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THE CONSTITUTION OF THE FOURTH FRENCH REPUBLIC (1946) IN THE HISTORICAL PERSPECTIVE

Abstract

The French Revolution marked the period of the beginning of the expansion of republican ideas in France, and its achievements include in particular the Declaration of Human and Citizen Rights (1789). The republican constitutional tradition then formed in the period of the Third Republic (1870–1940) and strengthened in the Fourth Republic (1946–1958). The Constitution of the Fourth Republic of 1946, which was the result of a political compromise, deserves attention because it finalises the process of forming the constitutional republican tradition.

The Constitution of the Fourth Republic was adopted after a relatively long period of preparation and interim rule. The assumptions of the creators of this constitution were to constitute a departure from the political assumptions of the discredited Third Republic and the practice of applying the material constitution based on the constitutional laws in force at that time. However, it turned out that the departure from the constitutional tradition shaped over decades is not so obvious in practice because of internal premises such as the political system, social consciousness and international premises in the post-war period. These factors ultimately determined the short period of validity of the 1946 Constitution, and the Fourth Republic is treated as another episode in the history of the French constitutionalism. The text is based on scientific literature (Polish and French). In implementing the research assumptions, the dogmatic-legal method and the historical-legal method were used.

Key words: France, Fourth Republic, constitution, republican tradition

1. Introduction

The French Constitution of 27 October 1946, most often referred to as the Constitution of the Fourth Republic, arouses much less interest among constitutional scholars (lawyers and political scientists) than the current Constitution of the Fifth Republic of 1958. This is understandable in so far that the Constitution of the Fourth Republic already belongs to the constitutional history of France. However, there are several reasons why it is worth paying attention to this document.

The Constitution of the Fourth Republic is important for constitutional scholars because it closes a long historical period of the evolution of modern democratic standards exemplified by the formation of the French republican constitutional tradition. This constitution crowns the process of this tradition's development. Historians and political scientists, on the other hand, may be interested in the political situation, both domestic and international, in which the new constitution was drafted.

It happens in every country that successive new constitutions are created under conditions of some social or political breakthrough of either national or international dimension. The Constitution of the Fourth Republic was created at the time of a major breakthrough – the end of the Second World War. This breakthrough in France also involved the fall of the Vichy regime which collaborated with the Nazi Germany. The liberation of France was to be not only military and political but also legal liberation. The need for a new constitution also stemmed from discreditation of the Third Republic which (as it was believed) led the country to political and moral decline.

But is it possible to break off the past and political tradition represented by the Third Republic as well? This question is the main theme of the presented study, recurring throughout the formation period of the 1946 Constitution as well as later, during its application. Other issues, i.e. the internal and international political situation, are also mentioned in the context of the formation of the Constitution. The task undertaken in the study is therefore limited and more extensive research thereon would have to be carried out.

2. The origins and development of the French republican constitutional tradition

On the level of political science, the Constitution of the Fourth Republic deserves attention because this document crowns the formation of the republican constitutional tradition. This period lasted a little more than 150 years if we count its beginning from the adoption of the Declaration of the Rights of Man and of the Citizen on 26 August 1789 (hereinafter referred to as the Declaration). This document not only played a fundamental role in shaping the French republican constitutionalism. It also inspired the Universal Declaration of Human Rights adopted in Paris by the UN General Assembly (10 December 1948) and the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome (4 November 1950). Together with several subsequent protocols, the Convention is today a legal basis of the jurisdiction of the European Court of Human Rights in Strasbourg, which is a body of the Council of Europe.

The Declaration opened a revolutionary period in France; it was the preamble to the Constitution of 3 September 1791, which practically did not come into force as an unsuccessful attempt to create in France a constitutional monarchy modelled on the English (British) parliamentary monarchy.[1]

The Declaration was inspired by the ideas of the then English liberalism to a large extent. The Declaration emphasised that if the constitution determines the fundamental individual rights and freedoms, it may also determine their limitations, the catalogue of which was listed in the Declaration. However, J. Baszkiewicz aptly pointed out that the Declaration did not include, in particular, the principles of religious freedom and freedom of industry and trade, which were regarded by the then doctrine of liberalism as "pillars of the social order".[2]

The Constitution of 1791, which was an attempt at providing a social consensus built on the basis of the parliamentary constitutional monarchy, fell through with the collapse of the monarchy (10 August 1792). However, the fate of its preamble,

[1] M. Duverger, *Le système politique français*. *Droit constitutionnel et systèmes politiques*, Paris 1985, pp. 31–38.

[2] J. Baszkiewicz, *Wolność*, *równość*, *własność*, Warszawa 1981, p. 226.

the aforementioned Declaration, was different. It became the inspiration for the subsequent constitutions, mainly the republican ones. It was henceforth believed that the constitution should be preceded by a specific declaration of rights, or at least that it should reaffirm adherence to the rights and freedoms set forth in the Declaration. This is confirmed by the case of the Constitution of 24 June 1793 (the so-called Jacobin Constitution), which included the extensive Declaration of the Rights of Man and of the Citizen, as well as the Constitution of 22 August 1795 ("declaration of rights and duties").

