Kingdom

The position of the MP and the Opposition has been developing gradually for many years. The MPs have been receiving salary only since 1911. Before that, being a Member of a Parliament was not considered a full time job. Ever since 1911, not only the amount paid to parliamentarians has increased, but MPs have got their own pension scheme, and are entitled for allowances allowing them to work in Parliament and in their constituencies. The system of allowances includes Accommodation Expenses (for MPs from the non-London area), Constituency Office Rental Expenditure (CORE), General Administrative Expenditure, Staffing Expenditure, and Travel Expenditure.

In addition, the Library, which belongs under the Department for Information Services, offers an information and research services to parliamentarians, their staff and to both Houses[744].

Furthermore, the Speaker, Deputy Speakers, Leaders of Opposition and Opposition Chief and Deputy Whips are through their positions entitled to a salary in addition to their MPs salaries. Over the years, the number of paid positions has also been extended, in order to motivate parliamentarians to 'an alternative career path' to that of becoming a government minister, and also recognition of the extra workload that this position brings.

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743 Ibid. p. 137.

744 "The House of Commons Library," in *General Series: Factsheet G18*, ed. House of Commons Information Office (2010).

As a result, the chairmen of committees or members chairmen's panel[745] receive additional remuneration.

Political parties represented in parliament but not in government are paid some money to facilitate enough funds for the Opposition and minority parties to perform their parliamentary role and to express their views. This is known as 'short money' and is given to the parties proportionally to the votes they received during the last elections[746]. The funding covers expenses related to Parliamentary business, travels and office costs of the Leader of the Opposition[747]. In general, these funds are used as research support for spokesmen, and administrative staff of the leadership of the opposition parties[748].

The chair and members of the committees have at their disposal a team of staff led by the Clerk of the Committee, who works with the Chairman[749]. The main task of a staff working for each committee is either to provide administrative support, or gather and analyze evidence, advise the committee, and draft the reports[750]. Committees can contract experts and specialists as advisors[751].

745 The Chairmen's panel is a group of around 30 MPs selected by the Speaker, who chair the Public Bill Committees and other general committees in the House of Commons

746 The funding for opposition takes name after Edward Short, who introduced the law into parliament in July 1974 in order to provide additional support for all opposition parties. IN Richard Kelly, "Short Money," ed. Parliament and Constitution Centre (2011).

747 Ibid.

748 Ibid.

749 "Departmental Select Committees," http://www.parliament.uk/documents/commons-information-office/p02.pdf.

750 Ibid.

751 *Standing Orders of the House of Commons*.137a.

5.1.13.3 Administrative Support: Turkey and Slovakia

In Turkey, the General Secretariat supports parliament and its bodies in exercising their functions administratively[752]. All the details on the Secretariat, its legal and organizational framework, and data are to be found in the Strategic Plan of the TGNA General Secretariat 2010-2014, and the annual Accountability Report of the General Secretariat. The main source of the organizational principles of the TGNA is the Organizational Law on the TGNA complemented by regulations and decisions adopted by the Bureau of the TGNA. The TGNA Secretariat employs over 5000 employees. However, the majority of the personnel are employed in the departments dealing with non-core activities, such as Auxiliary Services, or the Technical and National Palaces Departments.

Interviews conducted by the Sigma research team revealed that some MPs feel that administration is not sufficiently responsive to their needs and requirements. Procedures, staff allocation and the administrative performance seem to follow preferences of administration rather than MPs[753]. Also the Strategic Plan highlights concerns regarding politicization and patronage in hiring and promotion, lack of human resources management, deficiencies in technical equipment and physical space, especially when it comes to the staff serving for committees[754].

Administrative support to the National Council in Slovakia is provided by the Chancellery of the National Council. It fulfills professional, organizational and technical

752 Report, "The Administrative Capacity of Turkish Grand National Assembly." Par. 70.
753 Ibid. Par.88.
754 Ibid. Par.88.

tasks related to securing the work of the National Council, committees, and other parliamentary bodies, including the parliamentary documentation and press office. The Chancellery is managed by the Head of the Chancellery, who is accountable to the Speaker. The Head of the Chancellery has a right to attend both public and closed sessions of the National Council, as well as public and closed sessions of the committees of the National Council[755].

MPs are allocated an office in the building of parliament, and they are entitled to open another office elsewhere, usually in a different city. MPs are entitled also to employ assistants to help them with their work. Expenses on additional offices and on assistants, however, cannot exceed 2.7 times the MPs' salary.

To conclude, the less resources parliaments have available, the less capable they are to efficiently influence the parliamentary agenda-setting. German and British parliaments have considerable resources and fine administrative support to perform their work, even if MPs are not members of the political party holding a majority. On the other hand, MPs in the Slovak and Turkish parliaments lack the same resources, which makes them more constrained with regard to agenda-setting.

Conclusion

If we try to assess the legislative function from the traditional point of view, which is the relationship between parliament and government, we can see that not much has changed here. It is obvious in all four jurisdictions that government is dominant in parliamentary agenda setting. The difference is merely in the form the executive dominance is presented

[755] The National Council of Slovak Republic official website: www.nrsr.sk

publicly. For example, in the British parliament, the government has precedence in all parliamentary businesses apart from 20 Opposition days. On the contrary, in the German, Slovak and Turkish parliaments, the rules of procedures provide for neutral agenda-setting procedures, where parliamentary bodies officially decide on the agenda. However, agenda-setting parliamentary bodies are usually created on the basis of proportionality to the strength of political parties in parliaments, and so it is clear that the executive's wishes regarding the agenda are adopted through the majority in parliament. At the end of the day, dominance of the majority can be clearly visible on the number of bills presented and passed by the executive as compared to bills introduced by MPs (see Table 37).

Table 37: Government vs. PMB bills in Slovakia and the UK

	Bills Introduced	Successful Bills	%
Slovakia (2012)			
- government	80	66	82, 5%
- private member bills	114	16	14, 03%
The UK (2010-2012)			
- government	47	47	100 %
- private member bills	228	7	3, 07 %

Source: Slovak and UK parliamentary web sites

Executive dominance, as was shown in this chapter through several indicators, is not a recent phenomenon. Quite on the contrary, executive dominance in the parliamentary system is an inherent part of parliamentarism rationalized, and it is quite static. Thus, although the executive dominance was shown, it does not represent a change, and one can hardly argue that there is a parliamentary decline because of the procedural executive dominance in parliaments. Looking at the legislative function from the perspective of non-traditional constraints discussed in Chapter 6, however, reveals the dynamics of the legislative function of parliaments.

Chapter 6: Non-traditional constraints of legislative function of parliaments

Introduction

In Chapter 5 the agenda setting power of government in relation to parliaments was discussed, and it was concluded that agenda-setting predominance of government is a traditional rationalized arrangement of the relationship between the executive and the legislature. In other words, after WWII, the executives have been strengthened at the expense of parliaments in many European countries. This chapter, on the other hand, takes a different approach to assessing the legislative function of parliaments and looks into the development of parliamentary legislative function through 'non-traditional' constraints, such as policy transfer to the EU level, conditionality, the increasing number of the soft law instruments, constitutionalization, and judicialization. These non-traditional constraints, unlike agenda-setting powers, I believe, are the major ongoing and novel developments with constraining implications on the legislative function of parliaments. The aim of this chapter is to answer if these novel developments are behind the parliamentary decline thesis.

This chapter is divided into two parts. The first one discusses constraints caused by European integration. The European Economic Community, in 1992 renamed to the European Union, as an organization *sui generis* has been since its establishment developing in terms of geographical reach of the Community as well asin sphere of

competence. Out of the four researched jurisdictions, Germany is one of the founding member states of the EU, the United Kingdom was accepted in 1973 and Slovakia in 2004. Turkey applied for membership to the European Economic Community already in 1987, in 1997 it was declared eligible to join the EU, and it is currently listed as a candidate country[756].

In terms of the scope of regulation by the EU, since establishment there has been gradual transfer of competencies to the EU level. At the same time, certain policies were attributed to constitutional value, which these policies did not have before they were transferred to the competences of the EU. Furthermore, besides the voluntary transfer of competences, parliamentary legislative function is also constrained by other EU related actions such as by conditionality of the accession process, during which parliaments of future member states have to adopt reforms while supervised by the Commission, and a considerable number of soft law measures, which are not binding, but parliaments have to take them into account as a form of guidance or recommendation. Therefore, the impact of the European integration is not taken as a whole, but rather is broken down to specific developments starting from conditionality, through direct transfer of competences to constitutionalization and soft law measures. The overall question is if any of these EU related developments can be considered to cause, and support the parliamentary decline thesis.

[756] Turkey is on the list of candidate countries together with Iceland, Montenegro, Serbia, and Former Yugoslav Republic of Macedonia. See: http://europa.eu/about-eu/countries/index_en.htm

In the last part of this chapter, in addition to policy transfer, indirect constraints on parliaments, and constitutionalization, there is another phenomenon discussed, which is judicialization of policy making as a constraint of the legislative function of parliaments. Simply said, judicialization means that judicial decision-making is affecting the policy making of legislatures. Judicialization can be seen through the abstract decision-making of national constitutional courts, as well as through international courts, such as the Court of Justice of the European Union or the European Court of Human Rights. The main question on the part of judicialization but also of the whole chapter is that if agenda-setting of government as a traditional constraint of legislative function of parliament has not changed, what impact do non-traditional constraints of the legislative function of parliaments have on the legislative function of parliaments?

6.1 EU: direct and indirect constraints of legislative function and constitutionalization of policy making

6.1.1 Direct Constrain of Parliamentary Legislative Function: Policy Transfer

Transfer of policies on the EU level, for the purposes of this dissertation, is considered as a direct constraint of parliamentary legislative function, since parliaments have done the transfer voluntarily, by ratifying each of the respective treaties amending the Treaty of Rome. Transfer of competences has still an impact on the legislative performance of parliaments, but in comparison with indirect constraints, direct constraints are legitimized by parliaments themselves, which is an important distinction, because of the degree of involvement and participation of national parliaments in the process.

6.1.1.1 Policy Transfer: 1951-2007

The integration process started in 1951 with the establishment of the European Coal and Steel Community (ECSC) by France, Germany, Italy, Belgium, Netherlands and Luxembourg. In 1957 the Treaty of Rome was signed by the same six states, the European Atomic Energy Community (Euratom) and the European Economic Community (EEC) were created ('Community') in order to create a common market by free movement of person and goods. The Treaty of Rome set out the schedule for adoption of the common market, which was supposed to be achieved through 'positive' and 'negative integration'[757]. 'Positive integration' meant creating new European policies to regulate the common market. 'Negative integration', on the other hand, meant removal of all barriers precluding free movement between states in EC territory.

To pursue common market objectives, the Treaty of Rome has been revised several times since its adoption, expanding the scope of Community competence. The first revision of the Treaty of Rome was adopted in the form of the Single European Act (SEA) in 1986. Besides institutional changes such as the introduction of cooperation procedure or qualified majority voting, the Community area of competence was extended to co-operation in economic and monetary issues, social policy, economic and social cohesion, research and technological development and environmental policy. Besides the expansion of competence of the Community, an important shift towards supranational character of the Community was the introduction of qualified majority voting from 1986, where I believe the 'real' shift of competences started, as prior to this, the intergovernmental

[757] Alec Stone Sweet, *The Judicial Construction of Europe* (Oxford ; New York: Oxford University Press, 2004). p49.

character of the Treaty guaranteed every state an equal vote. The Community suddenly did not need unanimity for certain decisions.

For almost thirty years, the Treaty of Rome existed without any revisions. After the SEA, however, revisions became much more frequent. In 1992 the Maastricht Treaty was adopted transforming the Community into the new form called the European Union. The Maastricht Treaty introduced a three-pillar institutional structure, where Communities formed the first pillar with supranational methods of decision-making (qualified majority voting). The other two were a Common Foreign and Security Policy and Justice and Home Affairs pillars, which gave member states a platform to co-operate on the intergovernmental level. The rationale of the pillar arrangement was that member states were not willing to give up full control over such sensitive policy areas. The Maastricht Treaty yet again transferred more competences on the Community in areas such as culture, public health, consumer protection, trans-European networks and environment[758].

In 1997 the Treaty of Amsterdam was signed and came into force in 1999, with aim to consolidate rather than extend the Community powers. The major change concerning the competences involved the transfer of a large part from the third intergovernmental pillar (Justice and Home Affairs) into the first Community pillar. Transferred policies included policy areas on the free movement of persons, visas, asylum, immigration, and judicial cooperation in civil matters. The inter-pillar transfer of policies meant at the same time a change in decision-making methods in these areas, whereas a unanimity vote turned into

[758] The development of the EU integration IN P. P. Craig and Gráinne de Búrca, *Eu Law : Text, Cases and Materials* (Oxford: Oxford University Press, c2003). p 25

qualified majority voting, which strengthened the European Union at the expense of the Member States[759].

The Constitutional Treaty signed by governments of the Member States in 2004 was not adopted in following referendums in France and in the Netherlands. It was replaced by the Reform Treaty or the Lisbon Treaty (2007). The Lisbon Treaty abolished the pillar system; the second pillar comprising the Common Foreign and Security Policy area was integrated into the Treaty on the European Union (TEU) while keeping its intergovernmental features. The third pillar on Police and Judicial Cooperation in Criminal Matters was assimilated with the community method in the Treaty on Functioning of the European Union (TFEU).

6.1.1.2 Current Regulation: European Exclusive Policy Areas

After several revisions of the EU treaties, the Lisbon Treaty aimed for clarification and simplicity with regard to division of competences between the EU and member states. The Treaty of Functioning of the European Union (TFEU) distinguishes between three main types of competences: exclusive, shared and supporting competences[760]. Article 3 of this Treaty lists the exclusive competence of the EU in the following areas, in which only the EU alone is allowed to legislate. The role of national parliaments in this sphere is limited only to the application of adopted legislation:

[759] After the Treaty of Amsterdam and before the Constitutional Treaty there was also Treaty of Nice singed in 2001, which however, with respect to transfer of comptences did not represent a major development.

[760] Article 1 of the Treaty on the Functioning of the EU (TFEU): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF

a. *customs union;*
b. *the establishing of the competition rules necessary for the functioning of the internal market;*
c. *monetary policy for the Member States whose currency is the euro;*
d. *the conservation of marine biological resources under the common fisheries policy;*
e. *common commercial policy*[761].

Article 4 lists the shared competence between the EU and member states. Shared competences mean that both the EU and member states are entitled to adopt legislation in listed areas, but member states can do so only as far as the EU has not legislated or has decided not to legislate:

(a) internal market;
(b) social policy, for the aspects defined in the TFEU;
(c) economic, social and territorial cohesion;
(d) agriculture and fisheries, excluding the conservation of marine biological resources;
(e) environment;
(f) consumer protection;
(g) transport;
(h) trans-European networks;
(i) energy
(j) area of freedom, security and justice;
(k) common safety concerns in public health matters, for the aspects defined in the TFEU.

The TFEU in Article 6 lists areas where the EU shall carry actions to support, coordinate or supplement actions of member states:

(a) protection and improvement of human health;
(b) industry;
(c) culture;
(d) tourism;
(e) education, vocational training, youth and sport;
(f) civil protection;
(g) administrative cooperation.

761 Article 3, section 1 of the TFEU

In these areas the EU has no precedence and may not interfere with legislation of member states.

Despite the goal to make the division of competences clear and simple, besides three types of competences there are special competences not belonging to any of the three types. First, it is a coordination of economic and employment policies enshrined in Article 5 of the TFEU, according to which the Council has the power to adopt measures and guidelines for this purpose[762]. Furthermore, the Union shall also take measures to coordinate employment policies of the member states and may coordinate social policies of member states[763]. Furthermore, Article 24 of the TEU specifies the EU's competence in the area of Common Foreign and Security Policy, which is governed by specific rules and procedures and in which the adoption of legislative acts and jurisdiction of the Court of Justice is explicitly excluded[764].

Competences of the European Union are set out as functional, which means that they extend to everything that is necessary to achieve the goal envisaged by the Treaties[765]. Moreover, Article 352 of the TFEU contains a so called 'flexibility clause', which gives the Council the power to adopt appropriate measures even if Treaties do not explicitly provide for such a power, in case it is necessary for achieving objectives of the Treaty. In such a case the Council must act unanimously on the proposal of the Commission after

762 Article 5 section 1 of the TFEU
763 Article 5 section 2 and 3 of the TFEU
764 Article 24 of the TEU
765 Allan Rosas and Lorna Armati, *Eu Constitutional Law : An Introduction* (Oxford ; Portland, Or.: Hart, 2010).p. 20

obtaining consent of the European parliament. Article 352 of the TFEU explicitly encourages national parliaments to use the procedure for monitoring the subsidiarity in Article 5(3) of the TEU. Although the unanimity of the vote in the Council is required, this provision means that amendment of treaties can proceed without the process of adopting treaties that have to be ratified by national parliaments.

Yet, despite the existence of the flexibility clause, my answer to the question if the direct policy transfer could be linked to the parliamentary decline thesis is negative, because all changes listed in this section happened with the presence of national parliaments that had to ratify all Treaty amendments.

6.1.2 Indirect Constrains of Parliamentary Legislative Function: Conditionality, and Soft Law Instruments

Parliaments ratifying policy transfer and voluntarily restricting their own sphere of legislating is one thing, but EU membership is more than that. Prior to accession, as will be discussed below, aspiring members since 1993 have had to comply with a long list of EU accession conditions, which have led to quite an extensive reform processes in all new member states, especially from Central and Eastern Europe. Since Germany is a founding state, and the UK entered the EU already in 1976 the focus of this section is on conditionality as applied in Slovakia and in Turkey.

Furthermore, this section also discusses so-called 'soft law' instruments. These are non-binding legal instruments adopted by EU institutions, which, however, de facto constrain the legislative function of parliaments. Their number is constantly increasing and the

main reason to look at it is that soft law instruments usually touch upon areas that states wanted to keep in their own area on competence. Yet, the European Union, but also other international organizations (such as e.g. the Council of Europe) by soft law instruments create pressure that states cannot ignore and have to take soft-law instruments into account when legislating.

6.1.2.1 EU Conditionality

Germany, Slovakia and the United Kingdom are current member states of the EU, and Turkey is a candidate country. In order to join the EU, especially after the adoption of the Copenhagen Criteria in 1993, future member states have to comply with a comprehensive set of accession criteria. As they were introduced in 1993, conditionality applied to Slovakia and still applies to Turkey[766].

In general, accession criteria adopted by the European Council in Copenhagen in 1993 require states to have stable democratic institutions, adhere to the rule of law, protect human rights and respect minorities. The second general criterion is a functioning economy and the ability to cope with competition and market forces within the EU. The last general criterion is the ability to effectively execute obligations of the membership, including political, economic and monetary goals. These general criteria transform into specific rules that are grouped into 35 chapters according to the field, for example environment, energy, or justice. These chapters are not negotiable, thus, candidates for

[766] European council in Copenhagen - 21-22 June 1993- conclusions of the presidency - DOC/93/3 adopted on 22/06/1993; available at: http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en (Last Accessed on September 19, 2013).

accession can merely negotiate the date and methods of implementation, but not their content[767].

Having Slovakia and Turkey as post 1993 accession states, we can compare, as an example, impact of one of the conditionality requirements regarding self-administration of judiciary in both states.

Slovakia: premature judicial autonomy

Slovakia entered the EU in 2004. Between 1998 and 2004 annually there was one progress report. The judiciary was one of the areas that had to be reformed to get in line with impartiality standards of the Community, especially with regard to its administration. Prior to 1989 the key role in administering of judiciary was played by the Ministry of Justice, and everything in the judiciary was *de facto* administered by the Communist party. The strong position of the Ministry was kept for some time following 1989. In 1999 the Commission concluded that "the Judiciary needs further modernization and reinforced independence and self-government.[768]"

In October 2000 parliament adopted a constitutional amendment next to other major reforms and also introduced a Judicial Council as a self-governing body into the system. On the new constitutional basis parliament adopted the new Act Coll. 385/2000 on Judges and Associate Judges, which put in place the National Council of the Judiciary

[767] All presented areas are monitored by the European Commission. Regular reports are published since 1998. See Preface of each report, such as Report on Slovakia 1998 available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/slovakia_en.pdf (Last Accessed on September 19, 2013).

[768] "Regular Report from the Commission on Slovakia's Progress Towards Accession," (The European Commission, 1999). p. 67.

(Judicial Council) and Regional Councils of the Judiciary as self-governing bodies within the court system.

The Judicial Council consists of 18 members and is presided over by the President of the Supreme Court[769]. Half of the members are elected by judges themselves, and the election or nomination of the rest of members is equally distributed among parliament, the government and the president of the Republic[770]. Powers of the Judicial Council include selection, promotion of judges and selection and dismissal of judicial officials, but also powers with regard to education, training and disciplinary measures[771].

Thus, formally Slovakia met the condition of judicial self-governance. That it might have been a somewhat premature step for the judiciary in Slovakia showed when the Minister of Justice in Robert Fico's government (2006-2010), Stefan Harabin, first strengthened the competences of the president of the Judicial Council, influenced a composition of the Council and consequently ran for office, which was very controversial, raising separation of powers as well as conflict of interest issues. Unfortunately, the election of Harabin as a President of the Supreme Court was not the only problem. In his position he has been using disciplinary proceedings against judges that would point to his misadministration of the judiciary[772].

769 Article 141a of the *Constitution of Slovak Republic.*

770 Ibid.

771 Ibid.

772 Up until 30 January 2011, disciplinary proceedings were initiated against fourteen judges: 1. Peter Paluda, 2. Stanislav Sojka, 3. Anna Benešová ,4. Angela Balázsová, 5. Milan Růžička, 6. Jana Dubovcová, 7. Darina Kuchtová, 8. Miroslav Gavalec, 9. Juraj Kliment, 10. Peter Hatala, 11. Jozef Kandera, 12. Juraj Majchrák, 13. Juraj Babjak, 14. Kristína Glezgová. See more at "Sudcovia "Za Otvorenu Justiciu" [Judges "for the Open Justice"]," http://www.sudcovia.sk/sk/dokumenty/disciplinarne-konania. (Last Accessed September 19, 2013).

When the government changed after 2010 elections, newly appointed Minister of Justice Lucia Zitnanska wanted to improve the critical situation in the judiciary[773]; however, there is strongly institutionalized independence, and the Minister has no influence whatsoever on the President of the Supreme Court. The President of the Supreme Court is in the position even today, and no remedy has been done to dismissed or punished judges who expressed their concern about the state of the judiciary.

Turkey: EU conditionality for benefits of current political party in power

Turkey, as other candidates, also has to undergo required reforms. Two out of the many areas that have to be reformed due to EU conditionality are military oversight and the judiciary. The Turkish military had since the 1980s a central position in the state as a protector of secularism, however, unlike in established democracies there was no civil oversight over the military. Therefore, Turkey was pressured to reform the status of military. The Progress Report in 2012 stipulates that the civilian oversight of the military was consolidated in Turkey by 2012[774]. Removing influence of the military is according to the EU a right step towards democracy; however, with a new shift to democracy the power of the current government has been strengthened considerably.

The second of many required reform areas is the judiciary. In Turkey, the composition of the judicial self-governing body and composition and powers of the Constitutional Court

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773 Main accusations against Stefan Harabin are: the abuse of disciplinary proceedings, influencing of the appointments in the Judicial Council and installing people close to him as presidents of courts, awarding financial bonuses to supporters, without disclosing the precise amount, influencing appointment of new judges, and lastly, using libel actions to threaten media and diminish public criticism , manipulating the case distribution at the Supreme Court, interfering with court cases, attempting to abolish the Special Criminal Court. See Ibid.

774 "Enlargement Strategy and Main Challenges 2012-2013," (The European Commission, 2012).

were amended[775]. The judicial self-governing body, the High Council, was altered within the package of constitutional amendments approved in a referendum in September 2010. In December 2010 parliament adopted based on a constitutional basis a Law on the High Council of Judges and Prosecutors. The number of members of the High Council was increased from seven to twenty-two members. The TGNA is not involved in the appointment process, but the President has discretion to decide on four non-judicial members of the High Council. The goal of the constitutional and statutory amendment of the High Council was to make it more pluralistic and representative of the judiciary as a whole, to reduce ministerial influence, and to allow appeal against the Council's decisions.

With regard to the Constitutional Court, the Law on the Constitutional Court was adopted in March 2011. The Law enlarged the membership of the court from eleven to seventeen members[776]. Three members are appointed by parliament (TGNA). For the first and second ballot an absolute majority (two-thirds) of all MPs is needed, if no judge is elected, in the third round MPs elect a judge from the two candidates who received the highest number of votes in previous ballots with only a simple majority[777]. The rest of the members of the Constitutional Court are appointed by the President of the

[775] Previous only the Supreme Council of Judges and Public Prosecutors was involved in selection of judges and prosecutors for the judicial and administrative courts. Members of the Supreme Council were appointed by the President of the Republic for 4 year term.

[776] Article 146 of *The Constitution of the Republic of Turkey*.: The term of office of the members is 12 years and non-renewable. The mandate of a judge expires, however, at the age of 65

[777] Article 146 (2) Ibid.

Republic[778].The powers of the Court were extended with an introduction of the individual application procedure.

What connects the area of the military and the judiciary is the fact that both acted, especially through last three electoral periods, as a contra balance to the hegemony of the executive. Both used to be the bastion of secularism; however, since the implementation of democratic reforms required by the EU, Turkey is experiencing a new shift in power balance in state institutions and increased influence of the ruling Justice and Development Party in previous strongholds of secularism. Specifically, membership of both the High Council as well as the Constitutional Court was raised. This allowed the current executive to pack the Constitutional Court and the High Council with his own supporters, and thus silently change the political stance of both institutions.