In the radical Constitution of 4 November 1848, on the other hand, rights and duties were included in the brief preamble. However, it is interesting that this preamble underlines that it recognises "all prior rights and duties which are superior to positive law" (i.e. statutes) as natural rights. Such a view had already appeared in the 1789 Declaration, which described individual rights contained therein as "natural, inalienable and sacred". The idea that fundamental rights of the individual are natural rights (by human nature) was not something specifically French because the origin of individual rights derived from the inherent human freedoms and dignity (liberalism) while the concepts of natural law (Grotius, Puffendrof) appeared a little earlier than liberal doctrines. This line of reasoning was later developed by John Locke, according to whom individual rights derive from the inherent human freedom. The Declaration of 1789 derived from such an ideological trend.[3]

The impact of the Declaration was so great that we find its traces in constitutional acts from the time of the monarchy restoration. They did not refer to the Declaration explicitly but were nevertheless contained in the chapters titled "the public rights of the French". The Constitutional Charters of 1814 and 1830 emphasised respect for personal liberty, private property and freedom of print and religious freedom (to a limited extent). In contrast, the Constitution of 14 January 1852, factually proclaiming the empire, underlined that it "recognises, confirms and guarantees the great principles proclaimed in 1789 which form the basis of the public law of the French people".

The quoted excerpt from the Constitution of 1852 (formally republican), which evokes commitment to the Declaration, indicates the formation of a constitutional tradition linked, in particular, to the catalogue of individual rights, the tradition going beyond

[3] G. Burdeau, *Le libéralisme*, Paris 1979, pp. 33–34.

the principles of the republican system. A little later, by a special resolution of the Senate (the so-called *sénatus consulte*) of 7 November 1852, the republican system was transformed into the empire and President Louis Napoleon Bonaparte became the emperor. However, despite this, other provisions of the Constitution were retained, including Article 1, which stated adherence to the Declaration.

In turn, the period of the Third Republic, which followed the collapse of the Empire and the return to the republican system (a consequence of France's defeat in the war against Prussia), despite appearances, strengthened the French constitutional tradition, which had been developing for many years and which had been republican. As aptly noted by Francis Hamon and Michel Troper, in spite of the absence of a formal constitution as an act superior to statutes, it meant a certain departure from the French constitutional tradition. For the first time in the French history it was the so-called substantive constitution, and the state's political system was determined by the Constitutional Acts of Parliament of 1875. These were political system statutes which did not raise the issue of individual rights and freedoms at all. This lack of a declaration of rights or provisions defining individual freedoms "will later empower the claim that the principles of 1789 should have apparently been included in the constitutions".[4]

Thus, as it seems, despite the absence of a formal constitution and no constitutional regulation of rights and freedoms, the constitutional republican tradition has been reinforced. It is still worth adding that it occurred despite the fact that the forms of a republican political system were developing for several years alongside political uncertainty (strong influence of monarchists). Even given such a genesis implying fragility of the political and legal situation, the Third Republic "brought forth surprisingly durable political institutions".[5]

The parliamentary system of the Third Republic survived until 10 July 1940, when the National Assembly gave all power to the government of Marshal Pétain. It is therefore a relatively long period for the then frequently changing political models in France. The substantive construction of the Third Republic consisted of three constitutional laws passed by Parliament in 1875. The conciseness of constitutional statutes (34 Articles altogether) and the lack of a declaration of principles or even any

[4] F. Hamon, M. Troper, *Droit constitutionnel*, Paris 2012, p. 391.
[5] J. Baszkiewicz, *Historia Francji*, Wrocław–Warszawa–Kraków–Gdańsk 1974, p. 594.

ideological reference (which is indeed against the political tradition) have contributed to the viability of such regulation of the political system. At the same time, however, the role of political practice filling in certain normative gaps has gradually increased.

Under these conditions, especially after the political crisis of 1879, political practice was evolving towards a dominant position of the parliament and a limited role of the president, who was formally a head of executive power. It was only after 1879 that the political system fully revealed its republican nature eliminating the model of a political balance between public authorities set out by the 1875 statutes. This definitively weakened the position of monarchists, which had hitherto been strong.

Political practice created the position of the President of the Council of Ministers (the Prime Minister), who actually headed the government bearing responsibility for the government's activities while the President's acts required countersignature. In consequence, the position of the president as a formal head of the Council of Ministers declined.[6] The practice also made the government accountable only to the Chamber of Deputies elected in a popular vote while accountability to the Senate became illusory. Another effect of the political practice was the return to the French republican tradition based on the institutional supremacy of the parliament and the constitution. I should add, by way of a reminder, that the system of the Third Republic shaped by the practice derived not only from the ideas of French political and constitutional philosophy (J.J. Rousseau – the role of a constitution) but from the English liberal thought too (J. Locke, who believed in the supreme authority of the parliament).