In short, these are a few of the many examples of EU conditionality and its constraining impact on the legislative function of parliaments. Would conditionality not be there, parliament would not necessarily adopt judicial reform with such strong independence considering the Slovakian past and the Turkish struggle over the secularism issue.

6.1.2.2 Soft law and the Open Method of Coordination

As was already indicated in Chapter 1 of this thesis, soft law is perhaps more constraining for parliaments than officially binding legal instruments. 'Soft law' instruments, compared to typical legislation, are non-binding; however, their goal is the same,

778 Article 146 (3) Ibid.

harmonization, and they have normative content and practical effects[779]. At the same time, these soft-law instruments lack the democratic control that is typical for legislative procedures. There are three main categories of soft-law instruments: preparatory and informative (Green Papers, White Papers, action programs); interpretative and decisional (administrative rules in EC law, interpretative communications and notices, guidelines), and steering instruments (commission's recommendation sand opinions)[780].

Although soft law is not a new phenomenon, since some instruments were already used from the first years of the Community, the new element is "the encouragement of its use and the actual frequency with which the Community institutions are having recourse to soft law instruments.[781]" The popularity of soft law has been increasing since the 1970s, when increasingly member states started to criticize the volume and quality of EU legislation[782]. Consequently the number of legislative acts decreased and the number of adopted soft law instruments increased[783]. Besides the criticism coming from Member States, soft law has been used predominantly where there was lack of consensus of all Member States, as a sort of preparation for adoption of the hard law measure after obtaining the necessary support[784].

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779 Batta and Havrankova, "Better Regulation Adn the Improvement of Eu Regulatory Environment: Institututional and Legal Implications of the Use of "Soft Law" Instruments." p.3.

780 Ibid.pp.3-10.

781 Linda Senden, *Soft Law in European Community Law*, Modern Studies in European Law V. 1 (Oxford ; Portland, Or.: Hart, 2004). p. 4.

782 Ibid. p. 9.

783 Ibid. p. 23.

784 Mark Dawson, "Soft Law and the Rule of Law in the European Union: Revision or Redundancy?," *EUI RSCAS* 24(2009), http://cadmus.eui.eu/bitstream/handle/1814/11416/RSCAS%202009_24.pdf?sequence=1., p. 11 (Last Accessed on September 20, 2013).

The main danger of soft law measures is that they lack democratic control. Measures are adopted by the European Council, implemented by national executives and controlled by the Commission. Both the European Parliament and especially national parliaments are left out of the process[785]. European Parliament adopted in September 2007 a Resolution touching upon the implications of soft law:

> *European Parliament is of the opinion that Commission interpretative communications serve the legitimate purpose of providing legal certainty but that their role should not extend beyond that point; considers that, when they serve to impose new obligations, interpretative communications constitute an inadmissible extension of law-making by soft law; maintains that, when a communication lays down detailed arrangements not directly provided for by the freedoms established under the Treaty, it is departing from its proper purpose and is thus null and void*[786]

In the same document the European Parliament called for enhanced involvement of European Parliament in the adoption of the soft-law instruments, as the only democratically elected body within the European Union, and through that also enhanced scrutiny of soft-law measures[787].

The Open Method of Coordination (OMC) was introduced as an instrument of the Lisbon strategy adopted in the Lisbon European Council in 2000. The OMC is an intergovernmental framework for collaboration between the Member States, setting common aims and goals[788]. The OMC concerns areas that were not transferred to the EU but remain in the scope of the Member States such as employment, social protection, education, environment, taxation, immigration, research, transport, education, regional

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785 Ibid., p. 13; Francesco Duina and Tapio Raunio, "The Open Method of Coordination and National Parliaments: Further Marginalization or New Opportunities? ," *Journal of European Public Policy* 14, no. 4 (2007). p. 489.

786 Point 10 *European Parliament Resolution of 4 September 2007 on Institutional and Legal Implications of the Use of "Soft Law" Instruments*

787 Point 16 Ibid.

788 "Open Method of Coordination," in *Summaries of EU legislation.*

cohesion and social inclusion[789]. Common goals are set by the Council; Member States are then comparing best practices under the supervision of the Commission. The OMC uses soft law instruments. The issue with regard to the OMC is that its adoption happens behind closed doors, and documents related to the OMC are not transferred to national parliaments as other legislative proposals[790]. Thus, the adoption of particular goals is slipping of the review of national parliaments. To sum up, soft law instruments and open methods of co-ordination are constraining the legislative operation of parliaments.

6.1.3 Constitutionalization of the EC

The constitutionalization, or construction of the constitution out of the Treaty, has been discussed already for more than three decades[791]. Stone Sweet characterizes 'constitutionalization' as a process in which treaties have become directly applicable, conferring enforceable rights to private and legal persons within the territory of the EC/EU[792]. This process has been mainly driven by the Court of Justice of the European Union. More recently, however, the meaning of the term 'constitutionalization' widened and refers to all processes that may grant constitutional status to basic legal norms of the European Union[793]. Under this meaning, constitutionalization is a process not driven only

789 Ibid.

790 John O'Brennan and Tapio Raunio, *National Parliaments within the Enlarged European Union : From 'Victims' of Integration to Competitive Actors?*, Routledge Advances in European Politics 47 (London ; New York: Routledge, 2007). p 281

791 Stone Sweet, *The Judicial Construction of Europe*. p. 241

792 Alec Stone Sweet and Thomas Brunell, The European Court and Integration in Martin M. Shapiro and Alec Stone Sweet, *On Law, Politics, and Judicialization* (Oxford ; New York: Oxford University Press, 2002). (p. 263)

793 Francis Snyder, "The Unfinished Constitution of the European Union," in *European Constitutionalism Beyond the State*, ed. Joseph Weiler and Marlene Wind (New York: Cambridge University Press, 2003); Joseph Weiler and Marlene Wind, *European Constitutionalism Beyond the State* (Cambridge ; New York: Cambridge University Press, 2003). p. 62-63

by the Court, but also by the European Council, European Parliament and other EU institutions and agencies, as well as by national institutions[794].

6.1.3.1 Constitutionalization trough Ruling of the Court of Justice

The Court of Justice was established in 1951 by the European Coal and Steel Community Treaty, with a seat in Luxembourg. Later on, when the EURATOM and the EEC were established in 1957, the Court was shared by all three institutions. The Court played an active role in the development of the Community, especially in the 1960s and 1970s, when there was a lack of political will to enhance European integration. The Court with its rulings managed to give life to policies adopted by the Community that member states struggled to implement[795].

The Court is the main actor in constitutionalization understood in the narrow sense[796]. The Treaty of Rome was an international treaty resulting from interstate bargaining, with little operational force before the 1960s and 1970s. It was the Court that in 1963 in the ground-breaking decision in the case *Van Gend and Loos* introduced the principle of direct effect of Community Law in the member states[797]. Direct effect, or in other words, immediate applicability, confers the right to individuals to invoke EU law before national courts or the Court of Justice of the EU, without a precondition for member states to integrate EU law into their national legal systems. The court limited the application of

794 Snyder, "The Unfinished Constitution of the European Union." p. 63

795 Martin Holland, *European Integration : From Community to Union* (London: Pinter Publishers, 1994).

796 Official web page of the Court of Justice: http://curia.europa.eu

797 Case 26/62 Van Gend en Loos v. Nederlandse Administratie der Belastingen; the plaintiff wanted to import goods from Germany to Netherlands, and custom duties were still in force between the two states.

direct effect to those provisions of the EU primary law which are precise, clear and unconditional and that do not require adoption of further measures.

A year later, in 1964, a pro-active Court delivered another significant judgment in the case *Costa v. Enel*, in which it established supremacy of Community law:

> *an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question*[798]

The supremacy essentially means that EU law overrides national law. Member states did not welcome the activist approach of the Court. Germany, Belgium and the Netherlands, for instance, expressed criticism of the principle of supremacy of the EU law as the constraint of their sovereignty[799]. What is more, the Court was not authorized by Treaties to develop these doctrines.

Both principles were in subsequent rulings of the Court re-confirmed and further developed. In 1974 the Court ruled that also directives under certain conditions can be directly effective[800]. This was taken badly by member states, who protested referring to the Treaty distinguishing between directly applicable regulations and directives that need to be transposed to national legal order to be effective[801]. The Court later distinguished between vertical and horizontal direct effect. Vertical direct effect refers to the direct effect of Community provisions, which individuals or private companies can invoke *vis a*

798 Case 6/64 Costa v. ENEL [1964];
799 http://www.grin.com/en/e-book/99422/the-european-court-of-justice-and-its-activist-approach
800 Van Duyn, ECJ 41/74, 1974
801 Craig and de Búrca, *Eu Law : Text, Cases and Materials* p 204.

vis a state. Horizontal direct effect concerns direct effect of rules that individuals or private companies can invoke between themselves[802]. In the *Simmenthal* case in 1978 the Court ruled that Community law since its applicability renders automatically inapplicable any conflicting national rules, including constitutional ones[803].

In summary, the Court declared the supremacy of the EU law and direct effect of certain provisions of the Treaty. This represents constraint of legislative function of parliaments to a certain degree. Ordinary legislative procedure on the EU level, an old co-decision procedure, equally involves the Council and the European Parliament. Although participation of national parliaments in the European legislative process improved over the years, their position, as is discussed in the next chapter, is more of a control one. In other words, if anything, national parliaments are predominantly reactive, not proactive. Thus, having their agenda setting powers curtailed even more than traditionally, with EU law being supreme and having a direct effect, I argue that constitutionalization of EU law does have a constraining impact on the legislative function of national parliaments.

6.1.3.2 Constitutional through Treaties: Fiscal Compact

Out of the four researched parliaments, three are members of the European Union (EU) – Germany, Slovakia and the UK, and the currency of two countries out of the four researched jurisdictions is the Euro – Germany and Slovakia[804]. Traditional prerogatives of parliaments regarding budgets were until recently not touched by the EU; even in the

802 Treaty, regulations and directives can have vertical direct effect. Treaty and regulations only trigger horizontal direct effect, no directives (Marshall I (ECJ 152/84, 1986)

803 Simmenthal, ECJ 106/77, 1978

804 The common currency was introduced in 1999. At the moment 17 states out of 27 member states of the EU have Euro.

case of common currency, the EU established the only common monetary union, with policy determined by the European Central Bank, and the basic rules are established in the Stability and Growth Pact, but there is no fiscal union. Thus, the taxation and expenditure remained in control of Member States themselves. To put it simply, common currency did not lead to common EU fiscal policy.

The introduction of the new currency was considered a success[805]. However, when the sovereign debt crisis in 2009 - 2011 hit some member states, especially Greece, Ireland and Portugal, the common currency without centralized economic policy making appeared like a house without a solid foundation[806]. For the sake of stability of the whole euro zone, first the European Union adopted the European Financial Stability Mechanism (EFSM) in 2010 by amending Article 136 of the TFEU[807]. The mechanisms were used by Ireland in November 2010, Portugal in May 2011 and Greece in July 2011[808].

All bail out mechanisms also triggered calls for deeper economic coordination (especially by Germany), resulting in a meeting of the European Council on 9 December 2011, where 26 out of 27 EU member states discussed the adoption of a Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (Fiscal Compact)

805 Rosas and Armati, *Eu Constitutional Law : An Introduction*. p. 220-221

806 Sovereign debt crisis occurred when states were not able anymore to finance their debt through emissions of state bonds at reasonable interest rates. Ibid. p. 221

807 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:091:0001:0002:EN:PDF; Treaty: http://www.european-council.europa.eu/media/582311/05-tesm2.en12.pdf ; Treaty replaced temporary European Financial Stability Facility, see more information at: http://ec.europa.eu/economy_finance/european_stabilisation_actions/efsf/index_en.htm

808 Rosas and Armati, *Eu Constitutional Law : An Introduction*. p. 233

aiming to restrict limits on government spending and borrowing, including penalties[809]. The 26 Member States agreed on inter-governmental treaty outside the institutional framework of the EU[810]. On 16 December 2011 a draft International Agreement on a Reinforced Economic Union was published, and on 30 January 2012 the informal European Council concluded and endorsed the final version of the Fiscal Compact. The UK did not agree to it and the Czech Republic said it might join at a later stage[811]. On 2 March 2012, 25 Member States formally signed the Fiscal Compact[812]. The target for completing ratification of the Treaty was the end of 2012, although the Treaty could enter into force with 12 ratifications. Within one year after the Fiscal Compact entered into force, the ratifying member states were required to enact necessary legislation to secure their national budgets are in line with the Compact[813]. Legislation has to include a self-correcting mechanism to avoid breach of these rules[814]. The European Court of Justice received a jurisdiction over the failure to comply with the Fiscal Compact, despite the fact that previous Treaties had specifically excluded this jurisdiction[815].

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[809] UK Prime Minister David Cameron vetoed the compact as an EU agreement, largely on the grounds that there was no guarantee that it would not affect the UK's financial services industry.

[810] Originally the plan was to amend existing Treaties; however, due to the UK veto, this was not possible. http://www.reuters.com/article/2011/12/09/eurozone-idUSL5E7N900120111209

[811] For non-members of Euro zone, the Compact becomes binding with their accession to Euro zone, or if they declare they want to be part of it, before. Thus, in case of Czech Republic, as they are bound to adopt Euro in the future, they will be joining the Compact. http://www.european-council.europa.eu/home-page/highlights/the-fiscal-compact-ready-to-be-signed-%282%29, http://www.bbc.co.uk/news/world-europe-16803157

[812] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128454.pdf, http://european-council.europa.eu/eurozone-governance/treaty-on-stability

[813] According to the Fiscal Compact the general deficit of the budget shall be less than 3 percent and structural deficit less than 1 percent of the gross domestic product.

[814] Self corrective mechanism shall be in legislation in case of deviation from the debt brake rule. The exact design is up to each Member State; however, the minimum is provided for in the European Commission's directive published in June 2012

[815] In practice this means that any of the 26 signatory Member States have power to initiate enforcement proceedings before the Court of Justice against Member State(s) that breach the Compact.

The treaty also introduces new "debt brake" criteria, and requires signatory states to insert them into the respective countries' constitutions.[816] The Fiscal Compact does not represent the constitutionalism trend only because of its status on the supranational level, but also because it directly obliges states to entrench provisions of the Compact into their domestic constitutions.

As members of the Euro zone, Germany and Slovakia ratified all respective treaties, and incorporated debt break instruments into their constitutions[817]. In Germany the ratification process was accompanied by the constitutional challenges. On 7 September 2011 the Federal Constitutional Court (FCC) ruled that there was no violation of budget autonomy of the Bundestag in case of aid measures for Greece and Euro rescue packages[818]. The FFC declared that based on Article 38 of the Basic Law in connection with Articles 20.1 and 20.2, and Article 79.3 of the Basic Law

> *the decision on revenue and expenditure of the public sector remain in the hand of the German Bundestag as a fundamental part of the ability of a constitutional state to democratically shape itself. As elected representatives of the people, the Members of*

[816] Debt break criteria are essentially a new procedure to be followed strictly by the Member States whose debt exceeds the 60 percent level in relation to the GDP.

[817] In Slovakia, the amendment of Article 136, and thus creation of European Financial Stability Facility (EFSF) was approved on May 16, 2012 and came into force on June 13, 2012 by 130 MPs in favor. European Stability Mechanism (ESM) was approved by June 22, 2012 by 118 in favor. Lastly, the Fiscal Compact Treaty was submitted to the National Council on 10 October 2012. It was approved by the National Council on 18th December 2012. Out of 141 present representatives, 138 voted for the Treaty. In Germany, EFSF, the ESM and the Fiscal Treaty were submitted to Bundesrat on 20th March 2012. All three were adopted by Bundestag and Bundesrat on June 30, 2012, and Presidential Assent was achieved on September, 13 2012. Whole ratification was completed on 27 September 2012. The United Kingdom the Article 136 amendment of the Treaty was approved by the House of Lords on July 4, 2012 and approved by the House of Commons September 10 2012, and received the Royal Assent on 31 October 2012.
With regard to constitutional amendments: In Slovakia the parliament adopted the Constitutional Act on Budgetary Responsibility on 8 December 2011. Germany incorporated *Schuldenbremse* into the Basic Law in summer 2009.

[818] Federal Constitutional Court - Judgment of 7 September 2011- 2 BvR 987/10, 2 BvR 1485/10, 2 BvR 1099/10- Constitutional complaints lodged against aid measures for Greece and against the euro rescue package

Parliament must remain in control of fundamental budget policy decisions in a system of intergovernmental governance as well.

Therefore, in case of such important mechanisms, the Bundestag has to give mandatory approval.

The FCC stated that the right to adopt the budget and control its implementation was not impaired in a constitutionally impermissible manner by the government or in the case of future parliaments. On 28 February 2012 the FCC found that the special 9-member committee (*Sondergremium*) elected from among the members of the Budget Committee set up in October 2011 to make quick decisions about the use of the European Financial Stability Facility (EFSF) is largely unconstitutional, for the reason that it violates the rights of other representatives to take part in decision-making concerning budget[819]. In practice, according to this decision, the FCC declared that decisions taken by the Bundestag under the EFSF or the European Stability Mechanism do not violate the Basic Law provided that such decisions are taken either by the full Bundestag or its whole Budget Committee[820].

Another case was submitted to the FCC after parliament approved the Treaty setting up the European Stability Mechanism (ESM) in June 2012. Petitioners argued the breach of Article 38 (general, free, equal and secret parliamentary election) in conjunction with Article 20 (democracy principle) and in conjunction with Article 79(3) ("eternity clause":

819 Federal Constitutional Court, Judgment of 28 January 2012 – 2 BvE 8/11 –Organstreit proceedings regarding the Bundestag's right ofparticipation.

820 Ibid.

Articles 1 (human dignity) and 20 must under no circumstances be amended). The exceptional preliminary judgment was delivered on 12 September 2012 (BVerfG, 2 BvR 1390/12). Within three months the FCC scrutinized constitutionality of the Treaty and found it constitutional, provided that it makes sure (a) that Germany's liability under the treaty was really limited to the sum there specified and not more[821] and (b) that the already existing rights of Parliament to be informed by the government about everything relevant for European economic issues were not detrimentally affected[822]. In its reasoning the FCC indeed mentioned that national budgetary independence would be limited, but it would not be impaired completely, as ultimate responsibility and final say will stay with member states. Also, the ESM, the FCC said, would not constitute a supranational fiscal union, but permanent institutionalized economic device. Lastly, parliaments continued to be provided with strong powers with regard to bailout issues.

To conclude, recent developments connected to the sovereign debt crisis brought in mechanisms and legal regulation that would not be acceptable for member states under normal circumstances, as all adopted measures, with monitoring and control degree they contain over national budget policies, shift the economic policy coordination towards common economic policy[823]. Economic policy and budget adoption is a traditional

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821 Exact wording: "…the provision under Article 8 paragraph 5 sentence 1 of the Treaty establishing the European Stability Mechanism limits the amount of all payment obligations arising to the Federal Republic of Germany from this Treaty to the amount stipulated in Annex II to the Treaty in the sense that no provision of this Treaty may be interpreted in a way that establishes higher payment obligations for the Federal Republic of Germany without the agreement of the German representative;"

822 "…the provisions under Article 32 paragraph 5, Article 34 and Article 35 paragraph 1 of the Treaty establishing the European Stability Mechanism do not stand in the way of the comprehensive information of the Bundestag and of the Bundesrat."

823 Rosas and Armati, *Eu Constitutional Law : An Introduction*. 235

prerogative of national parliaments, which is slowly diminishing due to the pressure of the ongoing debt crisis and the danger of bankruptcy of several members of the European Union. In relation to the Fiscal Compact, what is most striking is that not only the Treaty creates another regulation of constitutional value on the supranational level, it also obliges states to amend their constitutions on the national level. Therefore to relate this to the main question, the constitutionalization of economic policies through Fiscal Compact and other Treaties is representing a novel constraint of the legislative function of national parliaments.

6.2 Judicialization of Legislative Process by Constitutional Courts

"... nothing falls beyond the purview of judicial review; the world is filled withlaw; anything and everything is justiciable"
Aharon Barak[824]

Justice Barak believes that everything falls into the scope of judicial review. Whether he is right or not, judicial review or "judicialization" of politics does constrain the legislative function of parliaments and is the last non-traditional constraint of the legislative function discussed in this chapter. As Hirschl notes "[o]ver the last few decades the world has witnessed a profound transfer of power from representative institutions to judiciaries, whether domestic or supranational.[825]" While before World War II, only a few European countries had a constitutional court in place, and the role of constitutional courts was not that profound, after the war the situation changed and constitutional courts were created

[824] Former president of the Supreme Court of Israel, cited in Ran Hirschl, "The Judicialization of Mega-Politics and the Rise of Political Courts," *Annual Review of Political Science* 11(2008). p. 95

[825] ———, "The New Constitutionalism and the Judicialization of Pure Politics Worldwide," *Fordham Law Review* 75, no. 2 (2006). p. 721.

with the power to declare legislation adopted by parliaments to be inconsistent with the constitution[826]. This is the case of post war Germany, post-communist Slovakia and of post military intervention (in the 1960s) Turkey.

The same trend can be seen also with regard to supranational entities, such as the European Union, whose members are Germany, the UK and Slovakia of the researched jurisdictions. The jurisprudence of the Court of Justice of the EU has been a strong motor of integration at times of lacking political will, through constitutionalization of Treaties by its famous decisions discussed in the previous section. Also, although not discussed here, the European Court of Human Rights is a strong part of 'judicialization', through its rulings as well as the debates initiated by the system of decision making[827].

Alec Stone Sweet defines judicialization as "… the general process by which legal discourse—norms of behavior and language—penetrate and are absorbed by political discourse.[828]" In other words, the term 'judicialization' is used by Sweet to describe the impact of constitutional review in the lawmaking process, introducing for legislators a web of constitutional obligations and constraints[829]. Courts play an increasingly vital role in policy making, which on the other hand also means that politicians and other actors seeking political goals have to pursue their actions with perception of the following

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826 Herman Schwartz, "The New Eastern European Constitutional Courts " *Michigan Journal of International Law* 13(1992). p 741.

827 C. Tate and Torbjorn Vallinder, *The Global Expansion of Judicial Power* Project Muse (New York: NYU Press, 1995). p2

828 Shapiro and Stone Sweet, *On Law, Politics, and Judicialization*. p187; Similar definition was offered by Torbjorn Vallinder: "… *infusion of judicial decision-making and of courtlike procedures into political arenas where they did not previously reside*" in Tate and Vallinder, *The Global Expansion of Judicial Power* , p. 12.

829 As part of his doctoral research Stone Sweet researched the historical development of review since the Revolution and aimed to explain the evolution of the Council's impact over parliamentary legislating during the Fifth Republic.

judicial reaction in mind[830]. Research performed by Stone proves an impressive link between judicialization and the national political system. Not only does government try to formulate legislation to prevent the judicial scrutiny, but also the procedure of invalidation of the legislation is widely used by the opposition. Stone concludes that constitutional courts may be considered as a third branch of the legislature. Looking at the scope of the review and influence, and the use of abstract judicial review in Germany and Turkey I agree with Stone.

Hirschl in his article *The New Constitutionalism and the Judicialization of Pure Politics Worldwide* distinguishes three types of judicialization:

> (1) The spread of legal discourse, jargon, rules, and procedures into the political sphere and policy-making forums and processes;
> (2) Judicialization of public policy-making through "ordinary" administrative and judicial review; and
> (3) The judicialization of "pure politics"—the transfer to the courts of matters of an outright political nature and significance including core regime legitimacy and collective identity questions that define (and often divide) whole polities.[831]

The most abstract level of judicialization is, according to Hirschl, popularization of legal jargon and discourse, which is evident in daily life through "subordination of almost every decision making forum in modern rule-of-law policies to quasi-judicial norms and procedures. "[832] This is what he calls "judicialization of social relations"[833]. The second type is judicialization of public policy through rights jurisprudence, especially through criminal procedural justice, with the focus on formal fairness in decision-making. As it is

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830 John Ferejohn, "Judicializing Politics, Politicizing Law," *Law Contem. Probl* 61(2002). p.42.
831 Hirschl, "The New Constitutionalism and the Judicialization of Pure Politics Worldwide." p. 723
832 Hirschl, "The New Constitutionalism and the Judicialization of Pure Politics Worldwide." p. 723
833 Ibid. p.

initiated by participants of the case, Hirschl describes it as "judicialization from below.[834]" Another part of the second type of judicialization is through administrative review, applying constitutional and procedural principles on policy-making. To sum up, the judicialization of public policy-making is happening either through rights jurisprudence or administrative review. Moreover, Hirschl notes that in recent years the judicialization of public policy is also growing in the international arena as well, specifically by establishing transnational entities and tribunals.

Third area of judicialization concerns 'mega-politics', which are core political issues that define and often divide whole policies such as electoral processes, regime transformation or collective identity[835]. The difference from the second type of judicialization is that the second type concerns procedural guarantees (due process), while the third type concerns substantive moral issues such as closure of political parties by the Turkish Constitutional Court in defense of secularism and state unity, or the ruling of the German Federal Constitutional Court on the Maastricht Treaty[836].

Hirschl lists five areas in which courts deal with mega-politics: first, in the area of electoral processes and outcomes (electoral threshold or closure of political parties in Turkey or Germany); second, in areas touching upon core executive prerogatives such as national security, foreign affairs, and fiscal policy; third, the legitimacy of regime change (approving of the constitution- rejection in South Africa); fourth, judicialization in

834 Ibid. p 725
835 Ibid.p 727.
836 The well-known Turkish case concerning closure of political party due to its alleged threat to secularism is TCC Decision 1/1998 (Welfare [Refah] Party Dissolution case), January 16, 1998; Germany-Maastricht Case 1993 BVerfG [Federal Constitutional Court] 89, 155

transitional justice (ICC, ICTY, Nurnberg trial); and lastly, defining the nation via courts such as the Canadian Supreme Court in the case Quebec Secession Reference (1998), or the German Constitutional Court in the Maastricht case (1993)[837].

Hirschl is also trying to answer why judicialization is happening[838]. Deference to the judiciary and its impact on policy-making most probably will not happen in a unified and assertive political system[839]. Thus, judicialization will most likely occur where judicial bodies are perceived by petitioners as more reputable, impartial, and more effective than other majoritarian bodies, such as parliaments. At the same time, politicians may prefer to defer complicated policy questions to the court to be blamed for them later[840]. Like this politicians are able to shift responsibility for the policy outcome to the judiciary[841]. Opposition, one the other hand, may use judicialization as a tool with which it can obstruct the government politics[842].

John Ferejohn offers two general reasons for judicialization[843]. The first one is an increasing fragmentation of power within the political branch of government, which diminishes its capacity to legislate (*fragmentation hypothesis*)[844]. One of the examples that Ferejohn uses to support this hypothesis is the development of the Community since the Treaty of Rome. Fragmentation of the Communities was apparent not only because of

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837 Ran Hirschl, *Towards Juristocracy : The Origins and Consequences of the New Constitutionalism* (Cambridge, Mass.: Harvard University Press, 2004). Chapter 6. Hirschl, "The Judicialization of Mega-Politics and the Rise of Political Courts." p. 98

838 Hirschl, "The New Constitutionalism and the Judicialization of Pure Politics Worldwide." p. 745

839 Ibid.

840 Ibid.

841 Ibid.

842 Ibid.

843 Ferejohn, "Judicializing Politics, Politicizing Law." p. 55.

844 Ibid. p. 55.

multiple institutions with complicated decision-making processes, but also due to a non-existent European political party system[845]. This explains why the motor of integration in the 1960s and 1970s was the Court of Justice of the EU (former ECJ), rather than European Parliament or national governments[846]. Ferejohn notes that recently the fragmentation has been diminishing, more specifically as of adoption of the Single European Act in 1986 and the Maastricht Treaty in 1992[847]. The Act introduced and the Treaty expanded the use of qualified majority voting, and at the same time the role of the European Parliament was strengthened with regard to budget and legislation, which decreased the effects of fragmentation[848]. The second cause is the sense that courts are more to be trusted with regard to protection of values against political abuse (*rights hypothesis*)[849]. This is the traditional area through which the judicialization has emerged.

From the representative democracy point of view, judicialization is problematic as judges encroach upon a political responsibility without being politically responsible. Political decisions shall be debated and decided in parliaments, whose members are regularly held responsible via elections. Elections provide citizens with the essential control tool by which they can express dissatisfaction with the governmental policies approved by parliament. This is not the case with the judiciary. The judiciary's role in policy making is expanding, at the expense of legislatures, who are either indirectly bound by existing standards set by the constitutional courts or supranational courts, which they have to take into account when legislating in order to avoid constitutional challenge, or are directly

845 Ibid. p. 55.
846 Ibid. p. 55.
847 Ibid. p. 56.
848 Ibid. p. 55.
849 Ibid. p. 55.

obliged to adopt legislation by these courts when they provide legislation with deliberative instructions.

Judicialization described in the previous section can be supported by evidence from researched jurisdictions. In Germany, Turkey and Slovakia there is a centralized system of constitutional judicial review in place, which in other words means that there is no other institution that can declare the unconstitutionality of adopted legislation. In all three states, constitutional courts are entitled to review *ex post* the legislation adopted by parliaments. Do constitutional courts interfere with parliamentary legislating? What is the trend with regard to review of constitutionality of the adopted legislation? Against the background of hypothesized judicialization of politics, is there reason to hold that there is a parliamentary decline? I will answer these questions in this section looking at Germany, Slovakia, and Turkey and their system of centralized abstract constitutional review.

6.2.1 Germany: The Federal Constitutional Court

To see whether the judicialization is behind the parliamentary decline thesis, let us look at specific jurisdictions having constitutional judicial review in place. In Germany, Article 93 of the Basic Law provides legal basis for the Federal Constitutional Court (FCC), and most of its fourteen types of disputes[850]. Abstract judicial review, together with concrete and constitutional complaints, is the most significant type of FCC's review. Abstract judicial review, or in other words compatibility of the federal or state law with the constitution, can be initiated by the federal government, a state government, or one

[850] Professor Doctor Wolfgang Zeidler, "The Federal Constitutional Court of the Federal Republic of Germany: Decisions on the Constitutionality of Legal Norms," *University of Notre Dame* 62(1987).

third of the MPs of the Bundestag[851]. All kinds of legal norms may be subjected to this review.

Zeidler notes that this review is initiated mainly by the opposition, and that unresolved political battlesare transferred from the floor of the Bundestag to the courtroom[852]. However, as

Table 38 shows, the invalidation of the legislation is not as common as it would be desirable for the opposition. Contrary to this view, Germany is known for its cooperation and compromise seeking attitude rather than antagonistic behavior; therefore, Germany would not be a country where the Court would be used deliberately by opposition due to the weak position in parliament[853]. Moreover, the German parliamentary system is inbuilt with multiple veto opportunities, which leaves the FCC as the 'third filter' of legislation proposals[854].

Table 38 shows yet another fact, which is the average number of abstract review cases per year. Within first four decades (1951-1991), there was on average 7.25 abstract review cases per year. In the years 1992- 2011 the average rose to 8.73 cases per year.

851 Article 13 (6) of the Law on the FCC in conjunction with Article 93 (1) (2) of the Basic Law

852 Zeidler, "The Federal Constitutional Court of the Federal Republic of Germany: Decisions on the Constitutionality of Legal Norms."

853 C. Neal Tate and Torbjörn Vallinder, *The Global Expansion of Judicial Power* (New York: New York University Press, 1995). p212.

854 Ibid.p213.

What the table however shows is that there is not a continuous increase. Thus one cannot conclude there is a raising trend of statutes objected at the FCC as unconstitutional.

Table 38: Statutes objected to by the FCC as being unconstitutional (1951 - 2011)

Period		**Law/Ordinance**		**Provision**		**Total**
		entirely or in part		**entirely**	**in part**	
1951 to 1991	Federation	23	15	89	164	291
	Länder	12	1	52	63	128
1992 to 2005	Federation	5	2	60	59	126
	Länder	5	1	23	7	36
2006	Federation	1	-	1	4	6
	Länder	1	-	-	-	1
2007	Federation	-	-	4	1	5
	Länder	-	-	3	-	3
2008	Federation	-	-	-	8	8
	Länder	-	-	1	6	7
2009	Federation	-	2	3	-	5
	Länder	-	-	3	-	3
2010	Federation	-	-	1	10	11
	Länder	-	-	-	2	2
2011	Federation	-	-	1	4	5
	Länder	-	-	-	3	3
	Federation	29	19	159	250	457
	Länder	18	2	82	81	183

** if a decision affected several provisions of a law (or ordinance), it was only counted once*

Thus, when it comes to numbers, it can be concluded that there is no increasing trends in abstract review. Let us look into the concrete example of judicial decision making with regard to abstract review. In the third chapter I dealt with the German electoral process, and the constitutional litigation concerning surplus seats. The Federal Constitutional Court (FCC) in July 2008 first declared the surplus seats and accompanying negative vote value effect as unconstitutional, and ordered the Bundestag and government to adopt an

amendment to the Federal Electoral Act[855]. Furthermore, the FCC ordered that amendments shall be adopted on the cross party consensual basis, providing the Bundestag with guidance of what would be considered as constitutional and lastly, the FCC gave the Bundestag a deadline of 30 June 2011. Despite having three years, government presented the amendment to the FEA in the Fall of 2011 without an all-party consensus; a compromise was reached only among coalition partners the CDU and the FDP.

Immediately after its adoption, the constitutionality of amendment was challenged at the FCC. The Court criticized the late adoption and lack of an all-party consensus, and declared the whole act invalid due to unconstitutionality of a newly introduced arrangement (see Chapter 3). It set a new deadline for government (Autumn 2013) and emphasized the requirement of an all-party consensus on the new regulation.

Thus, clearly the FCC does not limit itself when it comes to invalidation of the legislation or giving guidance how to proceed to legislature in order to adopt statutes complying with the Basic Law[856]. In the specific example used here, the FCC required all-party consensus for the new electoral law. However, Germany is still a parliamentary democracy where legislature adopts legislation based on the support of the majority and where constitution does not require a higher threshold for this specific law. Thus, the

855 *Negatives Stimmgewicht (Negative Weight of Votes) 2 Bvc 1/07, 2 Bvc 7/07*.

856 Other well known cases of judicial policy making come from 1970s (abortion debate, education reform, industrial codetermination law or party financing). The FCC with its involvement shaped the debate and outcome of the policy decisions in all these cases. In Tate and Vallinder, *The Global Expansion of Judicial Power*. p.219

FCC is a good example of a pro-active court that constrains the legislature[857]. And if the presented example is not picturesque enough, the fact that in 1976 during the deliberation of parliament on the Industrial Codetermination Act a specialized committee heard testimonials from more than ten constitutional lawyers trying to predict future decisions of the FCC shall serve the cause ("Karlsruhe astrology")[858].

On the other hand, the number of cases per year rose inconsistently throughout the last two decades. Therefore, without going into analysis of content of abstract judicial rulings, I conclude that in Germany since the trend in frequency is rising minimally, judicialization by the FCC shall not be held responsible for ongoing parliamentary decline.

6.2.2 Slovakia: The Constitutional Court of the Slovak Republic

Abstract review at the Constitutional Court cannot be initiated by the citizens; the Constitution specifically names persons that can do so: a minimum one fifth of MPs, the President of the Republic, the Government, the courts, the Attorney General, and the Public Defender of Rights (Ombudsman)[859]. If the Constitutional Court declares the unconstitutionality of the adopted legislation, the legislation at stake becomes invalid, and the National Council has a duty to adopt legislation in line with the opinion of the Constitutional Court within six months.

857 Judicial activism started according to the commentators at least in 1970s. In Ibid. p.213
858 Ibid. p.219
859 Article 125 s. 1 of *Ústava Slovenskej Republiky [Constitution of the Slovak Republic]*.

From 1 January 1993 until 25 March 2013, 50 abstract judicial review proceedings were initiated by a group of MPs according to Article 125.1.a (review of constitutionality of laws)[860]. Out of these 50 cases, the court declared a violation of the Constitution 11 times, which is 22 percent of the cases. In 78% percent of the cases the Constitutional Court did not find any violation of the Constitution.

6.2.3 Turkey: The Constitutional Court of the Republic of Turkey

According to the Constitution of the Republic of Turkey, the constitutional court examines *ex post* the constitutionality of adopted legislation[861] with regard to both form and substance, with two exceptions (annulment procedure). First, constitutional amendments may be reviewed only with regard to procedure[862]. Secondly, the constitution expressly prohibits the abstract review of decrees with the force of law issued during a time of emergency, martial law or in the time of war. Abstract review initiated due to alleged unconstitutionality because the defect in form has to be initiated within ten days; otherwise it is 60 days after publication of the legislation in the Official Gazette. Abstract review (annulment proceedings) can be initiated by the President of the Republic, the parliamentary party group in power, the main opposition party group or a minimum 1/15 of the MPs.

Annulment proceedings have been used in antagonistic parliamentary culture in Turkey mainly by the parliamentary opposition, and the Turkish Constitutional Court is a good example of the third branch Stone was talking about. The court delivered controversial

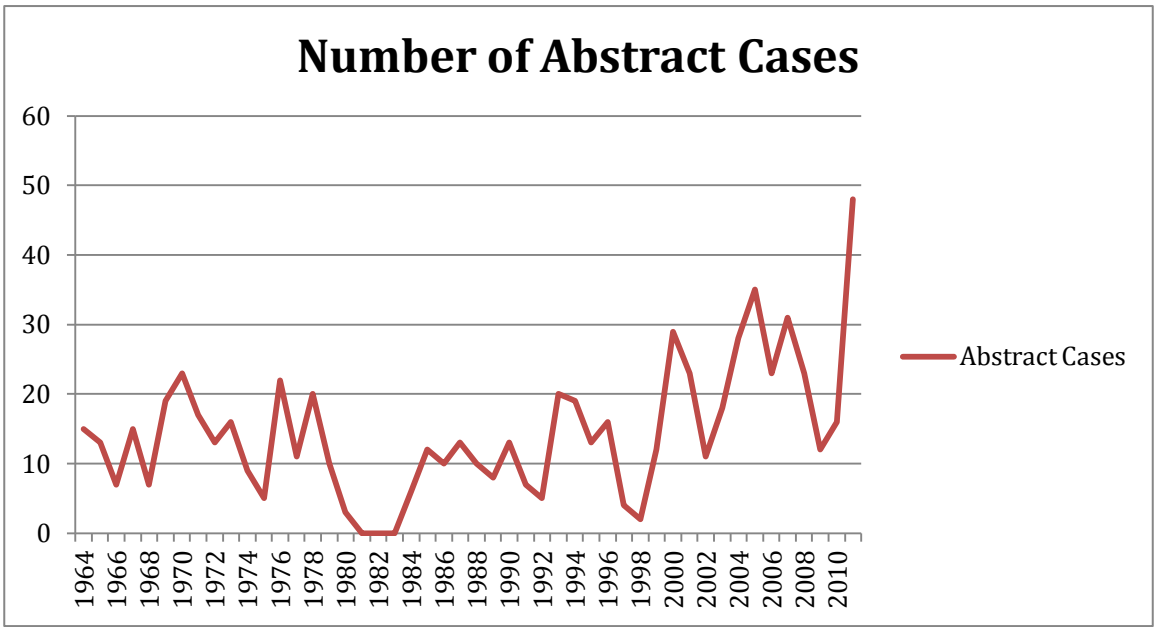
860 Data collected from the database of the decisions available on the official web site of the Constitutional Court of the Slovak Republic available at: http://portal.concourt.sk/pages/viewpage.action?pageId=1277961 (Last Accesssed on September 18, 2013).

861 laws, decrees having the force of law and the Rules of Procedure of parliament

862 Article 148 *The Constitution of the Republic of Turkey*. (as amended on May 7, 2010)

judgments a few times, overriding parliamentary decision including constitutional amendments. For instance, in February 2008 parliament adopted constitutional amendments allowing the wearing of the headscarf at Turkish universities with an overwhelming majority (411 MPs out of 550 voted for amendment). A few days after the amendment was signed by the president, the opposition appealed to the Constitutional Court, which in a decision nine to two annulled the adopted amendments[863]. The Court justified its decision by the argument that parliament violated Article 2 of the constitution that contains an unalterable principle of secularism. That the decision was political is proved by the fact that the Court is not empowered to review the substance of constitutional amendments, only procedural aspects of its adoption, which was not the case here[864].

Figure 4: Number of Abstract Cases in the Constitutional Court of the Turkey (1963-2011)



Source: Official web site of the Turkish Constitutional Court

863 The Court delivered judgment on 9 June 2008.

864 Article 148 of *The Constitution of the Republic of Turkey*.

When it comes to the number of abstract review petitions, the trend in Turkey is that the number is rising (Figure 4).The opposition Republican People's Party (CHP) attacks every adopted act on the Constitutional Court in order to get media attention and slow down the whole process. Prior to the last constitutional amendment in 2010, the court was the bastion of secularism and contra balance to the current AKP pro-Islamic government. This was the time of the previously mentioned anti-headscarf decision, and time when the opposition parties could anticipate the Court's decisions finding governmental legislation unconstitutional. After the constitutional amendment of 2010, however, the number of judges was increased, and together with other changes in the judiciary the political balance in the institution changed. At the present time, as was mentioned above, referrals to the Constitutional Court are a tactic to slow down implementation and trigger media attention.

Conclusion

In the fifth chapter it was shown that the legislative power has not declined when it comes to agenda setting power of the executive in relation to parliament. Instead, what is going on is declining capacity of parliaments with regard to policies in certain areas, with gradual European integration and related processes, such as judicialization or constitutionalization, as I have pointed out in this chapter.

First of all, the capacity of parliaments to legislate have been constrained by EU integration. European integration had several different yet interconnected consequences. The EU constraints started with the EU conditionality imposed on candidate states. States aspiring to join the club were required to adopt reforms to conform to EU democratic

ideas. The check-list is not negotiable, thus parliaments are able to influence only time frame measures and reforms prescribed for adoption. Thus, EU conditionality is a significant intensive and temporal constrain on the legislative function of parliaments.

Once inside the EU, member states voluntarily give up part of their sovereignty. This means certain policy areas are now out of reach for the German, Slovak and British parliaments. However, the fact is that national parliaments were involved in the transfer of competences through ratification procedures, and had done so voluntarily. At the same time, states have kept certain policies that they refused to give up in their sovereign domain, e.g. criminal law or security policy. What is, however, constraining parliaments is the harmonization of these exclusively states' areas by soft law instruments. Adoption of soft law, as was pointed out, is less transparent and more difficult to get involved in by national parliaments.

Lastly, there are two more trends presented in this chapter as potential constraints of the legislative function of parliaments. The first is constitutionalization of EU law by decision making of the Court of Justice and by adopting treaties, such as the Fiscal Treaty. In both cases, the constitutional status of EU legislation means its supremacy over national law, and limit to national parliaments' legislative function.

Judicialization is, on the other hand, the domain only of courts, national as well as international and European, and interferes with legislative function of parliaments *ex post*

through abstract review of legislation. As was shown in the last section of this chapter, judicialization is an ongoing trend since the introduction of domestic constitutional courts and international tribunals. Constitutional courts already as negative legislators present difficulty for democratic arrangement, since they have the power to strike down legislation contrary to the declared will of representatives of the people while themselves not being accountable to citizens. Furthermore, many times constitutional courts act as positive legislators too, setting limits and standards for legislatures to apply. I consider this quite an encroachment on the legislative function of parliaments. On the other hand, I looked at the numbers and to see if there are more cases of abstract review in the courts, and found that the increase is quite small. For that reason, I would not link judicialization, although it is restricting on parliaments, to parliamentary decline thesis.

Part IV: CONTROL FUNCTION

Chapter 7: Traditional Parliamentary Control Tools

Introduction

One of the features of parliamentary democracies, including Germany, Slovakia, Turkey and the UK, is that the government is accountable to parliament[865]. Accountability of governments to parliaments means that parliaments are expected to hold governments to account, to require explanations and this way to exercise their control function[866]. Accountability then presupposes that parliaments are principals and governments are agents, which would fit into the legitimacy chain starting from citizens and ending with government or ministers. However, the relationship between parliaments and governments is not that of principal and agent, as since World War II, the legislative-executive relationship has been "rationalized".

Rationalized parliamentarism, as mentioned elsewhere in this thesis, strengthened the executive while preserving a parliamentary form of regime in order to secure the stability of the system. Features of a rationalized form of parliamentarism are present in all aspects of parliamentary work, like in the case of agenda-setting in Chapter 5, or in the case of formation of government, or confidence procedures. The rationalized legislative-executive relationship is a vital limit to the general perception of what the control function of parliament and control tools can actually lead to.

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865 Article 114.1 and 116.1*Constitution of the Slovak Republic*.; Article 112.3 *The Constitution of the Republic of Turkey*.

866 Staddon, "Holding the Executive to Account? The Accountability Function of the Uk Parliament.", p.4

When we break down the notion that parliaments shall control governments, we see the parliamentarian majority supporting the government, and parliamentary opposition, who most often invoke available control tools. However, even if the opposition can start a motion, because of the low threshold (like the five percent rule in the Bundestag), the opposition will unlikely be supported by the majority in the final plenary vote. Then is there any use of control tools? This chapter will attempt to answer this question also, as I believe it is connected to the expectations of what parliaments can or can't do and the responding reality.

The answer to the question is highly determined by the concrete parliamentary culture at stake. All four parliaments are carrying their own legacies, which were closely analyzed in Chapter 2, and are of course reflected in their daily conduct of parliamentary business. More importantly, however, we can bring in the difference between majoritarian and consensus parliamentarism discussed in Chapter One. Throughout the chapter we will see that in cases of some control tools there are some differences stemming from the nature of the parliamentary system.

Thus, against the background of an alleged decline of parliaments, and declining trust shown in parliaments throughout the European Union and Turkey, the aim of this chapter is to assess traditional control tools parliaments have at their disposal. The question I will answer in this chapter is if there has been an erosion of the parliamentary control function, particularly with regard to traditional control tools, which could be subsequently linked to the parliamentary decline thesis. The second question that I

believe is related is what is the use of control tools if they are not likely to be invoked by the majority of MPs?

In this chapter I conclude, as in case of agenda-setting discussed in Chapter 5, that in general there is no decline either in the scope or in the particular use of the discussed control tools. Parliamentary control mechanisms are designed under the rationalized form of parliamentarism, which is at the present time the traditional arrangement, and thus is not likely to be behind the parliamentary decline thesis. In other words, there is no dynamic aspect to the control tools as discussed in this chapter; on the other hand, it can be see in Chapter 8 on non-traditional control tools.

7.1 Confidence Votes

One of the main features of the parliamentary democracy is that the government has to be backed by the majority of representatives in parliament. This means that the majority can control the activity of the government and in the case of dissatisfaction vote the government out of office. After the Second World War confidence votes were 'rationalized' to a great degree, as this was the most vulnerable aspect of parliamentary regimes in the interwar era[867]. Rationalization started with designing different control tools which prevented implying a vote of censure after every failed governmental legislative initiative[868]. Also, the division between confidence votes and no confidence votes was introduced after the Second World War.

[867] Smilov, "Parliamentary Techniques for Strenghtening the Government : A Comparative Study of Three Eastern European Models : Bulgaria, Hungary, and Russia"., p 19.
[868] Ibid., p 19.

Previous chapter dealt with vote of confidence initiated by the executive by attaching the confidence vote to the vote on the specific bill. The present section deals with various versions of the vote of confidence, which are initiated by parliament or required by law. Four types can be distinguished: votes of investiture, confidence vote, no-confidence vote, and parliamentary dissolution procedure (early elections). In the next subsections I will compare regulation and in some cases use of confidence votes in researched jurisdictions.

7.1.1 Vote of Investiture

A vote of investiture is required in some states by constitution as a precondition of the government to assume office and prove control of the majority in parliament after being appointed by the designated constitutional actor, usually the head of state[869]. Before the vote takes place, the new government shall also present a proclamation. This is an initial type of confidence vote following parliamentary elections.

In the case of the investiture vote in *Germany*, the Basic Law requires election of the Chancellor by an absolute majority of all Members of Parliament. The Federal President appoints the Chancellor-elect. If the Chancellor is not elected within 14 days by an absolute majority, the vote is repeated and the candidate that receives the largest number of votes is elected. The discretion of the President at this stage depends on the majority the winner secures: If the elected person secures an absolute majority, the Federal

869 Historically, the prerogative to appoint the Prime Minister is derived from Monarchs. In states that transformed into republics, Monarchs were replaced by Presidents (e.g. Austria, Finland, France, Germany, Italy). The exception is Sweden, where the Speaker of Parliament nominates the Prime Minister.

President has to appoint him. If the person does not have such a majority, the President can choose whether he/she will appoint him or dissolve the parliament[870].

The President of the Slovak Republic, who otherwise plays the ceremonial role as it is in Germany, appoints the Prime Minister, and on the Prime Minister's proposal also appoints other members of the government. The new government is obliged within 30 days after its nomination to present itself to the National Council, introduce its Proclamation, and ask for a vote of confidence[871]. In the short history of the Slovak parliament, the Proclamation has always been passed. In the case of coalition governments, the presentation of the Proclamation is preceded by lengthy negotiations and signing of the coalition agreement.

In *Turkey* the Prime Minister or one of ministers also has to present a Proclamation to the Assembly; however, the time limit is shorter than in Slovakia – it is only one week from the formation of the government, and it is followed by a vote of confidence (*güvenoyu*)[872].The support of 276 MPs is needed to pass the vote of confidence.

Unlike in the case of Germany, Slovakia and Turkey, in the majoritarian *United Kingdom* there is no such mechanism as an investiture vote; the party that wins elections with control of the majority seats in the Commons forms the Government. In this case, the Monarch by convention appoints the leader of the winning party as the Prime Minister. However, if the election does not result in any party holding a majority of seats, the

870 Article 63 of *The Basic Law*.
871 Article 113 the *Constitution of the Slovak Republic*.

situation is resolved by negotiations leading either to a minority or coalition government. This situation is called a 'hung parliament'. The first call to form a government is by a convention of the Prime Minister in office. The first parliamentary test of such a government is the vote on an amendment to the Queen's Speech. If the Queen's Speech is amended, the Prime Minister must resign[873]. After the elections in 2010, the former Prime Minister Gordon Brown stayed in office while negotiations took place. The negotiations resulted in a coalition government between the Conservatives and the Liberal Democratic Party[874].

To sum up, although a vote of investiture is not a control tool per se, it belongs to the category of confidence votes. Generally, in parliamentary systems outside of researched jurisdictions, governments have to receive a support of the majority in parliament, and formally it is done through votes of investiture. While in consensus-oriented parliamentary systems the procedure is rigid and explicitly provided in national constitutions, in majoritarian systems due to its nature the investiture vote is not required.

7.1.2 Confidence and No-Confidence Votes

Parliamentarism rationalized has led to the distinction between confidence and no-confidence votes. In confidence votes the initiative rests in the government, and the goal is to demonstrate the control of the majority in parliament. In most European countries this mechanism exists either explicitly set in constitutions or in constitutional

[873] See e.g. "A Hung Parliament," (2013), http://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/the-new-parliament/a-hung-parliament/. (Last Accessed September 18, 2013). Examples: The Conservative Party lost majority in 1923, and then lost a vote on King's Speech, the PM resigned.