Although the substantive constitution of the Third Republic did not contain any declaration of principles encompassing individual rights and freedoms, this period became especially important with regard to the protection of individual rights. Despite no constitutional guarantees, a statutory regulation of the rights and freedoms at that time was of considerable importance because in this way individual freedoms as natural laws became a part of the positive and therefore binding law. This, in turn, entailed the obligation to respect them as the element of the binding legal order because the Third Republic had formally adopted the positivist doctrine, according

[6] V. Constantinesco, S. Pierré-Caps, *Droit constitutionnel*, Paris 2013, p. 126.

to which the protection of rights and freedoms belongs to the bodies of political and judicial power applying the statutes as the acts of will of national sovereignty.[7] It was during the Third Republic that the following statutes, among others, were enacted: on freedom of the press and printing (1881), on freedom of associations (1901) and on freedom of assembly (1907). Some of these freedoms had already been proclaimed in the Declaration, but only the statutes provided legal grounds for their application, thus emphasising the primacy of the constitution.

During the Third Republic, the jurisdiction of the Council of State played a particularly important role in the protection of individual rights and freedoms. It accommodated the Declaration as the legal ground which, after all, was not binding according to the positivist approach. This may come as a surprise, but it should be remembered that although for a part of the French doctrine the Declaration was only a moral authority, the most acclaimed scholars of that time believed that the Declaration had a normative character because it defined natural laws superior to positive laws. Therefore, it is substantively a part of the binding Constitution (Maurice Hauriou), and it even has a supraconstitutional value (Léon Duguit).[8]

It is worth recalling that it was just during the Third Republic when under the Law of 24 May 1872 the Council of State became a fully independent court that could also consider applications for the annulment of any act of administrative authority on the grounds of the abuse of power. The Council of State was supposed to ensure compliance with the statutes but its activist jurisdiction often meant "filling in the gaps" in binding statutes, particularly in cases involving principles and fundamental rights protecting the individual.

In such cases, the Council of State was inspired by the Declaration formulating the so-called "general principles of law" (*les principes généraux du droit*), not grounded in specific statutory provisions but constituting "a source of law with the same basis as an ordinary written statute".[9]

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7 J.-J. Israël, *Droit des libertés fondamentales*, Paris 1998, pp. 133–135.

8 M. Granat, *Od klasycznego przedstawicielstwa do demokracji konstytucyjnej (ewolucja prawa i doktryny we Francji)*, Lublin 1994, pp. 25–30.

9 J. Robert, *Libertés publiques et droits de l'homme*, Paris 1988, p. 64.

As a result, the Declaration was not merely a moral or philosophical inspiration while the jurisdiction of the Council of State was of a norm-creating nature in such situations, i.e. it provided the created norms with the value of validity. The Council of State supplemented the factually binding legal order by referring to the republican constitutional tradition. Georges Vlachos rightly observes that although the Declaration [later also the Preamble to the Constitution of 1946 – Lech Jamróz] did not formally constitute a source of binding law, "the Council of State made them a written source of 'general principles of law' enshrined by the republican tradition that began with the Declaration of Rights of 1789".[10]

Hence, the period of the Third Republic was specific for the formation and development of the republican system. Despite the lack of a formal constitution and regulation of the political system exclusively by statutes, the principles of the republican system were strengthened. Moreover, despite insignificant predominance of republicans in the parliament, concise statutes on the political system were filled with political practice, as a result of which the role of the Chamber of Deputies was strengthened at the expense of the constitution.

The role of the President of the Republic was reduced while the President of the Council of Ministers was a head of executive power; the government was held responsible for its policy while the President was not. The rational logic behind the functioning of the institutions made the practice fill in "the gaps" in constitutional laws, sometimes in defiance of those laws. This practice made use of the republican constitutional tradition, i.e. accountability of the executive power to the elected house of parliament and to the principle of the primacy of the constitution.

When in the post-war period a new political system started to be built, which was to be legally founded upon a new republican constitution, the republican constitutional traditions shaped during the Third Republic were to be important legacy for its creators. As it turned out, however, this was not the only premise.

[10] G. Vlachos, *Principes généraux du droit administratif*, Paris 1993, p. 67.

3. Specific international and internal situation in France at the time of drafting a new constitution (the Fourth Republic)

It is not for the first time in the history of various states that landmark political events evoking conspicuous consequences in the political life of these states result in profound changes of the political system. France is a particular example of such an approach: from the fall of absolute monarchy to the birth of the Fourth Republic there were three republican periods but as many as six constitutions; two periods of the restoration of monarchy (and two constitutions) and two periods of the empire. In other words, so many often fundamental political changes took place in less than 150 years. The political system during the Third Republic lasted the longest; the previous Second Republic survived only two years. During the first republican period (formally ten years) there were four constitutions, but some did not even come into force (1791).