[874] The UK has not have coalition government in the time of peace since 1931-40.

conventions. Votes of (no)-confidence are considered to be the ultimate tool of the parliament to hold government to account as it allows parliament to initiate removal of the government in case members of parliament express their dissatisfaction, either with one minister or government as such[875].

No-confidence votes can be classified based on the procedural requirements. First, the procedural rules of no-confidence votes may require either a simple or absolute majority vote (see

Figure 5). Secondly, they can exist in a positive or negative form. The positive or 'constructive' form of no-confidence means that the majority can remove the government only by choosing a new one. The rationale behind this method is to contribute to the stability of the government. The negative 'ordinary' form is an easier mechanism, whereby parliament by a majority vote removes the cabinet from power without any additional requirements.

Figure 5: Types of no-confidence votes

	Simple	Absolute
Ordinary	Austria, Belgium (until 1995), Denmark, Finland, Italy, Ireland, Luxembourg, The Netherlands, Norway, Sweden (until 1971), **United Kingdom – before 2011**	France, Greece, Iceland, Portugal, Sweden (since 1971)**UK after 2011, Slovakia, Turkey**
Constructive		Belgium (since 1995), **Germany**, Spain

Source: Strom, Kaare, Torbjörn Bergman, and Wolfgang C. Müller. Delegation and Accountability in Parliamentary Democracies, p 156.

875 Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations."66.

The example of a positive vote of no-confidence is the *German* 'constructive vote of no confidence', which also requires the name of the prospective Chancellor for the motion for a no-confidence vote[876]. In *Slovakia*, within the whole legislative term, government or the national council on the proposal of at least a fifth of the MPs may initiate the vote of (no) confidence anytime[877]. To sustain either of the motions, absolute majority of the MPs needs to vote for it. In *Turkey* also, the PM may initiate a vote of confidence in parliament if he considers it necessary[878]. A vote of no-confidence can be initiated by at least one parliamentary party group or at least 20 MPs. An absolute majority vote is needed in order to unseat the government or a minister[879].

Votes of confidence initiated by the executive are usually triggered to manifest the majority and cohesion within a ruling political party or several coalition political parties. Thus, I would not consider them as a strong control tool in the hands of parliamentarians. The original aim of votes of no-confidence initiated by MPs is primarily to remove the government or minister at stake from the office; however, in parliaments with highly disciplined parties it is rarely initiated by the opposition with this goal. In practice, no-confidence votes are used to draw attention, open public debate, or to point to the political responsibility of the executive as a whole or its members.

876 Article 67 *The Basic Law.*; Lesotho, Slovenia, Spain and Thailand have similar provisions. See Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments." p. 67

877 Article 114 *Constitution of the Slovak Republic.*

878 Article 111 Ibid.

879 Article 99 *The Constitution of the Republic of Turkey*.

7.1.3 Early dissolution as a consequence of lack of confidence in parliament

Dissolution as such is the consequence of the successful votes of no-confidence or unsuccessful votes of confidence. This section answers the question if parliament can dissolve itself. In parliamentary democracies this concerns the decision of the majority, thus government may dissolve parliament and call for new elections with having *de facto* full confidence of the parliament.

In*Germany* the power to dissolve the Bundestag is severely limited by the Basic Law. There are no automatic constitutional provisions imposing dissolution and early elections, as the drafters of the Basic Law wanted to prevent the Weimar scenario in post war Germany[880]. The Federal President may dissolve parliament if the Chancellor is not elected within 2 weeks, or if the Chancellor loses the motion of the vote of confidence and he asks the President to dissolve parliament. In 2cases we talk of *'manufactured'* defeats of a vote of confidence.

From 1949 – 2005 there were only five votes of confidence in the Bundestag altogether, out of which three motions were not carried and resulted in dissolution of the parliament and early elections[881]. Two of those three lost motions were so called 'false' votes of confidence, during which the Chancellor put forward the motion of confidence with the

880 The average parliament lasted for 18 months, while government lasted only 11 months during the Weimar Republic. On the contrary, the Bundestag was dissolved three times from 1949 to the present time. See more in Werner Reutter, "Yet Another Coup D'état in Germany? Schröder's Vote of Confidence and Parliamentary Government in Germany," *German Politics* 15, no. 3 (2006).p.310.

881 Votes of no confidence: 1972 – Willy Brandt (SPD) – lost, new elections, 1982 – Helmut Schmidt (SPD) – motion carried, 1982 – Helmut Kohl (CDU) – manufactured, new elections, 2001 – Gerhard Schroder (SPD) – motion carried, 2005 – Gerhard Schroder (SPD) – manufactured, new elections. Ibid.

aim to lose it and subsequently to achieve new elections[882]. The first one was initiated by Helmut Kohl in December 1982 and the second one by Gerhard Schroeder in 2005. Both of these votes triggered a debate on the abuse of Article 68 of the Basic Law, and the role of the Federal President in the process[883].

As mentioned above, the first time the Bundestag managed to dissolve itself in 1982, during a coalition of the Social Democratic Party and the Free Democratic Party led by Chancellor Helmut Schmitt. Subsequently the departure of the FDP to the opposition, Helmut Schmitt was replaced according to Article 68 by Helmut Kohl. Kohl, however, in order to strengthen his position as Chancellor, decided to call for new elections and on 17 December 1982 put forward a motion of confidence with the aim to lose it. Shortly afterwards the Federal President dissolved the Bundestag.

Several parliamentarians challenged the decision at the Federal Constitutional Court (FCC) via initiating *Organstreit* proceedings[884]. The main issue was if the Chancellor may ask for a vote of no-confidence when actually he has the support of the parliamentary majority, and then if he loses the vote if the Federal President may dissolve parliament. The FCC confirmed the constitutionality of the dissolution order declaring that the President exercised his discretionary power "in the light of the complex political circumstances surrounding the Chancellor's call for a confidence vote and his subsequent

882 The way it happens is that when there is a motion of confidence, opposition votes no, and MPs for coalition abstain from vote (or at least some of them).

883 Reutter, "Yet Another Coup D'état in Germany? Schröder's Vote of Confidence and Parliamentary Government in Germany."

884 In the Organstreit proceedings, the Federal Constitutional Court can only interpret the law, it cannot invalidate the governmental action. Article 93 of the *The Basic Law.*

request for an order of dissolution[885]". According to the decision of the FCC, Article 68 is an open-ended provision that is to be concretized not only by the FCC, but also by other supreme constitutional organs such as the Federal President or the Bundestag[886]. The standard the FCC introduced to claim unconstitutionality of Article 68 required "an extraordinary situation" in which the Chancellor believes that "a lasting stable parliamentary majority could no longer be brought to an existence" and each participant of this process "must independently assess the process of invoking Article 68[887].

On 1 July 2005 Gerhard Schroeder used a 'false' vote of confidence for the second time in the history of the Basic Law, in order to dissolve the Bundestag, because of continuation of the popularity of his political party[888]. Following the lost motion, Horst Kohler, the Federal President, dissolved the Bundestag. In this case the FCC released the decision on 25 August 2005 in which seven out of eight judges confirmed the vote of confidence as constitutional. It was surprising for constitutional lawyers as they were assessing the case of 2005 based on criteria set by the FCC in the judgment of 1983[889]. As a result, the FCC de facto declared a right of assessment whether there is or not a supporting parliamentary majority to the Chancellor[890].

In *Slovakia* according to the Constitution the President *may* dissolve the National Council for the following reasons: first, the parliament within six months of the nomination of the

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885 Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*. p119

886 S4 of the Parliamentary Dissolution Case (1984), 62 BVerfGE I in Ibid.

887 Ibid.p 121

888 Simon Apel, Christian Körber, and Tim Wihl, "The Decision of the German Federal Constitutional Courtof 25 August 2005 Regarding the Dissolution of the National Parliament," *German Law Journal* 6, no. 9 (2005).p. 1243

889 Werner Reutter, "Yet Another Coup D'état in Germany? Schröder's Vote of Confidence and Parliamentary Government in Germany," *German Politics* 15, no. 3 (2006).p.309.

890 Ibid.p.309.

government has not passed its Program Proclamation; second, if parliament has not passed a draft law within three months with which the government has combined a vote of confidence; third, if the parliament has not held a session for a period exceeding three months without being adjourned and repeatedly called for a meeting; and lastly, if the adjournment exceeded the time allowed by the Constitution[891]. The Constitution stipulates the obligation for the President to dissolve the parliament if he sustains the plebiscite called to recall him[892].

The alternative is to adopt the constitutional act on shortening the legislative period; however, for that the government would need a qualified majority. In the short history of Slovakia the National Council already adopted a constitutional act on shortening the legislative period three times. The most recent case was in 2011, when Prime Minister Radicova joined the vote on the bill with a confidence vote and lost. Shortly after the vote, the coalition and opposition parties together agreed on the date of early elections and passed the constitutional act shortening the legislative period with the required majority. This procedure, however, raises questions regarding the procedure's constitutionality. The Constitution of the Slovak Republic, however, stipulates that the legislative term of each of the MPs lasts four years, and at the same time it says that all constitutional acts and regular statures cannot contradict the constitution. Hence, the constitutional issue here is whether parliament violates the constitution by the adoption of

891 Article 102.1.e *Constitution of the Slovak Republic*.

892 Article 106 Ibid.; The Plebiscite is called by the President of the National Council on a basis of resolution adopted by at least three fifths of all representatives within 30 days from the adoption of the resolution. The President is recalled if absolute majority of all legitimate voters votes for the recall) as well as during the war, war state or exceptional state (The process of invoking all three situations and conditions are set in the constitutional law)

the constitutional act on shortening the legislative period. In my opinion, this does not constitute a violation of the Constitution, because in Slovakia the constitution is amended by constitutional acts, which basically contradict the original text. So if this is the practice and constitutional amendments adopted not in the form of a new constitution, but in the form of constitutional acts have equal value to the constitution, so shall have ad hoc constitutional act on shortening the legislative period.

In *Turkey,* in case the government fails to receive the confidence vote or is expressed a no-confidence by parliament, or the government resigned without a confidence issue, and the new government is not formed within forty-five days, the role is given to the President of the Republic, who may call for new elections[893]. However, in the case of Turkey, according to the Article 77 of the Constitution, the Assembly may decide to hold elections before the end of the legislative period. Turkey is thus one of the countries where parliament may in a constitutionally prescribed procedure shorten the legislative term. Since the 1983 elections, all of general elections were early elections.

In the *United Kingdom* until 2011 the dissolution of parliament was governed partly by law, and partly by conventions and the Royal Prerogative. It was a prerogative of the Prime Minister to dissolve the House of Commons when he decided to do so, but it also might be result of the lost of confidence or no-confidence votes. By convention, the Monarch had not dissolved the House from his own initiative. In 2011 Parliament adopted the *Fixed Term Parliaments Act*, which sets the date of the next and all subsequent elections. The next elections are to be held on 7 May 2015, while the others

[893] Article 116 *The Constitution of the Republic of Turkey*.

on the first Thursday in May in the fifth year of the Parliament[894]. This is an important reform, as it takes away a royal prerogative exercised by the Prime Minister of the day to call for elections when it strategically fits his or her own political party. At the same time, the Act introduces rules for dissolution of parliament and early general elections in case the motion is passed at the House of Commons supported by more than two thirds of the MPs (including vacant seats)[895]. An early election also takes place in case the Commons pass the motion "[t]hat this House has a no-confidence in Her Majesty's Government", and within a period of 14 days after the motions were passed the new government does not receive the confidence of the House (motion: "That this House has confidence in Her Majesty's Government.")

7.1.4 Summary

After elections, a vote of investiture is usually a formality. If there is a coalition, it comes to parliament with an already signed coalition agreement, and if there is a one party government, party discipline secures that the demonstrative display of confidence is passed. When it comes to confidence votes requested by the government, these would be invoked to declare the support of the majority to the government. There are cases, such as in Germany, when the government in order to call new elections government initiates the vote of confidence and purposefully loses, which triggers questions of the constitutionality of the act. No-confidence votes are initiated by parliament, usually by the opposition. As the opposition does not have the required absolute majority in parliament, it is not initiating the act to bring down the government or one of its

894 S. 1(2) and s.1 (3) of *The Fixed Term Parliaments Act 2011*

895 The motion is in the form: "*That there shall be an early parliamentary general election*." s. 2 (1) of Ibid.

members, but to draw the attention to the issues, hoping to open public debate and create pressure on the executive.

Early dissolution is a consequence of the vote rather than a type of the vote of confidence. Parliaments usually do not have the power to dissolve themselves, with few exceptions (Turkey). This is due to the rationalized parliamentarism, which made it more difficult for parliaments to call for new elections in order to secure higher stability. The problem arises when existing mechanisms are circumvented and early dissolution is achieved and supported by all political players. Besides manufactured votes of no-confidence, there is also an example from Slovakia where governments have three times shortened the legislative term and called for early elections by adoption of the constitutional act.

To conclude this section, although votes of confidence are considered one of the strongest parliamentary control tools, it seems that it is more useful for the government than parliament. Government may on the one hand enforce the party discipline as we could see in the previous chapter, or use the tool to dissolve parliament and call for new elections.

7.2 Parliamentary Questions and Interpellations

In contrast with mechanisms such as a vote of no-confidence or investiture votes, parliamentary questioning belongs to an 'unsanctioned' group of mechanisms[896]. Nevertheless, parliamentary questions are considered to be a vital tool for ongoing

[896] Kaare Strom, Torbjörn Bergman, and Wolfgang C. Müller, *Delegation and Accountability in Parliamentary Democracies*, Comparative Politics (Oxford ; New York: Oxford University Press, 2003).p.167.

control of the executive branch, as they represent the most visible mechanism by which especially opposition MPs are able to publicly hold government accountable for their actions, even though this mechanism lacks the prospect of an immediate change of the government[897].

Scholars distinguish three main functions of parliamentary questions: to provide information, to criticize government action, to test the honesty or ability of members of government[898]. The first function of this mechanism compensates for the informational disadvantage of the parliamentarians, especially from the opposition in relation to the government. The fact the question times are being publicized in most of the countries forces members of the executive to respond to questions at least to a certain extent. With regard to the second and third functions, parliamentarians may with raised questions point to inconvenient or embarrassing facts, and again this way make it public, or simply uncover lies or incompetence of the minister.

The following subsections distinguish between parliamentary questions and interpellations. The reason they are not dealt with in conjunction is that interpellations go beyond extorting information in either oral or written form, and stimulate comprehensive debate on the specific issue. In some cases they are followed by the vote or even lead to the motion of censure[899]. Keeping this distinction in mind, special attention must be given

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[897] Federico Russo and Matti Wiberg, "Parliamentary Questioning in 17 European Parliaments: Some Steps Towards Comparison," *The Journal of Legislative Studies* 16, no. 2 (2010).

[898] Strom, Bergman, and Müller, *Delegation and Accountability in Parliamentary Democracies*.p.167.

[899] Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments." p. 59.

to the possibility that the same expressions may have different meanings, in terms of functions, forms, and overall consequences.

7.2.1 Parliamentary Questions

The Parliamentary Questions mechanism is a tool of scrutiny that allows legislators to request information from the government and this way call them accountable[900]. Parliamentary questioning is a traditional part of control tools parliaments have, which is demonstrated by their early introduction in many parliaments. For example, in British Parliament, the written questions were for the first time introduced in 1833, and oral ones were introduced in 1869[901]. In the German Bundestag, the use of oral questions was launched in 1952, and in 1969 it was complemented by procedure of written questioning[902]. In Turkey, parliamentary questioning has been part of parliamentary procedure since the early Ottoman parliaments, and since 1961 it has been incorporated in Constitution[903].

By using parliamentary questions, MPs may seek clarification from the government on its position on a specific matter or on its politics in general. In recent decades question time receives wide media coverage, and thus questions addressed to members of the executive are used not only to hold members of the executive accountable for their actions, but also to raise awareness and point attention to specific issues, and initiate a debate[904]. A negative consequence of increased media attention is the abuse of question time for party

900 Ibid. p. 49.

901 Matti Wiberg, Parliamentary Questioning: Control by Communication? In Döring, *Parliaments and Majority Rule in Western Europe*. p 191.

902 Matti Wiberg, Parliamentary Questioning: Control by Communication? In Ibid. p 191.

903 Yasushi Hazama, Omer Faruk Genckaya, and Selma Genckaya, "Parliamentary Questions in Turkey," *The Journal of Legislative Studies* 13, no. 4 (2007). p4.

904 Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations." p. 31.

campaigns. Wilberg and Koura also identified some additional reasons why MPs employ questions in parliament:

1. To request information.
2. To press for action.
3. To gain personal publicity.
4. To demand an explanation.
5. To test ministers in controversial areas of their policies.
6. To attack ministers in difficult political situations.
7. To deal with a large number of different topics rapidly and conveniently.
8. To show concern for the interests of constituents.
9. To help build up a reputation in particular matters.
10. To force compromises on an unwilling government.
11. To delay a headstrong government until other forces and events make their influence felt.
12. To demonstrate a government's faults.
13. To rally members within an opposition party, with only a remote intention of forcing change on the government.
14. To create elements of excitement and drama.[905]

Parliamentary questions can have two forms, oral during question time, or written. These two forms differ mostly in their purpose, content, and media coverage. Written questions typically address more specific and detailed issues (e.g. implementation of policies, local issues), unlike oral questions, which deal with more universal policy matters[906]. Also compared to oral questions, written ones are most of the time delegated – both in process of their drafting and answering, due to the lack of publicity as well as their specialized character (see Table 39).

905 Wiberg, M. and Koura, A., The Logic of Parliamentary Questioning, 1994.. In:Russo and Wiberg, "Parliamentary Questioning in 17 European Parliaments: Some Steps Towards Comparison."

906 Olivier Rozenberg and Shane Martin, "Questioning Parliamentary Questions," *The Journal of Legislative Studies* 17, no. 3 (2011). p 394.

Table 39: Typical Patterns in Oral and Written Parliamentary Questions[907]

	Oral Questions	Written Questions
Input	MP, whips, party leaders;	MP, MP assistant, interest groups
Control	Strict institutional constraints, whip	Low institutional constraints
Content Party	conflict, governmental priorities, question of the day;	Detail of the implementation of public policies, local issues
Validity of the answer	Temperance and performance of the minister, applause, laughter	Administrative respect of the timing, precision of the answer
Recipients	TV, national media, MPs, whips, party leaders, voters	Local media, voters, interest groups
Accountability	Limited delegation, ex-ante and ex-post control	Delegation for both questions and answers, ex-post control

Although most countries (including all research jurisdictions) provide for a question time, the rules of procedure will determine the ultimate efficiency of this scrutiny tool, considering that states' rules vary when it comes to allocated time, or formal requirements. The same applies to the written form of questions being a similarly widespread means of control of government[908].

Parliamentary questioning varies among parliaments. Wiberg, for example, identified te following dimensions which distinguish between various forms of parliamentary questioning:

1. Forms of questioning [oral, written, interpellations];
2. Manner of introduction;
3. Conditions for admissibility;
4. Timing of questioning (when asked and when answered);
5. The way in which debates are fixed and organized;
6. Content of questioning;
7. Maximum number of questioners;
8. Allocation of the duty to answer;

907 Ibid..Rozenberg and Martin, "Questioning Parliamentary Questions." p. 397

908 Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments." P.59

9. The conclusion which is possible[909].

In the following sections I discuss the existing system of parliamentary questioning in chosen jurisdictions through lenses of these nine dimensions, which are merged together into bigger sections.

7.2.1.1 Manner of introduction, Forms of questioning, Timing

In *Germany* there are four different questions types: Oral Questions (*Mundliche Frage*), Urgent Questions (*Dringlichkeitsfrage*), Questions to the Federal Government (*Befragung der Bundesregierung*), andWritten Questions (*Schriftliche Frage*). Each month, every MP has the right to table up to two *Oral,* and four *Written Questions. Oral Questions* are aimed to be replied during the Question Time, which takes place on Wednesdays between 13:30 – 15:30. In Germany the notice of oral questions has to be given until 10 am on Fridays before parliamentary week to the President of the Bundestag, so they can be forwarded to the Federal Government by 12pm at the latest[910]. As of 1990, in the new arrangement, *the Questions to the Federal Government* takes place between 13:00 – 13:30 on Wednesdays in weeks of sittings[911]. These questions shall be on topical interest within the competence of the Federal Government, principally regarding the preceding cabinet meeting, shall be brief and permit brief answers. In exceptional situations, the President of the Bundestag permits *Urgent Questions* if they are in public interest, however, they must be tabled latest by noon of the day prior

[909] Matti Wiberg, Parliamentary Questioning: Control by Communication? In Döring, *Parliaments and Majority Rule in Western Europe*.
[910] Annex 4 (8) *The Rules of Procedure of the Bundestag*.
[911] Annex 7 Ibid.

questioning[912]. The deadline for giving the answers for *Written Questions* in Germany is one week after arrival at the Federal Chancellery. The Rules of Procedure of the Bundestag provide for strong incentive for providing the answer, as "if the reply has not been received within one week by the President (Parliamentary Secretariat), the questioner may demand that his question be called for oral reply during the first Question Time in the week of sittings following expiry of the time limit.[913]"

Before 1983 political parties made little use of questions and interpellations, because of consensus oriented politics. What had changed in 1983 was that the Green Party entered the *Bundestag*, and since then opposition parties have started to use questioning and interpellating more extensively as a means of holding government publicly accountable[914]. Between 1994 and 2009 more than 9 out of 10 questions were tabled by the opposition[915].

In *Slovakia* the Constitution and the Rules of Procedure provide for detailed specification of only interpellations. Oral or written questions are not explicitly stated in the RP, only indirectly implied through the specification of the question time, suggestions and comments[916]. Question Time is a one-hour long slot on Thursdays during which the Prime Minister, ministers, the Attorney-General, and the Chairman of the Supreme Audit Office answer questions on topical issues, mostly within their scope of powers[917].

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912 Ibid. Annex 4 (9).
913 Ibid. Annex 4 (15).
914 Saalfeld and Dobmeier, "The Bundestag and German Citizens: More Communication, Growing Distance." p. 323.
915 Ibid. p. 323.
916 *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*. Article 131
917 Ibid. Article 131 (1).

Question Time can be devoted only to a specific issue and questions have to be submitted at the latest by noon on Wednesdays. Unanswered questions turn into interpellation and shall be answered within 30 days in writing.

In *Turkey* the Constitution provides for Oral (*Sözlü sorular*) and Written Questions (*Yazılı sorular*)[918]. The Constitution defines a question as "a request for information addressed to the Prime Minister or ministers to be answered orally or in writing on behalf of the Council of Ministers"[919]. However, the Rules of Procedure of the Assembly defines a question as "a way of requesting information from the Prime Minister or ministers on certain matters excluding personal and private life without a reason of statement and personal opinion"[920]. In Turkey oral questions are placed on the plenary agenda after 5 days following the referral date to the relevant ministry, and if they are not answered within three parliamentary sessions, they are automatically converted into written questions[921]. Written questions shall be answered within 15 days following their referral to the ministry at the latest, although the government has a right to delay for 30 days for reasons of public benefit or in order to compile necessary documents[922].

The British parliamentary procedure recognizes five types of parliamentary questions, namely ordinary written questions, written questions tabled for the named day, oral questions, topical (oral) questions, and urgent questions. *Oral questions* tabled by up to

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[918] Article 98 of *The Constitution of the Republic of Turkey*.
[919] Article 98 (1). Ibid.
[920] Article 96 (1) of the *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*
[921] Ibid.
[922] Article 99 Ibid.

25 Members for each question time are selected by ballot for oral answer in the House. Other Members may be called to ask supplementary questions. Questions shall be submitted before 12.30 pm on a sitting day, three sitting days in advance of the question session. Each MP is allowed to table two questions for oral answer at Question Time each sitting day, however they may not both be tabled to the same department. For each relevant Question Time, ten MPs are selected by ballot to put forth a topical question or *topical (oral) question* (without any notice given!!) for answer in the House. Other Members may also be called. At the end of Question Time *Urgent (oral) Questions* may be asked exceptionally, if the Speaker considers them important. Any MPs may submit the Urgent Question any sitting day to be asked the same day to the Minister. *Written questions (ordinary)*and *written questions (named day)* can be tabled on each sitting day and non-sitting Friday for a written answer; with regard to the second one, MPs may table five questions for written answer on a specified date[923].There is a customary rule to answer within one week from the day the question was tabled[924].

Out of four presented jurisdictions, the United Kingdom and Germany have elaborate systems of questioning tools (see Table 40). At the same time, however, the United Kingdom and Germany are good examples of different uses of parliamentary questioning depending on the type of parliamentary system. In the United Kingdom, traditionally, parliamentary questioning is a strong tool to hold government accountable. In Germany, on the other hand, parliamentary questioning has been used effectively only since the Green Party entered parliament and stirred the calm waters of consensus-based politics.

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923 *Standing Orders of the House of Commons*.

924 "Written Answers," (2013), http://www.parliament.uk/about/how/business/written-answers/.

In comparison to the elaborate questioning in the United Kingdom and Germany, Rules of Procedure of the National Council of Slovak Republic specifically mention only the Question Hour and Interpellations, and the procedural rules of the Grand National Assembly of Turkish Republic distinguish only between Written and Oral questions. This differentiation is not purely formalistic, as it may seem. I argue that various types of questions present in the British and German parliamentary procedural rules reflect the need for more prompt and efficient tools on how to extract information from the executive, and also the importance that both parliaments give to the parliamentary questioning as such. An example of such a novel tool is an introduction of the Questions to the Federal Government in the Bundestag in the 1990's, which are discussed in the plenary following the cabinet meeting for half an hour before the regular Question Time.