When in the wake of France's military defeat in 1940 Paul Reynaud's last government of the Third Republic resigned on 16 June, the government was headed by Philippe Pétain, who arranged an armistice with the Germans in exchange for France's surrender. From the political system perspective, it is accurately observed that the Constitutional Act of 10 July 1940 passed at that time by the National Assembly granted "all power to the Government of the Republic under the authority of Marshal Pétain". The Marshal was to define a "new constitution of the French State" by constitutional acts. The constitution was then to be ratified by the nation and "applied by the chambers of the parliament", enforced as a "state law". Ratification, however, did not take place.

The implementation of the Act of 10 July 1940 broke the continuity of the republican French state (it was adopted by 569 votes against 80), which meant the end of the Third Republic. It is pointed out that the transfer of all power to the government violated obvious republican traditions. Besides, the Act of 1884 explicitly prohibited any attack on the republican form of state. In the French doctrine, eminent constitutional scholars underline that the Vichy state system, which was established as a consequence of a partial loss of the French territory and occupation of the remaining land by the Germans, had no legal legitimacy.[11]

[11] M. Duverger, *Le système politique*…, pp. 139–140.

This is further confirmed by the statement made by Pierre Laval, who was appointed a head of the Vichy government by Marshal Pétain (9 July 1940). Pierre Laval stated that France's military defeat, which was its mishap, entailed that "the political system which led to this must not be allowed to continue. It is not only a question of the system's condemnation, nothing can be the same again […]. Activities of the Chambers of the Parliament will of course be limited". Laval also announced loyal cooperation with fascist Germany and Italy.[12]

In result of protests against the Vichy government outside France, the first in French Equatorial Africa and later in Algeria, another centre of political power was established around General de Gaulle, the undersecretary of state in the last government of the Third Republic headed by Paul Reunaud. There were calls to fight against Germans (18 June 1940). In 1941, the French National Liberation Committee was formed with headquarters in Algeria with de Gaulle as a leading figure. On 3 June it was transformed into the Interim Government of the Republic which, after the evacuation of the Pétain government, settled in Paris (August 1944). The Interim Government insisted that it was the only legitimate centre of republican power. The ordonnance it issued stated that "the Republic is and remains the form of authority and power in France"; and it never ceased to exist. The acts of the Vichy government listed in this document were considered to be non-existent; other had to be still applied out of necessity.[13]

Organising the republican system of government in the post-war France, the Interim Government also decided (Ordonnance of 21 April 1944) that the election to the National Assembly, which could also be a constitutional assembly (Constituent Assembly), would be held on 21 April 1945. This election was combined with the referendum where two questions were asked: 1) do you want the assembly to be a constituent assembly?; 2) do you want the government institutions to be organised in a way set forth in the enclosed statute until a new constitution comes into force? Voters were massively in favour of making the elected assembly a constituent assembly (about 96%) while the second question did not receive such an overwhelming affirmative response (about 2/3 of voters).

12 D. Colas, *Textes constitutionnels français et étrangers*, Paris 1994, pp.754–755; see more: F.-G. Dreyfus, *Histoire de Vichy*, Paris 1990.

13 D. Colas, op. cit., pp. 767–770.

As it turned out, the referendum and election to the assembly confirmed a significant increase in the influence of the left-wing politics. The Radicals, a main party of the Third Republic, which was blamed by the voters for the military defeat and later for social problems, were the main victims of the new arrangement of power. They won 145 seats in the 1936 election and only 31 (about 10% of the vote) in the 1945 election. The left-wing parties turned out to be real winners: SFIO (*Section française de l'Internationale ouvrière*) winning 143 seats – over 24% of the votes) and the communist PCF (*Parti Communiste Français*) winning 148 seats (over 26% of the votes). Christian Democrat MRP (*Mouvèment Républicain Populaire*), which originated from the resistance movement, won 143 seats (over 25% of the votes). The election results created an uncomfortable situation for de Gaulle. He was still a head of the interim government but it was necessary to incorporate communist ministers into the government.[14] This was an inconvenient situation for de Gaulle as he wanted to pursue his political concepts of the strong executive power centred around the head of state, while the interim political system was characterised by the dominance of the National Assembly and primacy of the constitution. Under these circumstances, de Gaulle resigned (20 January 1946).

It should be stressed that the election to the National Assembly on 21 September 1945 generated a completely new array of political powers in the parliament compared with the Third Republic. In the post-war French society, impoverished and war-weary, egalitarian ideas proclaimed in particular by the Communist Party PCF and by the Socialist Party SFIO played a greater role than a return to republican legitimacy and legality. Moreover, it must be remembered that broad masses of people believed that the manner of the fall of the Third Republic discredited the political model it represented as well as the parties that were in power at that time. If we add here the fact that significant resistance movement units that were operating during the Vichy rule and occupation of most of the French territory were particularly linked to the left politics, we find an explanation why such a configuration of political powers emerged after this election. Despite his glorious struggle for French independence, De Gaulle, who dominated the Interim Government of the Republic, was in fact a continuator of the Third Republic even though he proclaimed the need for fundamental changes in the political system, a strong position for the head of state in particular.

[14] M. Morabito, D. Bourmaud, *Historia konstytucyjna i polityczna Francji*, transl. A. Jamróz, Białystok 1996, pp. 430–432.

In line with the radical republican tradition (Jacobinism), the draft constitution of April 1946 provided for a unicameral parliament. Article 47 stated that "the French people exercise their sovereignty through deputies in the National Assembly, elected by common, equal and direct vote by secret ballot". This provision emphasised the dominance of the parliament and thus of its act – the constitution.

However, the draft constitution prepared by the Constituent Assembly on 19 April was rejected in the referendum of 5 May 1946 by a narrow margin (about 1 million more votes of the opponents, with a total of about 20 million voters). The draft, preceded by the Declaration of Rights, invoked the "inalienable and sacred rights of every human being" which "no law shall infringe". They are included in this draft constitution "the same as in 1793, 1795 and 1848." The draft under discussion declared that "the French nation is faithful to the principles of 1789".[15]

The rejection of the prepared draft in the referendum of 5 May 1946 was a signal that the public moods were radically weakening as a consequence of the widespread criticism of the Third Republic political system and miserable economic and social situation. However, two years had already passed since the liberation of France and the formation of the Interim Government. The public moods were becoming more moderate and views less radical. This was confirmed by the next election to the National Assembly on June 2 1946, which was held in consequence of a failed attempt to adopt the constitution submitted by the previous Constituent Assembly.

That election generated a second Constituent Assembly. A new draft was to be less radical than the previous one because it had not been accepted by the nation in the referendum. The result of the election confirmed the above observations about diminishing radical moods in the society. Christian MRP won (18 seats more than in the previous parliament) and the parties on the left lost their majority (communists maintained their support but socialists lost 20 seats) while the radicals won only 11% of the vote. In the election campaign MRP presented itself as a defender of the rights that were threatened by the communists (PCF). It must be remembered that this was

[15] M. Duverger, *Constitutions et documents politiques*, Paris 1981, pp. 176–206; see more: J. Zakrzewska, *Tryb przygotowania i uchwalenia Konstytucji IV Republiki Francuskiej z 27 października 1946 r.*, [in:] *Tryb przygotowania i uchwalania konstytucji w wybranych krajach europejskich*, Studia konstytucyjne, vol. 6, ed. A. Gwiżdż, Warszawa 1990.

also the result of deteriorating relations between Western countries and the Soviet Union. The former anti-Hitler allies were becoming enemies. The international situation would further affect political views and relations between the states in the following year (the beginning of the "Cold War").

Although formally the achievements of the main parties changed a little, the relations between the parties changed significantly. MPR began to work with socialists to eliminate the influence of communists. A compromise which was reached as a consequence of the referendum of 5 May and the election of 2 June 1946 rejected both the radical republican concepts (which perished in the first rejected draft) and the political system concepts of the presidential model (de Gaulle's views).[16] This compromise focused on the classical principles of the parliamentary system. The draft was adopted by the National Assembly by an overwhelming majority (440 against 106). Then, on 13 October 1946, it was approved by the nation, albeit in an inconclusive manner (the proportions were reversed this time and just over 1 million voters were in favour of the draft), with non-attendance amounting to almost 7.9 million votes.[17]

The Constitution of the Fourth Republic was thus adopted after a relatively long period of preparation and interim rule. However, it must be stressed that it was adopted democratically despite many problems of the post-war France. Political and internal conditions under which the Constitution was adopted implied that the changing international situation affected changes in the relations between political powers in France. The beginning of the so-called Cold War in the relations between Western countries and communist states centred around the Soviet Union fundamentally changed the French politics.

4. Political practice of applying the Constitution of the Fourth Republic

The Constitution was a kind of a compromise between the reference to the French constitutional traditions and an attempt to depart from the period of the Republic when, despite a lack of a formal constitution, the constitutional tradition based

[16] K. Wołowski, *Prezydent Republiki w powojennej Francji (IV i V Republika)*, Warszawa–Poznań 1973, pp. 21–31.

[17] J. Zakrzewska, op. cit., pp. 34–36.

on the specific and supra-positive validity of the fundamental rights of the individual set forth in the Declaration had finally been established. Primacy of the constitution as a work created by the parliament became well established too, and the fact that it was achieved by the National Assembly elected in the common vote to which the government was politically accountable was of particular importance. This element as well as the limited role of the president were the effects of political practice in the Third Republic, which supplemented and to some extent even amended the text of the substantive Constitution of 1875.