In all four countries there is a tradition of oral questions tabled in advance. Spontaneous questions are not so common, and usually take less time than questions tabled in advance. Out of present jurisdictions, in the United Kingdom, there are Topical Questions in the House of Commons, tabled without any prior notice given, taking the last ten minutes of Question Time, and in Germany there are Oral Questions put to the Federal Government on Wednesdays at the first half an hour of Question Time on topical interests primarily concerning the preceding cabinet meeting[925].

925 *The Rules of Procedure of the Bundestag*., Annex 7

Table 40: Forms of Parliamentary Questions in the UK, Germany, Slovakia and Turkey

	Types of Oral PQs	***Types of Written PQs***	***Submission deadline***	***The Question Time***	***Reply for Written Questions***
The UK	- oral questions, - topical(oral) - questions, -urgent questions	-Ordinary written questions, -Written questions tabled for the named day.	before 12.30 pm on a sitting day three sitting days in advance of the question time	Monday - Thursday; PM answers PQs every Wednesday	1 week (customary rule)
Germany	-Oral Questions, -Urgent Questions, -Questions to the Federal Government.	-Written Questions	10 am on Fridays before parliamentary week; urgent 12 pm a day before	Each Wednesday 13:30 – 15:30	1 week
Slovakia	- Oral Questions	N/A	12 pm Wednesdays	One hour each Thursday	Questions not answered orally shall be answered in 30 days in writing (as they turn into interpellations)
Turkey	-Oral Questions	-Written Questions		Two working days/each one hour	15 days (possibility to delay for 30 days)

Furthermore, both the British and German parliamentary procedures include Urgent Questions as a specific type of parliamentary questions. Common for both is that the deadline for tabling is extended (in the UK they can be tabled the same day, in Germany at the latest by noon the day before), and the approval of the Speaker/President is required, which keeps their numbers low (see

Table 41). Using of the Urgent Questions, parliamentarians have a chance to promptly react to the pressing situations, and unexpected events, challenge governmental choices, and staying informed. Additional effect of this procedure is that it deprives Ministers of

time to prepare, and it highlights potential (in) competence of members of the government.

Table 41: Number of Urgent Questions in the UK Parliament (2002- 2010)

Session	Urgent Questions
2002/03	10
2003/04	12
2004/05	4
2005/06	14
2006/07	9
2007/08	4
2008/09	12
2009/10	12

Source: Official website of the UK Parliament

In Slovakia, although there are no specifically Urgent Questions, the fact that ordinary questions can be tabled at the latest by 12pm on Wednesdays, which is one day prior to the Question Hour, makes them 'urgent' de facto at least in comparison with the German arrangement. In both cases the Question Time/Hour is only once a week, and so besides the ability to table questions at the last minute, pressing issues have to wait for the established Question Time/Hour to be answered. Urgent Questions in the UK do make sense more, as Question Time takes place every day except non-sitting Fridays.

7.2.1.2 Conditions for admissibility, Content of the Questioning

In *Germany*, questions must be concise, enable a brief answer and must not contain statements which are not to the point. The same is specified for the questions during Question Time in the National Council of the *Slovak* Republic, and the other researched parliaments. In general, questions are successfully tabled if they are submitted on time and do not touch on forbidden topics (see below). In the Bundestag, MPs have the right to ask questions concerning topics for which the Federal government is responsible, and questions relating to matters for which the Federal Government has direct or indirect

responsibility[926]. MPs are not allowed to ask questions on the political attitude of other MPs, PPGs or parties[927]. Questions shall not contain subjective statements or evaluations[928].

In *Turkey*, the regulation of forbidden topics is quite exhaustive, and it is based on the constitution and the Rules of Procedure. The Constitution forbids parliamentary questions, debates or statements in relation to the ongoing judicial cases[929]. Rules of Procedure further prohibit questions on

> *a) Matters on which information can be easily acquired from another source;*
> *b) Matters solely for consultation purposes;*
> *c) Questions covering the same issue with a motion of censure previously submitted to the Office of the Speaker.*[930]

Finally, prohibited questions are specified in other regular laws such as Banking Law[931].

In *the British* Parliament the Table Office accepts questions only if they are "in order". Parliamentary questioning is governed by conventions. A question shall either seek information or press for action; it shall not offer or seek expressions of opinion, or convey information nor advance a proposition, an argument or debate. It shall relate to a matter and have a factual basis (no rumors) for which the tabling Member is responsible, and not seek information on interpretation of law, which is for courts to decide. Questions shall not touch cases present before the court, shall not be hypothetical, or clearly

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926 Annex 4 – Question Time and Written Questions. Ibid.
927 Matti Wilber, Parliamentary Questioning: Control by Communication? In Döring, *Parliaments and Majority Rule in Western Europe*.
928 Annex 4.1 of *The Rules of Procedure of the Bundestag*.
929 Article 138 of *The Constitution of the Republic of Turkey*.
930 Article 97 of the *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*
931 Hazama, Genckaya, and Genckaya, "Parliamentary Questions in Turkey." p. 542

promote opposition policy. Finally, tabled questions shall not request information that can be answered elsewhere (archives, library)[932].

7.2.1.3 Question Time and Deliberation

Another two dimensions of parliamentary questioning discussed in this section are timing of the questioning and the way debates on parliamentary questions are organized. Question Time in the *German Bundestag* is governed by Annex 4 of the Rules of Procedure. Question Time in the Bundestag takes place weekly and lasts up to 3 hours[933]. The President of the Bundestag calls "the number of the question and the name of the name of the questioner"[934]. In addition to tabled question questioners may ask two supplementary questions[935]. With the approval of the President of the Bundestag may other MPs continue with further questions provided they are directly related to the main question[936]. The questioner has to be present in the Bundestag during the Question Time; otherwise his/her question is answered in a written form[937]. Same applies to those questions, which do not receive a response due to lack of time[938].

As in other parliaments, there is longer time, one week, provided by the Rules of Procedure for the response to Written Questions[939]. Written Questions are answered in

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932 Thomas Erskine May and W. R. McKay, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd ed. (London: LexisNexis UK, 2004). p 345.
933 Annex 4 (1) of *The Rules of Procedure of the Bundestag*.
934 Annex 4 (10) of Ibid.
935 Annex 4 (3) of Ibid.
936 Annex 4 (4) of Ibid.
937 Annex 4 (10) of Ibid.
938 Annex 4 (12) of Ibid.
939 Annex 4 (13) of Ibid.

the written form, except when the answer is delayed. In such a case a questioner has a right to demand an oral response during the Question Time[940].

Furthermore, the Rules of Procedure of the German Bundestag specifically provide for the debate on matters of topical interest[941]. These debates are held if

> *(a) it was agreed in the Council of Elders, or*
> *(b) is demanded by a parliamentary group or 5 percent of MPs either in relation to the response of the tabled oral question addressed to the Federal Government, or*
> *(c) independently of a question submitted for Question Time.*[942]

The length of the debate is limited by the Rules of Procedure to not more than one hour excluding the speaking time taken up by representatives of the Federal Government or the Bundesrat[943]. Speeches of those who join the debate are limited to 5 minutes[944].

Questions addressed to the Federal Government are regulated by Annex 7 of the Rules of Procedure. Questions to the Federal Government last in general 30 minutes, and precede Question Time[945].

In *Slovakia*, an introductory 15 minutes of each Question Time are reserved to questions submitted to the Prime Minister. The order of the questions is determined by a lot drawn from all submitted questions. Presentation of the oral question is limited to 2 minutes.

940 Annex 4 (15) of *The Rules of Procedure of the Bundestag*.
941 Article 106 of Ibid.
942 Annex 5 (1) of Ibid.
943 Annex 5, 6.1, 6.2 of Ibid.
944 Annex 5, 7.1 of Ibid.
945 Annex 7 (1) of Ibid.

In *Turkey* the Speaker refers tabled questions to the Prime Minister or relevant ministry[946]. At least twice a week at the beginning of the session no less than one hour shall be reserved for oral questions[947]. The relevant minister or the person responsible for delivering the answer gives the answer in utmost 5 minutes, following which the questioner may ask a supplementary question[948]. Same 5 minute limit for answer applies to additional response.

The debate related to oral questions in *the United Kingdom* is organized as follows: Question Time takes place for an hour each sitting day from Monday to Thursday[949]. Question Time consists of two parts. In the first part, either the Minister or the government spokesperson presents prepared answers up to 25 questions tabled in advance and selected by ballot, and answers to related supplementary questions[950]. If due to lack of time not all 25 questions are answered, they receive a written answer on the same day. Those questions that were not chosen in ballot, are not printed, and they do not receive any kind of answer[951]. In the second part, ministers answer topical or spontaneous questions[952].

Following the reply of the relevant minister, the questioner and other MPs can ask supplementary questions. Provided that all supplementary questions are on the same

946 Article 96 of the *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

947 Article 98 Ibid.

948 Ibid.

949 *Standing Orders of the House of Commons*.No. 21 (1).

950 "Parliamentary Questions," (The House of Commons Information Center, March 2013). P. 7

951 Ibid.

952 Ibid.

subject as original question, the Minister must reply. The Speaker usually alternates between the Government and Opposition MPs[953]. MPs wishing to ask supplementary questions stand up and to attract the Speaker's attention. Following a few supplementary questions, the Speaker calls the next questioner. The last 10-15 minutes of Question Time is reserved for topical questions, during which MPs may ask supplementary questions in relation to any subject belonging to the department's responsibilities[954].

Every Wednesday is the Prime Minister's Question Time starting from 12 pm, lasting 30 minutes. Compared to other oral questions, there is no need for advance notice. The Prime Minister is usually requested to list the 'engagements of the day'[955]. In this case supplementary questions may be related to any area from within Government's responsibilities. The Leader of the Opposition is allowed to ask six supplementary questions, and he indicates to the Speaker when he wants to be called. When it comes to Urgent Questions, they are debated at the end of Question Time, as they are not printed on the Order Paper.

7.2.1.4 Summary

The organization of Question Times is important if parliamentary questioning shall be an efficient control tool. In all jurisdictions, the Speaker/President of parliaments are in charge of organizing and overseeing Question Time. In the Bundestag the President determines the order of question asked. The good practice is seen in the British parliament and in the National Council of the Slovak Republic, where questions are

953 "Parliamentary Questions," (The House of Commons Information Center, March 2013). P.8

954 "Question Time," (2013), http://www.parliament.uk/about/how/business/questions/. (Last Accessed on September 18, 2013).

955 "Parliamentary Questions," (The House of Commons Information Center, March 2013).

drawn in the ballot. The main benefit of this method is obviously transparency. Speakers and Presidents of parliaments shall be impartial, but especially in recently established parliaments impartiality does not have to be necessarily the case.

The present trend in all parliaments shows that there are more questions tabled for Question Time than are possible to answer. Thus, here the British method of drawing 25 questions in a ballot makes it clear which questions are going to be answered and which are not. Those not selected in the ballot are disregarded, those selected in ballot but not answered due to lack of time turn automatically into written questions. This system also makes it easier for the Speaker to manage Question Time in the Commons, especially the supplementary questions, which are regulated by the Speaker.

The duty to answer within a certain time limit is usually specified in the procedural rules (Germany, Slovakia, and Turkey) or is a part of convention (the UK). The shortcoming is in Turkish regulation, which allows government to justify delaying the answer up to 30 days from a statutory 15 day limit for reasons of public benefit or necessity to compile relevant documents. Besides the fact that 15 days is already double time compared to the UK or Germany, the public benefit is too broad and vague a term and compilation of documents an insufficient justification.

Moreover, the collected data from the official database show that although the Rules of Procedure set the rules and deadlines, and the written form as a backup for the lack of time situations, there are more than 50 percent questions unanswered, which are not rolled over to the new session, but filed as unanswered questions (see Table 42). To

compare the status quo with the British Parliament, which offers the same data on it's official website, written questions are answered up to 99 percent. Out of oral questions chosen by ballot 60 percent were answered within the last 10 years period, however, although this number is low, all unanswered oral questions turn into written ones.

Table 42: Parliamentary Questions in Turkish Gran National Assembly (2002-2011)

Session/year*	Total questions	Total answers	Oral questions (S)	Oral questions (A)	Written questions (S)	Written questions (A)
22/1. (2002-03)	1821	1474	719	462	1102	1012
22/2. (2003-04)	3038	2440	555	375	2483	2065
22/3. (2004-05)	4548	3525	299	126	4249	3399
22/4. (2005-06)	10989	5855	902	15	10087	5840
22/5. (2006-07)	5191	2081	115	3	5076	2078
23/1. (2007-07)**	104	67	27	18	77	49
23/2. (2007-08)	5586	3525	917	842	4669	2683
23/3. (2008-09)	5004	3165	561	455	4443	2710
23/4. (2009-10)	7251	3288	659	376	6592	2912
23/5. (2010-11)	3545	964	191	14	3354	950
Total	47077	26384	4945	2686	42132	23698
	56.04% answered		**54,31% answered**		**56.25% answered**	

Source: TBMM official web site
* the parliamentary year starts on 1/10 and lasts on 30/09
**This was shorthened session from 23/07/2007-30/09/2007

Supplementary questions exist in all four parliaments. In my opinion, the most developed form of this procedure is in British parliament. The positive feature of the British arrangement is flexibility, as the number of supplementary questions asked is left to be determined by the Speaker (Table 43). MPs willing to ask supplementary question give notice to the Speaker by standing up. In Germany, the rules of procedure permit the questioner and other MPs to ask two supplementary questions. In the National Council of the Slovak Republic, and the Turkish Grand National Assembly, the questioner may ask one supplementary question.

Table 43: Parliamentary Questions in the UK Parliament (2000-2010)

Session/Year	Written Q Submitted (s)*	Written Q Answered (A)	Oral Questions (S)	Oral Questions (A)	Supplementary Q
2000/2001	16417	16687	2780	2591	
2001/2002	72905	67651	6528	2201	4191
2002/2003	55436	51614	4118	6392	
2003/2004	54875	50009	3687	2079	3765
2004/2005	22292	21176	1438	847	1529
2005/2006	95041	96016	5353	2734	5280
2006/2007	47235	58175	3736	1796	3848
2007/2008	73357	73495	5151	2648	4112
2008/2009	56192	56387	4113	1293	3365
2009/2010	25467	23916	1924	942	1743
Total	519217	515126	38828	23523	23642
		99,21%		60%	

Source: Official web site of the UK Parliament

* This number is a sum of Written Questions tabled for the named day and ordinary written questions

7.2.2 Interpellations

The word 'interpellation' comes from the Latin word *interpellare* and means to interrupt by speech, demanding explanation, raising objections. An interpellation is defined by the Inter Parliamentary Union as "a formal request for information on or clarification of the government's policy"[956]. Interpellations are the same as oral questions; however, while questions are usually brief, interpellations intend to provoke comprehensive debate on a certain issue. Occasionally interpellations end with a formal resolution from parliament, or motions of censure[957]. Although interpellations are one of the control tools of parliamentarians in many assemblies, there is not exact procedural formulation of interpellation. In many parliaments interpellations do not exist. In those parliaments

[956] Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments."p. 59

[957] Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations."p. 30.

which use interpellations, they are either used as a follow-up after written or oral questions, or as an independent procedure[958]. Out of the four researched parliaments, the British and Turkish parliaments do not have interpellations. Thus further inquiry will consider regulations of interpellations in the German Bundestag and the National Council of the Slovak Republic.

7.2.2.1 Interpellation in the Bundestag

In Germany interpellations were introduced in 1848. In the current Rules of Procedures, there are two forms of interpellations: Major and Minor Interpellations. In order to submit an interpellation the request of at least 5 percent of the MPs or one PPG is necessary. *Major Interpellation* is considered to be the most effective parliamentary tool for obtaining information from the Federal Government on important political questions[959]. After the submission of Major interpellation, which must be brief, concise, and accompanied by an explanatory memorandum, the President of the Bundestag informs the Federal Government[960]. Following the response of the latter, the answer is placed on agenda. A debate must take place if one PPG or 5 percent of the MPs demand so. In most cases, Major Interpellations deal with matters of general political importance[961].

Refusal of the reply to a Major Interpellation or failure to do so within three weeks may lead to placing the tabled Major Interpellation on the agenda for debate. It must happen if

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958 According to research done by IPU, out of 69 parliaments, in 36 there is no interpellation, in 23 it exists as an independent procedure, and in 10 as a follow up procedure to other procedures. In Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments."p. 59

959 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p62

960 Rule 100, 101 of *The Rules of Procedure of the Bundestag*.

961 ———, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p62

a PPG or 5 percent of the MPs demand so[962]. Rules of procedure state that if the number of Major Interpellations will be so extensive that it would jeopardize the proper conduct of business in parliament, the Bundestag may for a certain period of time restrict debates on Major Interpellations to a particular day in a week[963].

Minor Interpellation is used to provide detailed information on specifically selected issues from the Federal Government. Minor Interpellations are answered in writing within two weeks, and this time may be extended (Rule 104). Both the question and the response from the Government are subsequently published as Bundestag printed papers.

7.2.2.2 Interpellations in National Council of the Slovak Republic

In Slovakia, an interpellation can be submitted by any MP to the government, member of the government or head of another central state administration body on matters within their official powers, and the interpellator has to receive an answer within 30 days. The answer is presented in the plenary, and followed by a debate, which can be joined with the vote of confidence[964]. Interpellation as defined "means a qualified question relating to the implementation and enforcement of laws, and the fulfillment of the Proclamation of Government Policies and the resolutions of the National Council by the Government and its members.[965]" Interpellation can be written, submitted to the Speaker, who refers it to the interpellated person, the Prime Minister and all PPGs, and it can be oral, raised during the time reserved for interpellationson the agenda[966].

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962 Rule 102 of *The Rules of Procedure of the Bundestag*.
963 Rule 103 of Ibid.
964 Article 80 (1),(2) of *Ústava Slovenskej Republiky [Constitution of the Slovak Republic]*.
965 Article 129 (1) of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.
966 Article 129 (3), (4) of Ibid.

Responses for interpellations are submitted to the questioner and to the Speaker, who refers it also to the PPGs. The answer may be presented in the plenary orally as well; however, this does not preclude the obligation to prepare and submit the written response[967]. Following delivery of the response, the item is included in the agenda for the next session[968]. The MP who submitted the interpellation shall state whether he/she is satisfied with the answer[969]. The Council shall express the satisfaction/opinion on the response by the means of resolution in case the MP considers the question unsatisfactory. The vote on the resolution may be taken jointly with a vote of confidence in the government or one of its ministers[970]. The interpellated person has to provide an answer within 30 days[971]. The interpellation can be classified as urgent, and in that case the deadline for the answer is shorter; however, it has to be no less than 195 days[972].

7.3 Debates

Confidence votes are the strongest tool to hold government accountable. However, this tool is only used in exceptional situations and certainly has no chance to be seen as effective in countries with strong cohesive political parties, especially where there is one such political party in government. Parliamentary questioning and debates thus are the tools which appeal especially to opposition parliamentarians. Debates, although different in form, have in many respects the same features and functions as parliamentary

967 130 (1) Ibid.
968 130 (4) Ibid.
969 130 (5) Ibid.
970 130 (6) Ibid.
971 130 Ibid.
972 130 (2) Ibid.

questions. In the current level of openness and transparency of parliaments debates are, like questioning, a source of information, criticism and deliberation.

In *Germany* the core of the plenary work is formed by debates, with the exception of undisputed political matters, which may be dealt without debates. The Council of Elders, the parliamentary body in charge of the agenda, is deciding upon which items of business will be debated and which will be directly voted on. The President of the Bundestag as a Chair opens the daily agenda and in case of a bill or motion manages the debate. The length of the debate is determined by the Council of Elders, and approved by the Bundestag. If there is no agreement reached in the Council, then the Bundestag decides on the duration of the debate (after a short procedural debate)[973].

The speaking time is distributed among the PPGs in proportion to their size in parliament, and it is the PPGs that decide upon who will speak from among their MPs and for how long. And although the Basic Law guarantees to the Federal Government as well as to the MPs an unlimited right to speak, in practice their time to speak in plenary is within limits granted to the relevant PPG[974]. The Speaker, the President acting as a Chair of the Bundestag, is responsible for ensuring that speakers keep up to the available time[975]. Once the time allocated is over, the President closes the debate.

The Rules of Procedure, with regard to the principle of the unlimited right to speak for the Federal Government, regulates the situation in which a member of the Federal

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973 Rule 35 of *The Rules of Procedure of the Bundestag*.
974 Article 43 (2) of *The Basic Law.*
975 Rule 37 of *The Rules of Procedure of the Bundestag*.
———, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p48

Government would be speaking after the end of the debate or outside the allocated time. In this case the debate is considered reopened, and the PPGs are entitled to one fourth of the previously allocated time[976].

There are several types of debates in the Bundestag:

Major debates: These debates usually go after governmental policy statements, in case of the adoption of important or controversial bills at the beginning of the second reading, major interpellations, or annual budget debates[977]. The length of major debates is not fixed precisely. The policy statement of newly elected Chancellor or budget debate usually lasts several days. Major debates attract the most public attention, as they are the battlefield of key political issues[978].

Debate on matters of topical interest: This is a special kind of debate that was introduced to give an opportunity to MPs to discuss in more detail the issues covered during Question Time. The debate takes place when it is agreed upon in the Council of Elders or if a parliamentary group or five percent of the MPs demand so. In this case, the Bundestag basically debates topical issues at short notice. Only one such debate can take place per sitting day. Specifics of this kind of debate are that, first, the time of deliberation is limited to 60 minutes, and second, each speaker's time to call is limited to 5 minutes. The Federal Government also follows the five minute rule limit, although

976 Rule 44.1 of *The Rules of Procedure of the Bundestag*.
977 Linn and Sobolewski, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p49
978 Ibid. p49

members of Government according to the Basic Law have the right to be heard at any time[979].

Debate following Questions put to the Federal Government: Through these questions the Bundestag has a chance to obtain information about the discussions of the Federal Government immediately after their weekly meetings. Therefore, these questions are addressed Wednesdays at 1pm. In order to make plenary debates more lively, the Rules of Procedure allow for short and spontaneous interventions at the end of a contribution to the debate. It allows for "a spontaneous exchange of arguments and viewpoints[980]".

In *Slovakia* there is one general type of parliamentary debate (*Rozprava*) governed by the Rules of Procedure[981]. The Speaker of the parliament opens a debate after the person introducing the matter (sponsor) speaks; in some cases the sponsor is followed by a Rapporteur[982]. MPs willing to participate in the debate have to either enter their names on the list of speakers after the agenda has been approved and before the debate on that motion, or orally ask for the floor after all speakers have spoken[983]. In the latter case, the Speaker reads aloud the names of MPs who asked for the floor and subsequently closes the acceptance of further speakers.

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979 Rule 43 of *The Rules of Procedure of the Bundestag.*: "The members of the Federal Government and of the Bundesrat, as well as persons commissioned by them, must, upon their demand, be heard at any time in accordance with Article 43, paragraph (2) of the Basic Law."

980 ———, "The German Bundestag - Functions and Procedures - Organisation and Working Methods the Legislation of the Federation." p 51

981 Section 27 of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

982 Section 26(1) to Section 27 (1) Ibid.

983 Section 27 (2) Ibid.

The Speaker gives the floor to speakers in the order they applied to the list of speakers[984]. MPs authorized by the PPG shall speak first; each PPG shall authorize only one MP to speak for the party[985]. The National Council may limit the timefor speaking in the debate. Rules of Procedure, however, stipulate that time limitation shall not be less than ten minutes, or twenty minutes in the case of speakers authorized by a PPG[986].During debate, MPs are allowed to make one brief comment by which they may immediately react to the presentation of the preceding speaker. A brief comment cannot be a reaction to another brief comment. After the presentation of brief comments, the Speaker shall allow the sponsor to react with a brief comment. Any factual comment and the presentation of the speaker to which Members react by brief comments shall not exceed the limit of two minutes[987].

During the debate, the sponsor and a Rapporteur shall have the right to speak whenever they request so[988]. This is the case also for the Speaker, the Deputy Speakers, the President of the Republic, and any member of the Government[989]. The President of the Constitutional Court, the President of the Supreme Court, the Chairman of the Supreme Audit Office, the Attorney-General and the Governor of the National Bank of Slovakia may be given the right to speak upon their request, with the consent of parliament[990].

984 Section 27 (4) Ibid.
985 Section 27(4) Ibid.
986 Section 30 Ibid.
987 Section 33 Ibid.
988 Section 27 (8) Ibid.
989 Section 28 (1) Ibid.
990 Section 28(2) Ibid.

On the motion of at least two PPGs, the National Council may vote on the time limit on the debate on any item on the agenda, provided that the motion was submitted before the beginning of the debate itself. The time span for the debate shall not be shorter than 12 hours[991]. If parliament approves the time limit for the debate, the Chair divides allocated time for the debate among the PPGs and independent MPs proportionately, according to the number of Members[992].

During the debate, the MPs representing PPGs speak alternately with MPs who are not members of any PPG, and the order of speaking is determined by ballot[993]. PPGs shall notify in writing on the order of speakers representing a particular PPG before the opening of the debate. The independent MP shall enter the list of speakers also before the opening of the debate. The time limitation for the debate does not include the presentation of the Chair, the sponsor, and the Rapporteur[994]. The allocated time for the debate also includes time for brief comments and procedural motions[995].

When the time for debate is over, the Speaker closes the debate after all speakers who wished to speak have done so[996]. The National Council may, by vote on the motion of at least two PPGs, close the debate before all speakers on the list have spoken, provided that at least one representative of each PPG had the floor[997]. Even if such a motion takes place and the debate has been closed, the MPs on the list of speakers, and those MPs wishing to

991 The motion to limit the debate cannot be submitted, if the deliberation is on a constitutional bill, the national budget bill, or the Programme Declaration of the Government. Section 29a(1) Ibid.
992 Section 29a (3) Ibid.
993 Section 29a(3) Ibid.
994 Section 29a(4) Ibid.
995 Section29a(5) Ibid.
996 Section 35 (1) Ibid.
997 Section 35 (2) Ibid.

put forward amendments to the discussed matter, have a right to speak before the debate is closed[998].