It was indisputable that the Constitution of the Fourth Republic should take into account the republican constitutional tradition. However, the question was which specific traditions since they were inspired by the departure from the Third Republic and the practice of using it in particular. The issues of the parliament's shape (national representation) and the status of executive power and its dependence on the parliament were especially contentious.

Unlike the rejected draft of April 1946, the Constitution of the Fourth Republic did not contain a declaration of principles but a concise preamble that "solemnly reaffirms the rights and freedoms of man and the citizen enshrined in the Declaration of Rights of 1789". In just one sentence in the preamble we find the statement according to which it (the Republic) "recognises the rights and duties prior to and superior to the statutes in force". Compared to the declaration in the draft of the constitution, the preamble of the Constitution of 27 October 1946 signals an apparent reduction of the radical tone of the draft, which referred to the republican traditions of the end of the 18th century. This is also confirmed by the way in which the preamble defines "social" rights and freedoms: the right to strike, freedom of association, the right to participate in governance (through delegates). On the other hand, there are several declarations in the preamble, e.g. "to provide the individual and the family with the conditions necessary for their development", or "to guarantee the protection of health, material security, rest […] to all, especially to a child, mother and elderly workers".

It is worth noting, however, that the preamble solemnly reaffirms not only the rights and freedoms contained in the Declaration, but it also affirms that every human being is entitled to "inalienable and sacred rights" (and thus to their legal nature) regardless of racial or religious differences. Of particular note is the solemn reaffirmation of the "fundamental principles recognised by the laws of the Republic" (*les principes*

fondamentaux reconnus par les lois de la République). This is a very important excerpt from the perspective of the protection of the principles of law and individual rights and freedoms during the Fourth Republic, but also later, during the Fifth Republic.

Earlier, during the Third Republic, the Council of State issued the so-called general principles of law even in such cases where there was no specific statutory provision. These principles enjoyed statutory force. The introduction of a new category of principles in the preamble of the 1946 Constitution gradually created new legal grounds for the Council of State jurisdiction. During the Fourth Republic, the Council of State jurisdiction continued to follow this course. Over time, the Council of State acknowledged that universal principles of law could also be determined on the basis of principles derived from the preamble: the right to strike and the principle of continuity of public authority. The Council of State thus began to treat the preamble as an equal, juridical (normative) part of the constitution.

In its ruling of 11 July 1956 the Council of State referred to "fundamental principles recognised by the laws of the Republic" citing the 1946 preamble.[18] During the Fifth Republic, in its ruling of 16 July 1971 the Constitutional Council invoked the legal basis in the form of the Declaration, solemnly confirmed in the concise preamble. This was a landmark ruling because it not only confirmed a juridical nature of the 1946 Constitution's preamble and the principles contained therein, in particular the "fundamental principles recognised by the laws of the Republic".[19] Far from being activist, such jurisdiction demonstrated vitality of the republican constitutional tradition and continuity of the republican state power. It showed that not only the Fourth Republic could not depart from the Third Republic. Later the Fifth Republic which contested the Fourth Republic could not depart from it as well following the principle of ''continuity of public authority'' recognised in the doctrine and practice.

Unlike the above-mentioned draft, in the 1946 Constitution the parliament consisted of two chambers: National Assembly elected in common and direct vote and Council of the Republic elected indirectly by so-called qualified voters. The inequality between

[18] M. Long, P. Weil, G. Braibant, P. Delvolvé, B. Genevois, *Les grands arrêts de la jurisprudence administrative*, Paris 2013, pp. 399–402.

[19] L. Garlicki, *Rada Konstytucyjna a ochrona praw jednostki we Francji*, Warszawa 1993, pp. 113–114.

the two chambers was striking. The Assembly passed laws and the Council merely gave its opinion. Ministers were collectively responsible for the general policy of the government and individually for their own acts. Proposals for laws could also be made by the members of the Council of the Republic in this chamber as well, but they were then referred without debate to the National Assembly.

The unequal nature of the two chambers of parliament also resulted from other constitutional provisions. The constitutional regulation of the powers of the two chambers was a kind of the political compromise in the Constituent Assembly. This way the postulates of unicameralism (of the extreme left) were rejected, which dated back to the radical republican tradition (Jacobinism). However, as it is aptly pointed out, bicameralism was indeed a part of the well-established republican tradition deeply rooted in the French constitutional history. It had been in force for 230 years while the unicameral parliament for only a few years (1791–1792 and 1848–1851) or, including the periods of the Constituents, for 10 years. Only once, in 1793, unicameralism received legitimacy in the referendum.[20]