General debates (*Genel görüşme*) in*Turkey* allow "consideration of a specific subject relating to the community and the activities of the state at the plenary sessions"[999]. General debates can be initiated in writing by the government, PPGs or at least 20 deputies[1000]. The proposal calling for the debate shall be addressed to the Office of Speaker and shall be accompanied by the summary of a maximum 500 words, if the proposal exceeds 500 words. If the motion meets all formal criteria, it is placed on the agenda. First, there is a preliminary debate, the purpose of which is to decide whether the general debate shall be held on the motion or not. During the preliminary debate, the government, PPGs, the deputy who signed the motion first, or another MP who signed the motion have the right to speak. The government and PPGs are allocated 20 minutes of speaking time, while the sponsor of the motion is allocated 10 minutes.

The preliminary debate can lead either to rejection of the motion, or its acceptance. In the latter case the general debate is held on the day selected by the Board of Spokespersons. The general debate shall be held not soonerthan 48 hours and not later than 7 days following the decision of the Plenary. During the general debate, the MP who signed the motion first, or the MP designated by him or her speak first. Then the government, PPGs

998 Section 35 (2) Ibid.
999 Article 98 *The Constitution of the Republic of Turkey*.
1000 Article 102 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

(20 minutes) and two independent MPs (each 10 minutes) have a right to speak. The general debate is not concluded by a vote[1001].

The Standing Orders of the *British*parliament distinguish several types of debates: the General debate, Adjournment debates, Emergency debate, and Topical debate (
Table 44). A typical debate starts with a motion presented by an MP, which is debated, sometimes amended, and decided upon at the end. Debate ends when no-one wishes to speak, and the Speaker move a motion to close a debate, or when the allocated time for the debate is over[1002]. Speaking MPs address their remarks to the Chair.

Table 44: Types of debates in the House of Commons

Adjournment debate (backbench)	Mainly allocated by ballot. Half an hour at the end of each sitting in the Chamber and for one and a half hours or half an hour on Tuesdays and Wednesdays in Westminster Hall.
Adjournment debate (before a recess)	Depending on time available and subject to being called by the Speaker. Almost any matter may be raised.
Emergency debate	Applications must be made in writing to the Speaker and conform to strict criteria governing their acceptance.
Topical debate	The choice of subjects for topical debate is made by the Leader of the House.

The Speaker may set the time limit for the speeches of backbenchers, as well as front benchers (Speeches by the Government, the Official Opposition). In a first case it can be for example 10 minutes; in the second 20 minutes, plus interventions. As a rule speeches shall not be read, except with the usage of notes. After speaking the MP shall remain in the chamber at least for two of the following speeches; if the MP is unable to stay, he

1001 "General Debate," (2013), http://global.tbmm.gov.tr/index.php/EN/yd/icerik/35. (Last Accessed on September 18, 2013).
1002 *Standing Orders of the House of Commons*.No. 36.

shall explain her/his reasons to the Chair and to concerned MPs. MPs who aim to refer to other MPs in the debate shall inform concerned MPs in advance.

General debates: It is common that general debates in the Commons are held on the motion 'That this House has considered the matter of [topic]". During the General debates the issues of general interest are debated and usually no specific decision is sought. If the motion of the debate is expressed in a neutral manner, the amendments are not allowed. The motion may be voted on at the end of the debate. The same applies for the Topical debates[1003].

Adjournment debates: An Adjournment debate starts with a motion "That this House do now adjourn…", which does not represent a substantive proposal and can be amended, and on which the House has to decide at the end[1004]. The End-of-the-day Adjournment debates take place at the end of the day's business for a half hour.Proposed subjects are submitted in writing to the Speaker by 7pm on Wednesday for the next week. Thursday's subject matter is chosen by the Speaker, on other days MPs are chosen by ballot conducted onThursday mornings. Every sitting day after finishing other business, the MPs are called to speak. Ministers have sufficient time to respond, and in this case there is no opportunity to ask supplementary questions; there is no possibility to speak after the Minister concludes his/her speech[1005]. Other MPs can interrupt the speeches of Ministers or other MPs with brief relevant remarks, provided speakers agree with it.

1003 "Business of the House and Its Committees – a Short Guide."p. 44.
1004 Ibid. p.17.
1005 Ibid. p. 17.

The Backbench adjournment debate is an opportunity for the backbench MPs during which they raise constituency matters, matters related to executive expenditure, administration, policy, and to obtain a response from a Minister[1006]. Suggested topics (1) must be within ministerial responsibility, (2) must not seek to amend the legislation and (3) must not involve an ongoing case before a court in the UK (sub judice)[1007]. Adjournment debates before recess provide customarily MPs with an opening for raising matters of their own choosing.

Emergency debate: According to the Standing Orders, Emergency debates may be proposed by any MP from Monday till Thursday (any sitting day). A proposal is made by the MP by rising in his place and shortly suggesting that the House shall debate a "specific and important matter that should have urgent consideration"[1008]. The consent may be granted by the Speaker, if it is not so, the MP would need support of at least forty MPs rising in their seats. If they are fewer, but more than 10, the House will vote on the motion[1009]. If the Emergency Debate is granted, the content of the topic is strictly limited to the proposal, and the Speaker shall determine when the debate shall take place and the length of the debate (not more than 3 hours)[1010].Emergency debates take place usually within 24 hours after being granted[1011]. Standing Orders further determine that an MP intending to make an application for Emergency Debate shall give prior notice to the Speaker by 12 pm on Monday and Tuesday and 10:30 am on Wednesday or 9:30 am on

1006 Ibid. p. 16.
1007 *Standing Orders of the House of Commons*. No.30.
1008 No.24. Ibid.
1009 No.24(1) Ibid.
1010 No. 24(2) Ibid.
1011 "Urgent Debate," http://www.parliament.uk/site-information/glossary/urgent-debate/. (Last Accessed on September 18, 2013).

Thursday, if it is possible (the urgency of the matter is already known)[1012]. If it is not feasible, the notice shall be given as soon as practicable. The Speaker grants annually not more than one or two leaves for Emergency debates and limits them to issues of national importance[1013]. Example of these debates: Parliament Riots debate in August 2011[1014], Emergency debate on phone hacking[1015].

Topical debates: The Government may decide that a general debate will be conducted as a topical debate. The subject would be a matter of regional, national or international importance. The time limit for topical debates is 1.5 hours (Standing Order No. 24A (1)), and they are held on Thursdays. As the overall time of the debate is limited, there is also a time limit for speeches: Ministerial speeches and speeches of Official Opposition are limited to 10 minutes (possibility of 10 interventions), the second largest opposition 6 minutes (6 interventions), and one minute is always added for an intervention.

7.4 Committee Oversight

One of the most common and powerful tools of scrutiny is conducted through the committee system. A committee is a group of parliamentarians appointed by a plenary to be responsible for selected issues[1016]. A couple decades ago committees used to be an important institutional feature of the American Congress; however, that was neither the

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1012 Article 24(3) *Standing Orders of the House of Commons*.

1013 "Urgent Debate." (Last Accessed on September 18, 2013).

1014 Ian Dunt and Alex Stevenson, "Parliament Riots Debate as-It-Happened," 11 August 2011.

1015 "Emergency Debate on Phone Hacking," UK Parliament, http://www.parliament.uk/business/news/2011/july/emergency-debate-on-phone-hacking/. (Last Accessed on September 18, 2013).

1016 Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments." p. 15.

case of British nor European parliaments. The committee system as a global phenomenon is a result of fairly recent developments[1017]. Ever since the 1970s committees became the key institutional feature of parliaments in Europe, and as Mattson and Strom noted, "[p]arliamentary committees are rarely mandated by constitutions; yet they almost invariably exist"[1018]. The United Kingdom introduced committees only in 1979[1019]. Committees have helped increase legislative activity, participation of MPs in debates, and party competition[1020].

Besides playing a role in the legislative process, committees embody a control function of parliament using oversight mechanisms of powers they posses: the power to request written information from relevant governmental sources and experts, and hold hearing procedures with participation of experts from various sectors of society[1021]. Not all parliamentary committees have a scrutiny function; some of them deal with organization tasks concerning parliaments[1022]. In addition to the legislative and control role, in the British majoritarian system *ad hoc* specialized commissions are regularly established for

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1017 Lawrence D. Longley and Roger H. Davidson, "Parliamentary Committees: Changing Perspectives on Changing Institutions," *The Journal of Legislative Studies* 4, no. 1 (1998). p3.

1018 Mattson and Strom, "Parliamentary Committees ".p.250.

1019 Originally consisting of 14 committees, there are now 16 departmental select committees. However, unlike developments of this kind elsewhere, the select committees at Westminster are not authorised to deal with legislation. Instead, these committees are concerned with overseeing the departments with which they are associated and investigating relevant policy issues. A detailed consideration of bills after second reading continues to be the concern of a separate set of *ad hoc* committees (illogically called standing committees) unless this stage is kept on the floor, as often occurs. Malcolm Shaw, "Parliamentary Committees: A Global Perspective," *The Journal of Legislative Studies* 4, no. 1 (1998).p 232.

1020 Longley and Davidson, "Parliamentary Committees: Changing Perspectives on Changing Institutions."p5

1021 Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations." p. 28.

1022 Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments."p. 16

the purpose to produce a report with a reform proposal[1023]. Typically, the general composition of committees reflects the whole of parliament, in other words, political parties are represented in committees proportionally to their strength in parliament[1024].

Table 45: Types of committees

Parliaments in continental Europe	Parliaments in the Westminster tradition
Permanent legislative committees	Legislative committees
Permanent non-legislative committees	Special committees
Non-permanent committees	Standing committees
Joint committees	Joint committees
Committees of investigation	Subcommittees
	Committee of the Whole
	Domestic or internal committees

Source: Rick Stapenhurst et al. (eds), Legislative oversight and budgeting: a world perspective, Washington, DC: World Bank, c2008

Efficiency of the committee system depends on procedural rules of parliament; to what extent government can influence the work of parliamentary committees, how they are created, and what kind of powers they can exercise when performing assigned functions (e.g. power to call for witnesses, to compel government to submit documents). These questions will be partly dealt with in the fourth chapter on legislative function within the agenda setting powers analysis, and partly in the fifth chapter on the control function of parliaments.

[1023] For instance, in August 2013 the Parliamentary Commussion on Banking Standards led by Andrew Tyrie was established to investigate and prepare a report on standards in the banking sector including recommendations for further legislative and other action. The Report was published on June 19, 2013.
Another example is more outdated, but relevant to the British parliament itself: in 1999 a Royal Commission led by Lord Wakeham was appointed to examine and prepare a set of recomendations for the reform of the House of Lords. Wakeham Report was published in 2000.

[1024] Whaley, "Strengthening Legislative Capacity in Legislative-Executive Relations." p. 28.

7.4.1 Hearings in Committees

Committees in all the researched parliaments may scrutinize their governments through hearings held in committees. In *Germany***,** according to the Basic Law and the Rules of Procedure, committees have a right to demand presence of a member of the Federal Government. The decision on a motion shall be taken on the meeting closed to the public[1025]. Rules of Procedure specifically provide for Public Hearings in Article 70. The purpose of hearings is first of all to obtain information on the debated issue from experts, interest groups, or other persons. The committee, to which the item of agenda was referred to, is obliged to hold a hearing if one quarter of the members of committee demand so.

In *Turkey* the constitution does not count with committees with the scrutiny function, and based on the Rules of Procedure it is evident that the role of the committees is limited to the legislative function[1026]. The scrutiny role of committees comes into the picture in the case of special investigatory committees, which are created ad hoc. Thus in Turkey there are no 'select' types of committees like in the UK parliament.

In *Slovakia,* committees have, according to Article 53 of the Rules of Procedure, the right to invite to their meetings members of government, heads of bodies of state administration, and the attorney general, and require explanations, reports, and all necessary documentation. Those invited are obliged to come to the committee meeting,

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1025 Rule 68 *The Rules of Procedure of the Bundestag*., Article 43 (1) of *The Basic Law.*

1026 Article 98 of *The Constitution of the Republic of Turkey*.: specifies that TGNA"shall exercise its supervisory power by means of questions, parliamentary inquiries, general debates, motions of censure and parliamentary investigations"."

and deliver requested explanations, reports or documents. If the committee agrees, they can be represented by substitutes.

In the *United Kingdom*, departmental select committees have power to scrutinize the expenditure, administration and policy of government departments and for that purpose they may call for "persons, papers and records"[1027]. Committees have power to compel people to give evidence, however, not the Government and MPs[1028].

Efficiency of the committee hearings is limited by the composition in parliaments, as in all countries the composition of committees is proportional to the strength of parliamentary political parties. In Slovakia as well as in Turkey, for example, the decision of the committee is taken by a majority of present members[1029].

7.4.2 Investigation Committees and/or Committees of Inquiry

Usually committees have scrutiny power, which was discussed in the preceding part. This part concerns the scrutiny by the committee established ad hoc for this purpose only. In Slovakia, Rules of Procedure do not talk about this kind of ad hoc committee. The control can be done by inquiry by already established committees[1030]. Germany, Turkey, and the

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[1027] Article 152 of the Standing Orders Select committees have according to Standing Orders power to:
(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;
(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and
(c) to report from time to time the evidence taken before sub-committees, and the formal minutes of sub-committees; and the sub-committees appointed under this order shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time their formal minutes, and shall have a quorum of three.

[1028] "Select Committees," (The House of Commons Information Office, August 2011).

[1029] Article 21 of *Türkiye Büyük Millet Meclisi İçtüzüğü [Rules of Procedure of Turkish Grand National Assembly]*

[1030] *poslanecky prieskum*

United Kingdom, however, in their Rules of Procedure provide for the possibility to establish ad hoc committees for the purpose of scrutiny of specific issues.

The *German* Bundestag has a right to establish investigative committees on the motion of one fourth of MPs to deal with topical issues[1031]. The jurisdiction of these committees is within all matters falling into the responsibility of either government or parliament. These committees are responsible for examining and investigating political and bureaucratic misconduct in the government, the Bundestag or the administration. The Investigative committee takes evidence at public hearings[1032]. It has a power to call for witnesses, and interview them under oath, order documents to be presented to it and request executive assistance from courts and administrative authorities. The inquiry is concluded by a published report and a following debate in the Bundestag.

In *Turkey*, the Rules of Procedure provide for the method of obtaining information by setting up a special *ad hoc* committee. The process of initiating a parliamentary inquiry through an *ad hoc* committee can be initiated by a written motion of the government, a political party group or at least 20 MPs. The motion has to meet formal criteria and can neither be concerned with commercial or state secrets, nor touch upon matters of ongoing judicial proceedings. It is addressed to the Office of Speaker. Once on the agenda, the motion to establish the committee of parliamentary inquiry is debated the same as the motion for general debate. At the end of preliminary debate the plenary takes a vote. If the parliamentary inquiry is approved, an *ad hoc* committee is established. The size and

1031 Article 44 of *The Basic Law*.
1032 Article 44 of Ibid.

duration of the committee is decided by plenary on the proposal of the Speaker. Political parties are represented in the committee on a proportional basis.

The committee may investigate and take evidence from officials of ministries, public institutions, local governments, universities, public economic enterprises, banks and institutions established by special laws, public professional institutions having the status of public institutions, and non-profit associations. The committee has to conclude its work within three months. The plenary may prolong the time with one additional month. The committee prepares a report on the investigated matter, cause of the problem, and measures taken, and it distributes it to the MPs. Following the distribution a general debate is held in the plenary. Debate is governed by general provisions and the report is published on parliament's official website[1033].

In the *United Kingdom* the committees of inquiry are basically select committees. Select committees have been set for centuries already and are the main tool when the House wishes to investigate something[1034]. In such a case the House selects a small number of MPs to gather information and produce a final report, which is subsequently debated in the House. Although most of the select committees are established right after general elections for the whole electoral term, occasionally they are set up *ad hoc* or as committees for temporary basis.

[1033] "Parliamentary Inquiry," (2013), http://global.tbmm.gov.tr/index.php/EN/yd/icerik/36. (Last Accessed on September 18, 2013).
[1034] "Select Committees," (The House of Commons Information Office, August 2011).

Conclusion

This chapter wanted to answer the question whether there has been an erosion of the parliamentary control function, which could be subsequently linked to the parliamentary decline thesis. I conclude that in general there was no decline either in their scope or in their particular use of control tools. In order to answer the question, I started with the fact that the legislative-executive relationship has been since the Second World War transformed into 'parliamentarism rationalized', which means that government has been strengthened on the account of legislature. We have seen this situation already with regard to the agenda setting arrangement. Nevertheless, the rationalized form of parliamentarism is by the present time the traditional and static arrangement, and thus is not likely that it is behind the parliamentary decline thesis.

The second point I would like to conclude at this point is the political use of control tools. Parliamentary control tools, in an arrangement where government relies on a cohesive majority in parliament, are obviously limited, unless control tools can be invoked by a low number of MPs. And even in this case, wherever a plenary vote would be needed, the majority will prevail. On the other hand, especially with regard to confidence votes and parliamentary questions, but also for other control tools, is the political use of control tools. For instance, parliamentary opposition in the Slovakian National Council often initiates vote of no-confidence to one of the ministers that opposition blames for failure with regard to a particular policy, knowing this will not lead to his or her resignation. However, the vote is accompanied with a debate where the minister has to be present and which also triggers a lot of media attention. So the vote is used for PR purposes, knowing the minister will remain in the position afterwards.

The same applies to parliamentary questioning. MPs use various strategies on how to maximize the impact of the answer ministers have to provide. As I mentioned in a relevant section, questioning can display that a minister lacks information, knowledge, or cannot explain problematic issues. MPs can ask questions having certain information in mind, which of course they are not obliged to disclose prior to questioning. Interpellations, debates, and committee hearings have essentially the same use. The opposition has no power to recall ministers or the Prime Minister unless the political party holding the majority has internal problems. To sum up, in general the rule of proportionality applies in parliamentary proceedings, which means that the majority prevails when it comes to most aspects of parliamentary procedure including composition of committees, timing of debates or votes in plenary.

With regard to the second question on what is the use of control tools if they are not likely to be invoked by the majority of MPs, I conclude that all parliamentary control is about is to point citizens' attention to issues they should consider. Critical views of citizens show themselves in polls and polls create pressure on government, which has to act in order to stay responsive, otherwise it will not be reelected in the following general elections. We shall not understand parliamentary control as the principal and agent relationship, where the principal can remove the agent anytime. This picture disappears once we realize the presence of government in parliament through its majority.

Chapter 8: New Parliamentary Control Tools

Introduction

Holding governments accountable is at the center of the control function of parliaments. In parliaments from parliamentary democracies scrutiny is limited by the fact that the system presupposes support of the majority for governments, and thus the control function is left to the opposition, which can maneuver within the tools available to it. As it was pointed out in Chapter 7, governments in a rationalized form of parliamentarism are strengthened in relation to parliaments; nevertheless, this is by now the traditional arrangement, which has not been changing recently, and thus is not likely that it is behind the parliamentary decline thesis. The main role of parliamentary control tools is their political use; they are essential to mobilize public opinion and create public pressure. So, if traditional control tools are not likely to be behind the parliamentary decline thesis, the question is if newly acquired roles and features of the parliamentary control function are.

Besides the traditional control tools discussed in Chapter 7, I identified a few new roles or features that might have an impact on the control function of parliaments. The first is a new role of national parliaments within the European Union, attributed to them by the Lisbon Treaty. The Lisbon Treaty is conferring on national parliaments several roles, out of which the most significant one (at least on paper) is their role in the Early Warning System (EWS). The EWS gives national parliaments the power to block legislation if they conclude that the legislative proposal is violating the principle of subsidiarity enshrined in Article 5 of the Treaty on the European Union. However, in order to block the legislation, parliaments have to act within a prescribed time limit and have to meet the

requirement of the number of votes. Thus, the question is, are national parliaments of member states capable of organizing and using this tool or is the EWS an important role only on paper?

Secondly, the European Union has an impact on the traditional control function of national parliaments when it comes to their ability to scrutinize governments over EU matters. Thus the question is, how much parliaments get to control their governments prior to their participation in the EU legislative process in the Council. In general as practices of national parliaments differ, it will be shown through the practices of German, Slovak and British parliaments.

Lastly, the chapter deals with a new feature of parliamentary proceedings, which is transparency. Transparency has been enhanced with regard to parliamentary proceedings throughout last two decades. It has started with the opening of special parliamentary television channels, and the boom of transparency later continued thanks to the growing use of the Internet among citizens. The nature of all control tools discussed in Chapter 7 has thus improved, and besides the (opposition) MPs, citizens are informed and able to control their government as well. In short, transparency strengthened each and every existent control tool by attaching to it the threat of changing opinion polls, which are so important for today's politicians. Here, however, the additional question arises, which is, what other impact has transparency had, especially with regard to parliamentary decline thesis.

All in all, if traditional control tools are not likely behind the parliamentary decline thesis, the question is if it is a performance of national parliaments in relation to the European Union or national governments in EU matters, or increasing transparency of parliamentary proceedings that are triggering the parliamentary decline thesis. To answer these questions I analyzed the development of regulation of national parliaments in the EU up to the present day and the impact of the Early Warning Mechanism, as well as gradually increasing transparency of the researched parliaments.

I conclude in this chapter that indeed discussed changes represent a dynamic factor that has an impact on the control function of parliaments. However, the changes are not as negative as to consider parliaments as losers. On the contrary, starting from the very neglected position, parliaments have the opportunity to control European legislation directly through the Early Warning Mechanism and indirectly through control of their national governments. In addition, transparency made parliament the focal point of politics, which on one hand contributes to unrealistic expectations and parliamentary decline thesis, but on the other, especially with respect to the control function, improves public scrutiny and gives new meaning to all the traditional control tools available to parliamentarians, such as debates or questions.

8.1 National Parliaments and the European Union

8.1.1 Direct European Affairs Scrutiny by National Parliaments

8.1.1.1 Role of National Parliaments in EU: From Maastricht to Lisbon

In order to give an answer to the question if national parliaments of member states are capable of organizing and using this tool or is the EWS an important role only on paper, I start with the analysis of gradual deepening of involvement of national parliaments in EU matters leading ultimately to the current arrangement.

The role of national parliaments within the EU has been one of the explanations of the parliamentary decline thesis. National parliaments have been considered as losers of European integration. One of the reasons behind the allegation was the late recognition of the role of national parliaments in Treaties. For the first time national parliaments were mentioned in Declaration 13 of the Maastricht Treaty (1992):

> *The Conference considers that it is important to encourage greater involvement of national Parliaments in the activities of the European Union.*
> *To this end, the exchange of information between national Parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure, inter alia, that national Parliaments receive Commission proposals for legislation in good time for information or possible examination.*
> *Similarly, the Conference considers that it is important for contacts between the national Parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between Members of Parliament interested in the same issues.*[1035]

From this first notice of national parliaments within the European Union one can understand the notice's largely declaratory character. The European Union acknowledged the need to address the issue of abandonment of national parliaments within EU

[1035] "Declaration on the Role of National Parliaments in the European Union in Maastricht Treaty," (1992).

governance; however, the proposed encouragements did not offer any tangible solutions: national parliaments shall be encouraged to be more active, governments of Member States shall ensure parliaments are informed, and cooperation between national parliaments and the European Parliament shall be intensified. This did not confer any specific power to parliaments to enhance their position on the EU level.

The Amsterdam Treaty also included the Protocol on the Role of National Parliaments in the EU[1036]. The Protocol consisted of two main parts; one dealt with information for national parliaments of member states, while the second dealt with the Conference of the European Affairs Committees (COSAC). Protocol was more specific than Declaration No. 13 included in the Maastricht Treaty. It specified that all Commission consultation documents shall be forwarded to parliaments, and all legislative proposals shall be made available in good time so governments could pass them on to parliaments in an appropriate time. In order to give national parliaments time for scrutiny, Protocol specified that six weeks shall pass from the time when the document is made available to the European Parliament and the Council and the time it is placed on Council's agenda. With regard to the conference, the Protocol referred to COSAC, which was established in November 1989, and its role in the Union and its legislative process. The Amsterdam Treaty was definitely more specific than the Maastricht Treaty; however, again it merely guaranteed the timely information and encouraged international cooperation of parliaments.

1036 "Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts ", (1997).

The Lisbon Treaty gave so far an unprecedented role to national parliaments, which is specified in Article 12 of the Treaty on the European Union[1037].First, national parliaments are expected to participate in the functioning of the Union through being informed. The Protocol on the Role of National Parliaments does not rely on governments anymore to forward documents to parliaments, but it stipulates that Commission shall directly forward all consultation documents, annual legislative programs as well as other instruments of legislative planning or policy[1038]. Draft legislative documents sent to the European Parliament and to the Council shall also be forwarded directly to national parliaments[1039]. The dependency of national parliaments on governments has thus been decreased[1040].

National parliaments are, since the Lisbon Treaty, also better informed about negotiations of the Council, as according to the Protocol, they are supposed to be sent all agendas, as well as outcomes and minutes of the meetings of the Council concerning the deliberation on the legislative drafts. This is a positive step towards transparency of the meetings, which were previously closed to the public, and shall give a chance to national parliaments, if interested, to hold governments accountable for their action in the Council. Moreover, the Protocol secures information also from other European

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1037 Article 12 of the "Treaty on European Union," (2009).

1038 Article 1 of the "The Protocol on the Role of National Parliaments in the European Union ", (2009).

1039 Article 2 Ibid.; "For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act"

1040 Theo Jans and Sonia Piedrafita, "The Role of National Parliaments in European Decision-Making,"(2009), http://www.eipa.eu/files/repository/eipascope/20090709111616_Art3_Eipascoop2009_01.pdf.

institutions, such as the Court of Auditors, which is also obliged to forward its annual report to national parliaments.

Moreover, the procedure of revision of the Treaties is also counting on the involvement of national parliaments. According to the Lisbon Treaty, there are two procedures for amending treaties: ordinary and simplified procedures. Within the ordinary procedure, national parliaments shall take part in the Convention through their representatives. In the simplified procedure, national parliaments have to be informed of the initiative of the European Council to move from unanimity to qualified-majority voting under Article 48 (7) at least sixth months prior to adoption. If any national parliament within these six months makes known its opposition, the European Council shall not adopt the decision.

The most significant role attributed to national parliaments so far is the power to control if the principle of subsidiarity is respected. The so-called 'Early Warning Mechanism' is also established in Article 12 of the TEU and further specified in the Protocol on the application of the principles of subsidiarity and proportionality. However, to trigger the EWS requires the cooperation of a prescribed number of parliaments within a short time limit. Therefore, the question elaborated in the next section is, is this the real empowerment of national parliaments or will the strengthening remain only on paper?

8.1.1.2 Early Warning Mechanism: Monitoring the Principle of Subsidiarity

Being informed is connected to the new role of national parliaments, which is outlined in Section (b) of Article 12 of the TEU. National parliaments may object that a specific legislative draft does not comply with the principle of subsidiarity and send their opinion to the Presidents of the European Parliament, the Council and the Commission (Early

Warning Mechanism)[1041]. Parliaments have an eight-week period between receiving the draft legislative act and the date when it is placed on agenda of the Council[1042].

Every national parliament is allocated two votes; in the case of bicameral parliaments each chamber has one vote[1043]. There are 54 votes altogether (for 27 Member States). There are two procedures. The first one the so-called 'yellow card', which requires at least 1/3 of votes (18) against a draft for non-compliance with the subsidiarity principle and 1/4 of the votes (14) for drafts in the area of freedom, security and justice[1044]. After the adoption of a yellow card, the institution initiating the legislation has to review its proposal, and can either maintain, amend or withdraw it, but in any case it must justify its decision.

The second procedure is called an 'orange card' and applies only to the ordinary legislative procedure. If there is an opposition of at least a simple majority (28), the proposal must be reviewed. The Commission can maintain, withdraw or amend the proposal, but again, its decision has to be justified. In case the Commission decides to keep the proposal, opinions of national parliaments together with the Commission's justification are forwarded to the European Parliament and the Council, which has to consider the issue of subsidiarity by the end of its first reading. If the majority of the European Parliament and a 55 percent majority of the Council members consider that the proposal violates the principle of subsidiarity, the proposal fails.

1041 Article 3 of "The Protocol on the Role of National Parliaments in the European Union ".

1042 Article 4 Ibid.

1043 Article 7(1) of "The Protocol on Protocol on the Application of the Principles of Subsidiarity and Proportionality," (2009).

1044 Article 7 (2) of Ibid.

In order to see how the EWS work in practice, COSAC conducted eight subsidiarity checks. The last check was done in 2009 on the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings[1045]. Twenty-one parliaments/chambers from seventeen member states concluded the subsidiarity check within the deadline of eight weeks. Ten parliaments/chambers from nine member states started the check but had difficulties complying with the eight-week deadline. As the main reason of not completing the check on time, the recess of parliamentswas identified. Out of twenty-one participating states three parliaments found that the proposal violated the principle of subsidiarity and supported their conclusions with reasoned opinions. Six parliaments either supported the proposal or requested more information. Thus, three parliaments would make six votes, which is not enough to trigger yellow or orange cards. On the other hand, this test together with seven others that COSAC conducted proved that it is institutionally possible to review legislation proposals.

Moreover, a platform called 'IPEX' for the exchange of information among national parliaments and the European Parliament was established[1046]. The platform contains a document database composed of legislative proposals, and parliamentary information uploaded by each national parliament, and tools to follow the subsidiarity check.

COSAC trials took place before the Lisbon Treaty came into force in 2009. Since then we know about application of the EWS from reports annually published by the Commission.

1045 "Subsidiarity Control in National Parliaments," ed. Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COM(2009) 338 final).

1046 The platform for EU Interparliamentary Exchange: www.ipex.eu

The EWS has been in force since 2010, and by the end of same year the Commission reported that it sent out 82 legislative drafts that are covered by the Protocol on subsidiarity and received 211 reasoned opinions, most of which focused on content of proposal, which is part of the normal dialogue between the Commission and parliaments[1047]. 34 opinions touched upon the issue of subsidiarity. For five proposals the Commission was sent a reasoned opinion from more than one chamber/parliament, but all cases were far from the threshold for either a yellow or an orange card. In 2011, the Commission reports 64 reasoned opinions regarding the subsidiarity, which is a 75 percent increase compared to 2010. Yet, these opinions relate to 28 proposals and the focus of parliaments' opinions is quite disparate. The threshold was not met in any of the 28 cases[1048].

The first 'yellow card' was issued in May 2012 in relation to a proposal concerning the right to take a collective action within the context of the freedom of establishment and the freedom to provide services('Monti II')[1049]. In this case, 12 parliaments/chambers out of 40, which represent 19 out of 54 possible votes, came to the conclusion that the proposal violated the principle of subsidiarity. Subsequently, the Commission withdrew its proposal[1050]. Thus, in the past three years we witnessed an increase of opinions and the first outcome of the designed EWS procedure. Three years is too short to say whether the participation of national parliaments will continue to improve and if the EWS will be successful or not. So far it seems that national parliaments are waking up and starting to

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1047 European Commission, "Smart Regulation," (2013).
1048 Ibid.
1049 The proposal was presented on March 21, 2012.
1050 "The Principle of Subsidiarity," (2013), http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf. (Last Accessed on September 18, 2013).

be more active also outside national borders. Furthermore, the Commission reported that the number of reasoned opinions in 2011 regarding subsidiarity make up merely 10 percent of overall opinions coming from national parliaments[1051]. The Commission is holding an ongoing dialogue on the content of the legislation with national parliaments since 2006, and used this network for implementation of the EWS. This means that whether the EWS will continue to improve or not, apart from the EWS parliaments are involved in dialogue regarding content of legislation with the Commission.

8.1.2 Indirect European Affairs Scrutiny by National Parliaments

National parliaments' main role towards the European Union is to be a guardian of the principle of subsidiarity, and it is a collective role parliaments are playing, in order to influence legislation, the required quorum of parliaments needs to mobilize. Parliaments, however, also individually play the role towards their own governments with regard to EU affairs. On the European level, one of the main legislators, besides the European Parliament, is the (European) Council (when it comes to ordinary legislative procedure). Thus, in the EU governments on the EU level turn to legislators. The question is how parliaments have reacted to this new situation: Are they trying to constrain governments? Are they giving them a precise mandate before going to Council meetings, or are they requiring information only *ex post*?

In order to keep up with flow of proposals coming from the European institutions, all of the EU Member States established specialized EU committees[1052]. The method and

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1051 Commission, "Smart Regulation."

1052 "Models of Scrutiny of Eu Matters in National Parliaments," (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union).Available at:

intensity of parliamentary scrutiny differs significantly between Member States[1053]. Differences may be when it comes to:

a. Time frame and access to information
b. European Affairs Committees and the organization of scrutiny
c. Systems of parliamentary scrutiny[1054]

COSAC identified three types of parliamentary scrutiny: first, the *document based model*, which focuses on examination of all incoming documents, with closer scrutiny of the Commission's documents. The document-based model is selective, with the number of documents coming from the EU; Committees have to select those that receive closer review. Many of these models also include the condition that ministers cannot agree on an EU proposal before parliamentary scrutiny is finished. Parliaments having a document-based approach to scrutiny of EU materials are the parliaments of the United Kingdom, the Czech Republic, Cyprus, France, Germany, Italy, Ireland, Portugal, Belgium, the Netherlands, Luxembourg and Bulgaria.

The second model is *mandating* or a *procedural system*, with a focus on governments' position[1055]. European Scrutiny Committees are empowered to grant direct mandate to the government minister prior to the negotiations in the EU. This model of European scrutiny is the case for the parliaments of Denmark, Estonia, Finland, Latvia, Lithuania, Poland (Sejm), Slovakia, Slovenia and Sweden. A third type of scrutiny is *'Informal Influencers'* and countries belonging to this type are, for example, Spain or Greece. This type of

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http://www.cosac.eu/eu-scrutiny-models/2012/6/21/models-of-scrutiny-of-eu-matters-in-national-parliaments.html (Last Accessed September 18, 2013).

1053 Jans and Piedrafita, "The Role of National Parliaments in European Decision-Making."

1054 Ibid.

1055 "Models of Scrutiny of Eu Matters in National Parliaments."

scrutiny relies on informal influence of European matters through dialogue without systematic scrutiny. In reality, many parliaments adopted what can be considered as *mixed*, using features from a document-based as well as a procedural model[1056]. This typology is useful when looking at practices of the three researched states, which are at the same time also members of the European Union: Germany, Slovakia and the United Kingdom.

8.1.2.1 Germany

Participation of the Bundestag in EU matters was first enshrined in the Act ratifying the Treaty of Rome in 1957[1057]. The law included a duty of the Federal government to inform the Bundestag on EU affairs. The legal basis for the participation of German parliaments in EU decision-making was amended only in 1992 after pressure of the Bundesrat to empower parliament as a precondition to consent of the Maastricht Treaty[1058]. The result of the pressure on parliament was the amendment of the Basic Law prior to the ratification of the Maastricht Treaty, which included a constitutional role of parliament in Article 23 and established the Committee on the Affairs of the European Union (*Ausschuss für die Angelegenheiten der Europäischen Union*) in Article 45.

Article 23 of the Basic Law obliged the government to provide comprehensive information to parliament as early as possible. Furthermore, it provides for the 'parliamentary reserve' that enabled parliament to adopt a resolution prior to the Council

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1056 Ibid.

1057 O'Brennan and Raunio, *National Parliaments within the Enlarged European Union : From 'Victims' of Integration to Competitive Actors?* p.135

1058 Ibid. p.135

meeting that government has to take into account[1059]. The Committee established by Article 45 consists of 33 MPs of the Bundestag with a possibility of participation of another 16 German MPs from European Parliament that may participate without voting rights. The Committee is the center of European policy-making decisions. The Committee is empowered to adopt opinions binding for the Federal government, although there is no scrutiny reserve as in the United Kingdom[1060].

In the Bundesrat, the Committee on Questions of the European Union (*Ausschuss für Fragen der Europäischen Union*) was established in December 1957[1061]. It has 17 members, one member per each federal state[1062]. The Committee deals with documents from the Council and the Commission that are of importance for federal states; documents are usually selected on the recommendation of the specialist committees[1063].

8.1.2.2 Slovakia

The relationship between government and parliaments with regard to issues related to the European Union is governed by the adoption of the Constitutional Act No. 397/2004 on the cooperation between the National Council of the Slovak Republic and the Government of the Slovak Republic in the affairs concerning the European Union[1064].The

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1059 Article 23(3) of *The Basic Law*. Article 5 of *The Act on Cooperation of the Federal Government and the German Bundestag in European Matters*.

1060 Article 9 of *The Act on Cooperation of the Federal Government and the German Bundestag in European Matters*.

1061 "Committee on European Union Questions," The Bundesrat, http://www.bundesrat.de/nn_11010/EN/europa-int-en/eu-ausschuss-en/eu-en-inhalt.html?__nnn=true. (Last Accessed Septemer 18, 2013).

1062 Article 23 of *The Basic Law*. and Section 45 of *Rules of Procedure of the Bundesrat*.

1063 "Germany," (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union). (Last Accessed Septemer 18, 2013).

1064 *Ústavný Zákon O Spolupráci Národnej Rady Slovenskej Republiky a Vlády Slovenskej Republiky V Záležitostiach Európskej Únie [the Constitutional Act on Cooperation between National Council of*

Constitutional Act stipulates that prior to participating in the Council meeting; the government has to submit its position to the National Council in order to obtain approval[1065]. If within two weeks parliament fails to deliver its own position or if it fails to adopt approval, the minister acts on the originally adopted and presented position of the government[1066]. Thus, if there is an adopted position of the National Council, the particular minister is bound by the position while representing Slovakia in European institutions[1067]. The minister can depart from the parliamentary position only in necessary cases in order to protect interests of the Slovak Republic. In that case the minister has to inform parliament and justify his or her actions.

The Constitutional Act gave parliament an option to delegate this power to the specialized Committee[1068]. For this purpose parliament established the Committee of the National Council of the Slovak Republic on European Affairs(*Výbor Národnej rady Slovenskej republiky pre európske záležitosti*) in April 2004. The Committee consists of 11 MPs, who are appointed to the position at the beginning of each legislative term based on the proportional strength of the political parties in parliament[1069].

Parliament and particularly the Committee on EU Affairs conduct scrutiny as follows. First, the European Commission publishes the Legislative and Work Program (LWP) for a particular year. Based on this program Slovak government indicates priorities of

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Slovak Republic and the Government of Slovak Republic in Matters of the Eu], (24.6.2004, in force as of 1.8.2004).

1065 Article 1 section 2 of Ibid.

1066 Article 2 section 1 of Ibid.

1067 Article 2 section 4 of Ibid.

1068 Article 2 section 2 of Ibid.

1069 Article 58a of *Zákon O Rokovacom Poriadku V Zneni Neskorších Predpisov [Act of the National Council of the Slovak Republic on Rules of Procedure as Amended]*.

national interest. Afterwards the Committee for European Affairs discusses the LWP together with national priorities set by the government. Thus, when a legislative proposal that is of national priority arrives from the Commission, the Committee on European Affairs asks specialized committees for their opinions, and focuses its scrutiny on these proposals.

The Committee reviews legislative drafts and initiatives, and adopts positions of the Slovak Republic to that purpose, as described above. However, if the plenary decides so, the review and position can be taken by the whole parliament[1070]. Furthermore, it is the Committee that is responsible for considering the compliance of legislative drafts with the principle of subsidiarity, and for deliberating on actions in case of breach of the principle of subsidiarity[1071]. Following the deliberations in the Council, the minister bound by the position of the Committee is obliged to participate in the Committee meeting and inform the Committee members and without delay inform the committee on legislative drafts and outcomes of the Council meetings[1072].

8.1.2.3 The United Kingdom

The Committee responsible for scrutiny of EU affairs in the House of Commons is the *European Scrutiny Committee*[1073]. The Committee consists of 16 representatives. Besides the European Scrutiny Committee, there are three other European Committees called A,

1070 Article 58a (4) Ibid.
1071 Article 58a (3) c,d Ibid.
1072 Article 58a (6) Ibid.
1073 *Standing Orders of the House of Commons*. No. 143

B and C with sectoral agendas[1074]. Each Committee has 13 members. Committees are referred to documents from the European Scrutiny Committee. Other departmental select committees also play a role in European scrutiny. The scope of the policy area is more limited than of the European Scrutiny Committee; however, they are capable of more detailed inquiries, and so the ESC has the power to request departmental select committees to provide opinions within a set time limit. As the time of the scrutiny is scarce, the ESC uses this power only two or three times a year[1075].

The Commons' system is a document-based type of scrutiny focused on EU documents and the UK's position towards them[1076]. The Committee is required to consider each document coming from the EU and assess its importance from a legal and political point of view. Only those documents that raise issues of legal and political importance are subjected to further scrutiny. Proceedings within the European Scrutiny Committee involve deliberation as well as questions. The Committee has the power to ask questions from Ministers without any notice for an hour or even longer without the presence of civil servants. If the document is not legally or politically deemed important it is considered cleared and the scrutiny is over[1077]. Annually the Committee recommends some documents to be debated on the Floor of the House. The number of documents

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1074 Ibid. No. 119; The European Committee **A** deals with areas of Energy and Climate Change; Environment, Food and Rural Affairs; Transport; Communities and Local Government; Forestry Commission. The European Committee **B**. HM Treasury; Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Justice; and matters not otherwise allocated. And lastly, the European Committee **C**. Business, Innovation and Skills; Children Schools and Families; Innovation, Culture, Media and Sport; and Health.

1075 "The European Scrutiny System in the House of Commons," (7 April 2010), http://www.parliament.uk/documents/commons-committees/european-scrutiny/ESC%20Guide%20Revised%202010.pdf. (Last Accessed September 18, 2013), p.16.

1076 Ibid., p. 5.

1077 O'Brennan and Raunio, *National Parliaments within the Enlarged European Union : From 'Victims' of Integration to Competitive Actors?* p. 167

debated on the Floor is really low, on average annually there are three documents that the Committee considers to be of special importance[1078].

Both Houses have a *Scrutiny Reserve,* which means that government declared in 1998 not to proceed with any agreement on the EU level until scrutiny committees completed their work[1079]. Thus Ministers are constrained from giving agreement in the Council to proposals or decisions that have not been previously cleared by the Committee, and from giving agreement to those documents that have been recommended for debate by the Scrutiny[1080]. On the other hand, a Minister may give his agreement in two cases: first, if he believes that a proposal is confidential, routine or trivial, and essentially in content similar to the one cleared by the Committee or because of urgency the Committee agreed that the resolution may be overridden or lastly in the case of special reason, which the Minister has to explain *ex post* at the first convenient time[1081].

The Committee control also controls actions of the UK Ministers in Council. The main monitoring happens through written reports[1082]. Three weeks earlier, a Council-relevant ministry sends a provisional agenda to the Committee, together with the recent steps taken by the UK. A couple of days before a Council meeting, the Committee receives written ministerial statement on reasons of placement of items on the agenda and the

1078 For instance during the session 2006-07 debates were held on the Hague Programme on justice and home affairs, Galileo, and on a European Union programme for critical infrastructure protection. "The European Scrutiny System in the House of Commons."p.14

1079 *Scrutiny Reserve* over a proposal basically means the scrutiny is still going on. The scrutiny reserve resolution was adopted by the House of Commons on 17 November 1998.

1080 The Resolution of the House of Commons of November 17, 1998.

1081 "The European Scrutiny System in the House of Commons."p.12.

1082 Ibid. p.15

position of government[1083]. After the Council meeting, again a written ministerial statement with accounts on what happened is sent to the Committee[1084]. After receiving this information, the Committee may request more written information or take oral evidence from the Minister. In practice, generally the Committee takes oral evidence after meetings of the European Council or with regard to some documents[1085].

The scrutiny of EU legislation is not limited only to the Commons. The Committee dealing with EU affairs was established for the first time in the House of Commons in 1974. Currently it has 19 members; however, there are in addition to the main EU committee also six Sub-Committees with a further 74 members[1086]. When it comes to political affiliation, the composition in general reflects the composition of the House[1087]. The main function of the Committee is to scrutinize EU legislative drafts and the response of government to them. The Lords' main aim when it comes to EU scrutiny is to stay informed and to contribute to the debate on European policies and to try to influence the government's position on the matter[1088]. For that purpose the Lords publish analysis and conclusions on reviewed items, publish the correspondence with Ministers, as well as evidence they receive.

1083 Ibid. p.15

1084 During the recess statemenets are replaces by ministerial letters.

1085 "The European Scrutiny System in the House of Commons." p.15

1086 Legal basis is the resolution of the House of Lords passed in 1999. The list of current six-subcommittees:
A. Economic and Financial Affairs
B. Internal Market, Infrastructure and Employment
C. External Affairs
D. Agriculture, Fisheries, Environment and Energy
E. Justice, Institutions and Consumer Protection
F. Home Affairs, Health and Education

1087 "The European Scrutiny System in the House of Lords," (2013), http://www.parliament.uk/documents/lords-committees/eu-select/Lords-EU-scrutiny-process.pdf. (Last Accessed September 18, 2013). p6.

1088 Ibid.p.4.

The Committee's style of work is also document-based[1089]. The Committee can select documents it wishes to scrutinize. The *Scrutiny Reserve* applies to the House of Lords in the same way as in the Commons. However, unlike the Commons, who report quickly within one week on a range of documents, the Lords reports on a smaller number of proposals in greater detail and with considerable longer enquiries[1090]. This is also why the Commons' Committee was referred to as 'reactive', while the Lords' Committee as 'proactive' with regard to EU affairs[1091]. The combination of the work of Commons and Lords is behind the fact that the British parliament is considered to be the one with strongest scrutiny of EU legislation[1092].

8.2 Transparency

"The successful functioning of any parliamentary democracy is dependent upon efficient, multi-directional flows of information."[1093] Parliaments have undertaken many reforms in recent decades, conscious of their public perception and appearance. Beetham mentions four points in which parliaments reformed themselves with regard to openness and transparency: first, parliaments are making greater efforts in communication with their constituents (media, broadcast, websites with extensive information and opportunity to communicate with MPs); secondly, parliaments make special efforts to reach the younger generation (school visits, virtual parliaments); thirdly, providing interested individuals

1089 In 2012, the Committee received for scrutiny around 800 documents.Ibid., p7

1090 "The European Scrutiny System in the House of Commons.", p. 19

1091 O'Brennan and Raunio, *National Parliaments within the Enlarged European Union : From 'Victims' of Integration to Competitive Actors?* p. 163

1092 Ibid. p 164

1093 Stephen Coleman, John Taylor, and Wim van de Donk, eds., *Parliament in the Age of Internet*, Hansard Society Series in Politics and Government (Oxford University Press,1999). p.3.

and groups with the opportunity to present evidence in legislative committees; and lastly, constituents in some states are given a role to decide upon the constituency development project[1094].

Although there are, as Beetham pointed out, several areas in which most parliaments try to act in order to increase knowledge, interest and ultimately trust in parliaments, the transparency and accessibility in the current 'wired age' comes down to the quality of the official web site. Since the mid 1990s parliaments have been using the Internet to a greater extent to make their activities and documents accessible to everyone[1095]. Interested people can visit digital archives, watch online streaming of debates, search minutes, or submitted and answered parliamentary questions. Essentially, the willingness to disclose more information on the official web site signalizes the commitment of the officials to transparency and openness.

The United Nations and the Inter-Parliamentary Union launched in 2005 the Global Center for Information and Communication Technologies in Parliament, with a seat in Rome. The main goal of the Center is to promote the use of Information and Communication Technologies (ICTs) as the main tools of modernization of parliaments[1096]. The Center publishes the World e-Parliament report. Key conclusions of the 2012 report emphasize that most parliaments improved the content of web sites, capacity to disseminate information and documents, and more up to date delivery of

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[1094] David Beetham, Do parliaments have a future? IN Sonia Alonso et al., *The Future of Representative Democracy* (Cambridge ; New York: Cambridge University Press, 2011). p131.

[1095] Jeffrey C. Griffit, "Beyond Transparency: New Standards for Legislative Information Systems,"(2006), https://ecprd.secure.europarl.europa.eu/ecprd/getfile.do?id=5027.

[1096] Global Center for the ICT in Parliament: http://www.ictparliament.org/ (Last Accessed on September 18, 2013).

information and documents to MPs[1097]. Overall, compared to 2009, in 2012 parliaments in general performed better in communication (improved by 10.6 percent), libraries and researched services in general (improved by 7.1 percent), and parliamentary web sites (6.4 percent). According to the report, 89 percent of parliaments are either currently webcasting plenary sessions of parliaments, or they are planning to do so in the future[1098]. Social media tools are in the top ten communication tools used by most parliaments.

For example, in the case of the*GermanBundestag*, since 1996 there is bundestag.de, a domain with published materials of parliamentary document databases, and since 1999 also parliament TV (*Parlamentfernsehen)*[1099]. Public record of debates is available online going back to 1994. As for individual MPs, at the present time practically all of them have personal websites, which besides providing information allow citizens to interact directly with parliamentarians[1100]. In 2012, out of 622 MPs, 70.6 percent used either Twitter or Facebook[1101]. Moreover, *the Bundestag* provides for the infrastructure to process citizens' petitions, which is based on Article 17 of the Basic Law. There were 747,963 individual petitions between 1949 and 2009, and 4,702,023people endorsed mass petitions[1102]. The procedure was reformed in 2005, when it became compulsory to arrange a public hearing if the number of petitioners in a mass petition exceeded 50,000. So far only three mass petitions have reached this number. In addition, the *Bundestag* introduced so-called 'e-petitions', which can be submitted through it's website, a

1097 Chapter 11: Major Findings, Conclusions, and Recommendations in Jeffrey Griffith and Gherardo Casini, "World E-Parliament Report 2012," (The Global Centre for ICT in Parliament, 2012). p. 198.
1098 Ibid. p. 198.
1099 Saalfeld and Dobmeier, "The Bundestag and German Citizens: More Communication, Growing Distance."p. 320
1100 Ibid.p. 324.
1101 Ibid.p. 320.
1102 Ibid.p. 325.

permanent tool as of 2008. This shows that the increasing transparency and openness of the German parliament, which leads to higher interest and involvement of citizens in policy-making.

The *Slovak* parliamentary website offers online streaming of parliamentary debates, archive of minutes of these debates, a database of documents, and information related to the work of parliament and MPs[1103]. Although content of the web site improved, from among the four researched parliaments it is the weakest. The Slovak parliamentary web site does not offer research papers, nor is reaching citizens through social media.

The openness of *Turkish* parliament is secured by publishing minutes from plenary sessions, and oral and written motions, introduced bills, decisions, committee reports and other related information on the parliamentary official website, and state television is screening sessions live nationally. The only exception is when parliament takes a vote and decides on a closed session. In that case unless parliament decides otherwise, minutes are kept secret in the archive for ten years.