The dominance of the parliament, or rather National Assembly, was associated with the primacy of the constitution. Although the Constitution of the Fourth Republic returned to the republican tradition derived from the French Revolution, according to which the constitution is in the forefront of the legal order, the constitution was in fact a supreme legal act. It was, according to the republican tradition, a "common will of the people'' expressed by their representatives in the parliament; moreover, it was a supreme act of a directly applicable law. It was believed that constitutions were acts manifesting a will of the sovereign itself.[21]

This was the reason why in the period of the Fourth Republic France did not have a constitutional court, i.e. an institution that was already present in the principal states of continental Europe. The Constitutional Committee was functioning under

[20] J.-P. Derosier, L. Gonot, *Le mythe d'un bicamérisme renouvelé*, [in:] *La Constitution du 27 octobre 1946. Nouveaux regards sur les mythes d'une constitution » mal-aimée «*, ed. E. Cartier, M. Verpeaux, Paris 2018, pp. 29–49; see also: Ł. Jakubiak, *Francuska izba druga na tle przekształceń parlamentarnego systemu rządów (od III do V Republiki)*, Kraków 2016, pp. 76–117.

[21] E. Gdulewicz, *Parlament a rząd w V Republice Francuskiej. Sfera ustawodawcza*, Lublin 1990, p. 11.

the Constitution but it could hardly be considered a constitutional court.[22] It could not independently decide on the constitutionality of laws. The Committee did not have the characteristics of a constitutional court and could not independently rule on the constitutionality of laws. The Committee can only be considered the leaven of a constitutional court in France, as it was a body of constitutional review in the broad sense,[23] or as a "timid form" of control over the constitutionality of the law (and moreover before the promulgation of the act).[24]

In compliance with the constitution, the executive power was dualistic. The government headed by the President of the Council of Ministers (the prime minister) carried out state policy, ensured the enforcement of laws and had the right of legislative initiative, but it was the President of the Republic who presided over its meetings. The President, on the other hand, was elected by the Parliament for a 7-year term without the right to be re-elected; he chaired the Committee of National Defence and the Supreme Council of the Judiciary, ratified treaties and promulgated laws. He could also demand the parliament to re-debate over a law; and the parliament could not refuse. Finally, the President appointed officials to several important state positions.

Furthermore, the President enjoyed a significant right to dissolve the National Assembly, but it was quite limited to specific situations. Namely, according to Articles 49–50 of the Constitution, if the government did not win the vote of trust of the National Assembly (the support of qualified majority was required), or if the government received the vote of no confidence (by qualified majority too), the Cabinet resigned collectively. The President could then dissolve the National Assembly only if government crises occurred twice within a period of 18 months (Article 51). In addition, the President made a decision to dissolve the Assembly at a meeting of the Council of Ministers after receiving an opinion from the Speaker of the Assembly.

22 E. Zwierzchowski, *Sądownictwo konstytucyjne*, Białystok 1995, pp. 54–55; see also: A. Kubiak, *Francuska koncepcja kontroli konstytucyjności ustaw*, Gdańsk 1993, p. 12.

23 For more on the discussion in the doctrine regarding the nature of the Constitutional Committee, see: L. Jamróz, *Sądownictwo konstytucyjne we Francji po II wojnie światowej. Znaczenie konstytucyjnej tradycji republikańskiej*, "Politeja" 2020, no. 1(64), pp. 67–69.

24 J. Stembrowicz, *Parlament V Republiki Francuskiej*, Warszawa 1963, pp. 21–22.

The above constitutional regulation was intended to increase the stability of the government, which was a real anguish during the Third Republic. However, it did not happen because the resignation of the government did not actually depend on the President but on the configuration of political forces in the National Assembly since the support for the government depended just on this. Although there was a desire to avoid situations typical of the Third Republic when political practice, sometimes unconstitutional and sometimes even anti-constitutional, determined the functioning of supreme state organs, this actually happened in the Fourth Republic.

A kind of political practice developed whereby successive governments that did not win sufficient support of the National Assembly resigned without applying for the Assembly's support at all, or resigned without allowing the expected vote of no confidence to take place. In this way, the practices of the Third Republic were resumed and the constitutional regulation which was supposed to strengthen the stability of governments upheld excessive dependence of governments on the National Assembly and strengthened its domination.[25]

During the entire existence of the Fourth Republic, the National Assembly was dissolved by the President in compliance with the Constitution only once – on 2 December 1955. An attempt at increasing the stability of the government proved unsuccessful too. Just on the contrary, the instability got even worse than in the Third Republic. During the Fourth Republic, counting from the election of the first Constituent Assembly on 21 October 1945 to 9 December 1958, i.e. over a period of just over 13 years, there were 25 governments, two of which were overthrown on the very day they were presented to the Assembly.

It must be mentioned here that the institution of the so-called "double investiture" under Article 45 of the Constitution also contributed to the above mentioned instability of governments. Firstly, the Prime Minister-designate had to obtain the individual support of the Assembly and then the support of the entire government. This regulation, which was intended to strengthen the position of the prime minister in relation to ministers and to reinforce the position of executive power, eventually weakened the position of the prime minister and of the government toward the Assembly.