Compared to all presented states I believe that the transparency and outreach of parliament is the most elaborate in the *United Kingdom* at the moment. As the British parliament has a far-reaching history, so does the evolution of the approach towards transparency of parliamentary proceedings. There were several "information revolutions" in the history of the British Parliament related to the technological inventions of the age at stake. First, it was printing; however, printing of the Official Reports was opposed to the contradictory ideals of secrecy of the parliamentary proceedings:

[1103] The National Council of the Slovak Republic website: http://www.nrsr.sk

> *The freedom to print a verbatim report of the proceedings of Parliament was not accepted without much resistance from MPs, who had long considered that 'every person of the Parliament ought to keep secret and not to disclose the secrets and things done and spoken in Parliament House to any other person, unless he be one of the same House, upon pain of being sequestered out of the House, or otherwise punished as by order of the House shall be appointed'*[1104]

It was only in 1909 when the Official Report was legitimized as a parliamentary service[1105].Later parliamentary "informational revolutions" were triggered by inventions of telegraphy, radio and television[1106]. By the end of the 1950s television had started to comment on parliamentary affairs, however, it was not allowed to enter the Commons[1107]. In 1978 radio broadcasting of parliamentary debates was allowed. Since 1985 from Lords, and since 1989 from Commons, television broadcasting of parliamentary debates has been allowed[1108]. The latest revolution can be considered the use of e-mail, Internet and web-based applications. In 1991 the Information Select Committee was appointed and later in 1993 also the Parliamentary Office of Science and Technology was established[1109]. As of 1996, Hansard records have been published online at the latest by 12:30 the following day, and the Internet domain www.parliament.uk has existed[1110].

British parliament has been working on a strategy on how to involve citizens and improve transparency. The Parliamentary Outreach office's goal is to spread awareness of the

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1104 Order and Usage howe to keepe a Parliament, 1571 cited in Stephen Coleman, "Westminster in the Information Age," in *Parliament in the Age of Internet*, ed. Stephen Coleman, John Taylor, and Wim van de Donk (Oxford University Press, 1999). p.3.

1105 Ibid. p.9.

1106 Ibid. p.10.

1107 Ibid. p.10.

1108 Ibid. p.10.

1109 Ibid. p.11.

1110 Ibid. p.13.

work and processes of parliament, and to engage the public and the two Houses. When it comes to the parliamentary website, it provides for everything that was already mentioned in relation to other parliaments: minutes, archives, bills, webcasting and so on, directly related to the work of parliament. Furthermore, it provides an educational service for students with research papers on various topics. Parliament published educational videos on YouTube and is present on all major social networks, such as Twitter and Facebook[1111]. However, despite all these efforts the British parliament is the one with the lowest trust according to the data presented in the first chapter. Therefore, the question comes into the picture whether the more people know about parliaments the more they distrust them.

Opening Pandora's Box and asking if citizens maybe become too cynical with greater transparency, let's look at one example for all, which is the British parliamentary expenses scandal in 2009. This scandal may be of great use as an example of what gradually enhanced transparency leads to. The scandal was activated by the leak regarding expenses claims by MPs and its publication in national newspapers. The parliament tried to prevent the official disclosure of allowances and expenses claimed by MPs[1112]; however, at the end of the day they needed to be disclosed, which led to public anger and decline of public trust. Data published on the parliamentary web site omitted certain details such as addresses or those payments not approved by the House, or correspondence between the House and MPs regarding expenses, following which the

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1111 The UK Parliament website: http://www.parliament.uk/business/.

1112 The request for information regarding expenses was submitted under the Freedom of Information Act in February 2008 and I was allowed by an Information Tribunal. The House of Commons challenged the decision as being unlawfully intrusive, however in May 2008 the High Court decided in favor of request.

House was accused of unnecessary secrecy. A number of MPs returned claimed expenses, and against some MPs criminal charges were pressed. The control of claimed expenses and allowances by MPs was strengthened.

The parliamentary expenses scandal shows the degree of demand on transparency of parliamentary business also in relation to the organization of parliament, but on the other hand it also shows that the enhanced transparency may be behind the low trust in parliaments. In the aftermath of such a scandal trust in politics sharply drops and citizens display unwillingness to attend the following elections. The more dirt they are exposed to, the more cynical and skeptical they become. Unfortunately, trust can be easily lost, but difficult to achieve.

And transparency behind the low trust in parliament is just one of a few other negative consequences. Another one is that parliament is, thanks to its open and transparent proceedings, becoming a center of politics with all the media attention. One of the results of being a focal point of politics is inflated and unrealistic public expectations about what parliaments can do. Which ultimately, when not fulfilled, lead to disappointment and low public opinion about the role of parliament. It also influences bargaining and political talks, therefore whole consensual politics as such, since politicians talk directly to their constituents, which may perhaps create nurturing conditions for populism.

My goal is not to argue that transparency is a negative feature, quite the contrary, transparency gave a new meaning to the old control tools. Politics are exposed more than ever, which helps hold politicians into account by citizens themselves. I portrayed

different possible impacts of transparency to show that the change is more complex, which supports John Keane's argument that we moved to a post-parliamentary stage of democracy[1113]. Keane introduces the concept of the 'monitory democracy', in which parliament is just one of many forms of control of elected officials. The main role is rather played by civil societies, watchdogs, cross-border settings, states and business organizations[1114]. Keane is not alone promoting the more complex understanding of change with regard to the representative democracy. Pierre Rosavalon, in his work *Counter Democracy: Politics in the Age of Distrust,* points out the role of citizens to hold governments accountable not just on the day of elections, which he considers as not effective sanction mechanism, but also between them, independently of their result[1115].

Conclusion

According to the parliamentary decline thesis elaborated in first chapter, national parliaments have been viewed as 'losers' of European integration. Based on the developments and new mechanisms outlined in the previous two sections, one can, however, conclude that although starting from an unfavourable position, the role of national parliaments in European governance is increasing as of the Maastricht Treaty. At first their importance was merely acknowledged through Declaration No.13 in the mentioned Maastricht Treaty, but since then each Treaty amendment brought an improved and more elaborate method of inclusion of parliaments.

[1113] John Keane, *The Life and Death of Democracy*, 1st American ed. (New York: W.W. Norton & Co., 2009).

[1114] John Keane, monitory democracy? IN Alonso et al., *The Future of Representative Democracy*. p. 212

[1115] Pierre Rosanvallon, Counter-Democracy : Politics in an Age of Distrust, John Robert Seeley Lectures 7 (Cambridge, UK ; New York: Cambridge University Press, 2008).

Parliaments can be involved directly in European legislation making through the Early Warning Mechanism or through consultation mechanism the Commission introduced in 2006. Indirectly, parliaments can keep themselves involved through controlling government. Parliamentary control of government policy-making on the EU level can be exercised *ex ante* or *ex post.* All national parliaments have by now committees specialized in EU affairs.

On the other hand, one has to realize that despite all methods of involvement of national parliaments into European governance, local issues and policies win or lose elections. Interests of parliamentarians have their limits. As O'Brennan and Raunio pointed out "…it is equally important to warn against too optimistic assessments of the strength of parliamentary scrutiny. European matters are simply not salient enough for most national deputies in order to facilitate a major qualitative leap in the level of control."[1116]

The only aspect related to the control function of parliament is not particularly a tool, but a feature functioning of parliament as such, however, with influence on the quality of other control tools – the transparency of parliamentary business. In the 'wired age' the work of parliament has become extremely visible. Through the constant improving of parliamentary websites, and through interaction with citizens through social media, parliaments managed to open parliamentary business to public scrutiny in an unprecedented way, as Internet access is the most accessible way to get to know parliaments.

[1116] O'Brennan and Raunio, *National Parliaments within the Enlarged European Union : From 'Victims' of Integration to Competitive Actors?* p278

On account of enhanced transparency in relation to the control function of parliaments, its significance is essentially two fold. First, the role of parliamentary questioning or debates, for example, is increasing, as the exposure of debated issues is higher. This fact works well for political parties on both sides, governmental as well as for those in opposition. However, in general it has more significance for the opposition, as although they cannot have their proposals adopted, they are able to expose government effectively and to trigger citizens' attention.

Secondly, citizens are not only informed indirectly through opposition due to enhanced transparency, but they themselves are becoming empowered by increased openness of parliaments. And so they need opposition as an intermediary to hold government into account less. Thus, interestingly enough, enhanced transparency empowers and benefits not only the opposition, but also citizens directly, and so the specific role of the opposition to control government is disappearing.

The last point regarding transparency I would like to make is that besides all benefits such as a further reaching impact of traditional parliamentary control tools, transparency also reveals negative aspects of parliamentary work, ignorant, unprepared politicians, scandals, and corruption, and it all leads to skepticism and decrease of public trust in parliaments,low electoral turnout, increased expectations and populism. Thus, to conclude, it seems like transparent parliamentary work is a double-edged sword. It empowers the opposition's and citizens' ability to scrutinize governmental policy-making, on the other hand, however, transparency may be causing political distrust leading to low electoral turnout, inflated expectations and populism.

CONCLUSION

The main quesion of this thesis was whether parliamentary decline thesis also involves the decline of parliamentary functions. For this purpose, in this dissertation I examined changing parliamentary functions with respect to the claim that parliaments' role and functions deteriorated and parliament is not an important institution anymore. I approached this argument of parliaments' losing their power by looking at three parliamentary functions, namely the representative, legislative and control functions. I focused my research on the parliaments of four countries: Germany, Slovakia, Turkey and the United Kingdom.

Summary of the conclusions

The conclusion of the thesis is that taking parliamentary functions alone, stripped of context, parliamentary functions are being continuously improved, and made more sophisticated. They are not deteriorating, at least when it comes to the legal regulation and practices analyzed in this thesis. Nevertheless, parliaments, as other institutions, do not exist in vacuum; they have to be viewed in the context of metamorphosis in the society we live in. Some of these new trends are enhancing parliamentary functions, such as transparency; while some are posing new challenges parliaments have to gradually cope with. Thus, the answer to the question whether there is a decline of parliamentary functions, which can support parliamentary decline thesis, is negative. I believe that what is happening is more profound. Parliaments are not the only institutions monitoring government anymore. Thanks to the webbed world, all interested citizens can hold government accountable, and they are not left out of the legislative process. What has to

change is our perception on what parliaments' role and powers are. I believe parliaments will continue to perform their functions, however, within a changed institutional and social environment, and under increasing pressure for greater involvement of citizens in the political process through tools of direct democracy.

Representative function

In Part II, representative function was assessed from the formalistic and descriptive point of view. In the cases of the United Kingdom and Turkey, I came to the conclusion that their parliaments are not representative when examined using both the formalistic and descriptive approach. In fact, none of the researched assemblies is descriptively representative. From the formalistic point of view, although the German and Slovak electoral systems favor major winners, it could be argued that they are representative. This finding, however, is not a novel situation of the researched parliaments. Quite to the contrary, most parliaments are continually improving when it comes to certain aspects of representativeness, such as number of women in parliaments. Thus overall, looking at the representative function of the researched parliaments, I do not conclude that parliaments declined in the performing representative function that can be linked to parliamentary decline thesis, and decreasing trust in parliaments.

Legislative function

If we assess the legislative function from the traditional point of view, which is the relationship between parliament and government, we can see that the arrangement is quite static and not much has changed here. It is obvious in all four jurisdictions that the government is dominant in parliamentary agenda setting. The difference is merely in the

form the executive dominance is presented publicly. For example, in the British parliament, the government has precedence in all parliamentary businesses apart from 20 Opposition days. On the contrary, in the German, Slovak and Turkish parliaments, Rules of Procedure provide for neutral agenda setting procedures, where parliamentary bodies officially decide on the agenda. However, agenda-setting parliamentary bodies are usually created on the basis of proportionality to the strength of political parties in parliaments, and so it is clear that the executive's wishes regarding the agenda are adopted through the majority in parliament.

Executive dominance, as shown in Chapter5 through several indicators, is not a recent phenomenon. Quite to the contrary, executive dominance in the parliamentary system is an inherent part of parliamentarism rationalized. Thus, although executive dominance was shown, it does not represent a change, and one can hardly argue that there is a parliamentary decline because of the procedural executive dominance in parliaments.

The second chapter in part on legislative function dealt with non-traditional constraints of the legislative function of parliaments: restrictions connected to the European integration and related processes such as judicialization or constitutionalization. First, the capacity of parliaments to legislate has been constrained by the European integration. Constraints started first by conditionality imposed by candidate countries prior to membership, then once members entered the EU constraints came by the division of competences among the EU and member states, and lastly constraints of the legislative function of parliaments are through the rising number of soft law mechanisms not only on the EU level, but also produced by other international organizations.

Lastly, there are two more trends presented in Chapter 6 as potential constraints of the legislative function of parliaments. The first is constitutionalization of EU law by decision-making of the Court of Justice and by adopting Treaties, such as Fiscal Treaty. In both cases constitutional status of EU legislation means its supremacy over national law, which poses limits to national parliaments' legislative function.

Judicialization is, on the other hand, a domain only of the courts, national as well as international and European, and interferes with the legislative function of parliaments *ex post* through an abstract review of legislation. As was shown in the last section of Chapter 6, judicialization has been an ongoing trend since the introduction of domestic constitutional courts and international tribunals. Constitutional courts already as negative legislators present difficulty for democratic arrangement. Moreover, however, many times constitutional courts act as positive legislators too, setting limits and standards for legislatures. I consider this quite an encroachment on the legislative function of parliaments. On the other hand, I looked at numbers to see if there are more cases of abstract review in the courts, and found that the increase is quite small. For that reason, I would not link judicialization, despite being restricting on parliaments, to parliamentary decline thesis.

Control function

The aim of the part of the control function was to answer the questionwhether there has been an erosion of the parliamentary control function, which could be subsequently linked to the parliamentary decline thesis. My conclusion is that in general there was no

decline either in their scope or in their particular use of control tools. In order to answer the question, I started with the fact that the legislative-executive relationship has been since the Second World War transformed into 'parliamentarism rationalized', which means that government has been strengthened on the account of legislature. We have seen this situation already with regard to the agenda setting arrangement. Nevertheless, the rationalized form of parliamentarism is at the present time the traditional arrangement, and thus it is not likely that it is behind the parliamentary decline thesis.

Secondly, I would like to point to the political use of control tools. Parliamentary control tools in an arrangement where government relies on a cohesive majority in parliament is obviously limited, unless control tools can be invoked by a low number of MPs. And even in this case, whenever a plenary vote would be needed, the majority will prevail. On the other hand, especially with regard to confidence votes and parliamentary questions, control tools have another important meaning, which is their political use. For instance, parliamentary opposition in the Slovakian National Council often initiates vote of no-confidence to one of ministers that opposition blames for failure with regard to a particular policy, knowing this will not lead to his or her resignation. However, the vote is accompanied with a debate where the minister has to be present and which also triggers a lot of media attention. So the vote is used for the purposes of public discussion, PR, etc, knowing the minister will remain in the position afterwards. The same applies to parliamentary questioning.

With regard to the second question on what is the use of control tools if they are not likely to be invoked by a majority of MPs, I conclude that all parliamentary control is

about is to point citizens' attention to issues they should consider. Critical views of citizens show themselves in polls, and polls create pressure on government, which has to act in order to stay responsive, otherwise it will not be re-elected in the following general elections. We shall not understand parliamentary control as the principal and agent relationship, where the principal can remove the agent anytime. This picture disappears once we realize the presence of government in parliament through its majority.

Based on the developments with regard to non-traditional control function tools and characteristics, one can conclude that although starting from a much neglected position, the role of national parliaments in European governance is increasing as of the Maastricht Treaty, because since then each Treaty amendment has brought improved and a more elaboratemethod of inclusion of parliaments. Parliaments can be involved directly in European legislation making through the Early Warning Mechanism or through consultation mechanism the Commission introduced in 2006. Indirectly, parliaments can keep themselves involved through controlling their governments. Parliamentary control of government policy making on the EU level can be exercised *ex ante* or *ex post.* All national parliaments by now have committees specialized in EU affairs.

On the other hand, one has to realize that despite all methods of involvement of national parliaments into European governance, local issues and policies win or lose elections. Interests of parliamentarians have their limits. O'Brennan and Raunio rightly pointed out that "…it is equally important to warn against too optimistic assessments of the strength

of parliamentary scrutiny. European matters are simply not salient enough for most national deputies in order to facilitate a major qualitative leap in the level of control.[1117]"

The only aspect related to the control function of parliament is not particularly a tool, but a feature functioning of parliament as such, however, with influence on the quality of other control tools – the transparency of parliamentary business. In the 'wired age' the work of parliament has become extremely visible. Through constant improving of parliamentary websites, and through interaction with citizens through social media, parliaments managed to open parliamentary business to public scrutiny in an unprecedented way.

On account of enhanced transparency in relation to the control function of parliaments, its significance is essentially two fold. First, the role of parliamentary questioning or debates, for example, is increasing, as the exposure of debated issues is higher. This fact works well for political parties on both sides, governmental as well as for those in opposition. However, in general it has more significance for the opposition, as although they cannot have their proposals adopted, they are able to expose government effectively and trigger citizens' attention.

Secondly, citizens are not only informed indirectly through opposition due to enhanced transparency, but they themselves are becoming empowered by increased openness of parliaments, and need opposition as an intermediary to hold government into account less. Thus, interestingly enough, enhanced transparency empowers and benefits not only

[1117] Alonso et al., *The Future of Representative Democracy*; O'Brennan and Raunio, *National Parliaments within the Enlarged European Union : From 'Victims' of Integration to Competitive Actors?* p278

the opposition, but also citizens directly, and so the specific role of the opposition to control government is somewhat weakened.

The last point regarding transparency I would like to make is that besides all benefits such as the further reaching impact of traditional parliamentary control tools, transparency also reveals negative aspects of parliamentary work: ignorant, unprepared politicians, scandals, and corruption, and it all leads to skepticism and decrease of public trust in parliaments and low electoral turnout. Thus, to conclude, it seems like transparent parliamentary work is a double-edged sword. It empowers the opposition's and citizens' ability to scrutinize governmental policy making, on the other hand, however, transparency may be causing political distrust, leading to low electoral turnout.

Broader perspective

Looking at the problem of trust from the broader perspective, one can see that the problem of the decline of trust is not limited only to parliaments, but is related to other institutions in the state, as well as the legal system, or justice. Thus maybe the attempt to raise trust in parliaments solely is taken out of context, and it should be considered whether the society and its expectations did not change so much that we should change our outlook on representative electoral democracy as such.

For some time, several authors have been suggesting rethinking our take on representative democracy. John Keane, for example, re-introduced an appealing idea of '*monitory democracy*', which originated in the 1940s[1118].Arguing that we moved to a post-parliamentary stage of democracy, Keane's monitory democracy involves not only

[1118] Keane, *The Life and Death of Democracy*.

free and fair elections, but more significantly constant scrutiny and control of power by various types of extra-parliamentary scrutiny mechanisms, in which the main role is played by civil societies, watchdogs, cross-border settings (summits), states and business organizations[1119]. He argues that elections, political parties and parliaments will neither disappear nor lose their importance, but they lose their prime role in politics[1120]. Monitoring institutions play various roles, e.g. their goal is to provide people with more unbiased information about the performance of governmental and non-governmental bodies, or scrutiny of governmental institutions (ombudsman, royal commissions). To support Keane's argument, recently a new monitoring body in Slovakia called the Budget Council was established, whose exact role is to provide accessible information on the situation of public finance to people and open the meaningful debate and create pressure on the government to keep the national debt within constitutionally set limitations. So essentially, the main argument of John Keane is that the meaning of the term 'democracy' has changed, as it is no longer considered a synonym with assembly of male citizens as in Greece, but it is not synonymous with a party-based government either. Rather, democracy is a way of life and a mode of governing, in which power is everywhere, subject to checks and balances[1121].

Pierre Rosavalon in his work *Counter Democracy: Politics in the Age of Distrust* argues that democracy is not in decline, and certainly not in danger[1122]. He argues that democracy has been changing, and according to some even improving; however, not in

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1119 John Keane, monitory democracy? IN Alonso et al., *The Future of Representative Democracy*. p. 212

1120 Ibid. p. 213.

1121 Ibid. pp. 221 – 222.

1122 Rosanvallon, *Counter-Democracy : Politics in an Age of Distrust*.

the ways that involves governments by the winners. Rosavalon points out the role of citizens to hold governments accountable not just on the day of elections, which he considers as not an effective sanctioning mechanism, but also between them, independently of their result[1123]. He mentions three mechanisms: Oversight (people as watchdogs), prevention (people as veto-players), and judgment (people as jurors)[1124]. By oversight Rosavalon understands various means by which citizens or their organizations are able to monitor and publicize the behavior of rulers[1125]. This mechanism, if we agree with Rosavalon, could be surely linked to increased transparency of parliaments, which as I have pointed out earlier, leads to the empowerment of citizens. Prevention means that citizens have the capacity to organize resistance against unwanted policies[1126]. And lastly, judgment mechanism represents 'juridification' of politics. Rosavalon argues that engagement of citizens shall be organized in many forms[1127].

New role for direct democracy

Rosavalon and Keane mentioned the above point to the deeper role of citizens and direct democracy. Matsusaka in his essay *The eclipse of legislatures: Direct democracy in the 21st century* supports this development with an argument that direct democracy has been long neglected, among scholars as well as among statesmen. However, as he argues, the neglect of direct democracy will soon come to an end due to the demographic and

1123 Ibid.
1124 Ibid.
1125 Ibid.
1126 Ibid.
1127 Ibid.

technological advancements that are supporting the growth of direct democracy[1128]. In that scenario, parliaments as policy makers are expected to assume the secondary role.

What will be the influence of direct democracy tools on the control function of parliaments? I assume they will influence all functions discussed in this thesis. First of all, enhanced direct representation will influence the representative function of parliaments, especially if the situation will evolve into a system where parliaments will deliberate and vote on initiatives suggested by citizens. Moreover, citizens' initiatives would definitely change the agenda setting relationship I was dealing with in this thesis among governments and parliaments. Through referenda citizens can replace legislatures completely.

Referenda are currently the most common citizen initiative. There is an increasing demand to use referenda, for instance, in the United Kingdom[1129]. The most recent referendum held was on the electoral system in 2011, and soon there will be one on the Scotland issue (September 2014), and there is a demand to hold a referendum on the future of the UK in the European Union (in 2017)[1130]. Thus again, apart from introducing the recall mechanism, referenda are another indicator of the growing demand of direct involvement of citizens in politics. Referenda are quite often held in Turkey, in the case there is no required majority achieved in assembly, constitutional amendments can be alternatively approved by citizens in referendum as, for example, the last time in 2010.

[1128] John G. Matsusaka, "Jothe Eclipse of Legislatures: Direct Democracy in the 21st Century,"(2004), http://www-bcf.usc.edu/~matsusak/Papers/9%20Eclipse%20of%20legislatures.pdf.

[1129] Referendums in the United Kingdom are not binding. Whether pre- or post-legislative, even if citizens speak against certain question, legally speaking parliament can adopt legislation going against result of referendum.

[1130] James Chapman, "100 Tory Mps Demand Law Change on Eu Referendum as Germany and France Snub Uk Review of Brussels Powers," *Daily Mail* 2 April 2013.

On the other hand, referenda in Slovakia have not been quite successful, and so are initiated rather rarely. In Germany they are not even a possibility.

Another trend not discussed here is the size of parliaments and the proposals decreasing the number of representatives. Germany had until 2002 a parliament sized 670, but its size was reduced to below 600[1131]. In the United Kingdom the number of MPs is going to be reduced for the purpose of the next elections from 650 to 600[1132]. Both proposals were connected to declarations related to the cutting of costs and transparency of spending. Hungary and Italy reduced the size of their parliaments as well. Slovakia did not reduce the size of parliament; however, it is a topic politicians tend to return to.

Based on what was written in this thesis, I argue that viewing parliaments stripped of context shows that parliaments are performing their functions with few exceptions in the form of new challenges (especially elaborated in the 'non-traditional' chapters) in the same or improved manner, and thus low performance of parliamentary functions, in my opinion based on my research is not behind the declining trust in parliaments and ongoing parliamentary decline thesis.

Parliaments, however, do not exist in a vacuum. As shown, the trust of citizens in any kind of governmental or supranational institution is declining. With regard to all institutions, it seems that the more transparent institutions are and the more citizens

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1131 "Germany: Delimiting Districts in a Mixed Member Proportional Electoral System," (1998-2013), http://aceproject.org/ace-en/topics/bd/bdy/bdy_de.; Based on the Federal Electoral Act, at the beginning of each electoral term Electoral Districts Commission (*Wahlkreiskommission*) revises the constituency boundaries. In 1995 in addition the Bundestag ruled on decreasing number of MPs as of elections in 2002 from 656 to 598.

1132 *Parliamentary Voting System and Constituency Act 2011.*

know, the more they are skeptical about their representatives. I believe that this is a reason why there is such a growing demand for direct democracy. Without trust in legislature and government, citizens are likely to show support of popular initiatives or referendums. The latest example supporting this trend comes from Turkey, where in the aftermath of the Gezi Park protests people were gathering in different places throughout Turkey to deliberate and make decisions by a vote, therefore actually returningto the basic form of direct democracy.

On the other hand, it is very unrealistic to expect that direct democracy will displace parliamentarism as such anytime soon, if at all. Although there is increased pressure for greater involvement of the people, there are also some opposing trends, such as low turnouts in referenda, or the fact that few countries use extensive forms of direct democracy tools in general. This results in greater expectations for more direct democracy, but with parliaments being dominant, which is a factor that undermines in itself in the confidence in parliaments.

So where does the demand for direct democracy leave parliaments? Here I am inclined to agree with Keane's monitory democracy, and his argument that parliaments do not fail to deliver their functions, but rather they are gradually improving and trying to cope with new situations, which is re-affirmed by this dissertation as well. Parliaments have and will continue to hold a crucial role next to newly demanded direct democracy tools, and all extra-parliamentary scrutiny institutions. At the present time, maybe better appreciation of the situation could lead to more realistic expectations for what parliaments actually do and should do!

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