[25] C. Leclercq, *Droit constitutionnel et institutions politiques*, Paris 1984, pp. 379–380.

However, the sources of this weakness should also be sought in the configuration of the powers in the party system. Since 1947, governments have been formed by the parties of the so-called "third force". It was the concept of isolating the "Gaullists" from RPF for anti-systemic reasons (disapproval of the Constitution and communists on anti-democratic bases). With regard to the latter issue, escalating the "Cold War" period in international relations had a significant impact on the public awareness and on the configuration of powers in the party system. Thus, for many years of the Fourth Republic, the "third force" governments were formed by the following parties: socialists from SFIO, Christian democrats from MRP, and radicals and the so-called moderates (several conservative-liberal groups). This model of the government influenced the need to reach out to parties and politicians previously associated with the Third Republic.

Similarly to the previous republican period, a basic feature of the Fourth Republic's political practice was domination of the National Assembly in relations with the executive power and domination of the Prime Minister in relations with the President in the situation when the Prime Minister was supported by a dominant chamber of the parliament (National Assembly). He was then the real head of the executive power[26] because the Chairman of the Council of Ministers performed a triple function: 1) he was a head of the executive power (being politically responsible he possessed real power whereas the acts of the president required countersignature of a relevant minister); 2) as the head of the government he could choose his ministers and could practically dismiss them; 3) when the National Assembly became a centre of the constitutional system of the Fourth Republic, the prime minister became the head of the parliamentary majority since the conditions of his investiture and his accountability to the parliament made him lead the coalition of parties associated in the government.[27]

It must be stressed, however, that the return to certain political practices of the Constitution's application during the Third Republic also resulted in other unconstitutional practices, e.g. Prime Minister André Marie of the Radicals party (26 July – 5 September 1948) asked the Council of the Republic to express confidence in him concerning a draft of the law threatening to resign if they refused. This was not

[26] K. Wołowski, op. cit., pp. 94–96.
[27] P. Pactet, *Institutions politiques*. *Droit constitutionnel*, Paris 2000, p. 312.

provided for in the Constitution. Prime Minister Robert Schumann had done the same earlier; he respected opinions of the Council of the Republic treating them as objections generating legal effects.

Speaking of the gradual evolution of the 1946 Constitution towards political practices of the previous republican period, it should also be mentioned that it involved the return of many politicians of the Third Republic to political life. For example Henri Queuille, who served three times as Prime Minister in the Fourth Republic, served twenty two times as a minister in the Third Republic.

5. Some synthetic conclusions

The Constitution of the Fourth Republic was another and perhaps the most conspicuous example in the French history proving that at the time of great political and social changes a significant change in the political system occurred. The adoption of a new constitution met massive social expectations. The period of drafting the constitution showed that it was to be created in the atmosphere of deep criticism of the political system of the Third Republic and of great radicalisation of the social moods (condemnation of the hitherto political elites, popularity of egalitarian slogans, and postulates of a welfare state policy). Hence, it was no coincidence that the left-wing parties (communists and socialists) made majority in the First Constituent Assembly whereas the draft of the constitution referred to the radical tradition of the French Revolution (among others a unicameral parliament and declaration of principles).

The first draft of the constitution was rejected in the referendum while more moderate forces in the Constituent Assembly were gaining advantage. They intended to reject the radical republican concept (of the communists) and neutralise the “Gaullist” concept of the political system focused on the idea of the strong executive power in the hands of the head of state (the president), which was a counterbalance to the domination of a parliament in the system of constitutional bodies.

Another draft (of the second Constituent Assembly) was passed and the constitution was finally approved in the referendum. It was a compromise of the parties included in the so-called “third force”. This political bloc was already evident at that time and the period of the “Cold War” in international relations clearly deepened this configuration

of powers in French politics. The shape of the Constitution of the Fourth Republic was influenced by the following factors: 1) the arrangement of political powers in the Assembly (which was evolving for two years under the interim government); 2) political consciousness of the French society (which was evolving as well); 3) the republican constitutional tradition.

Over time, during the period of the Constitution's application, certain phenomena emerged in the political practice that provided a specific shape to the "letter of the Constitution" – the dominance of the Parliament (more precisely the National Assembly) in particular and the dominance of the Prime Minister and the Government within the executive power. Constitutional practice referred more and more to the tradition developed in the period of the Third Republic which it was actually supposed to depart from. Sometimes the practice, similar to the Third Republic, was unconstitutional or even anti-constitutional. What is more, a negative phenomenon of the government instability emerged to an even greater extent than during the Third Republic.

A short period of the Fourth Republic Constitution's application clearly showed that a constitution does not only cover norms resulting from a legal text but also those derived from the constitutional tradition and configuration of political forces while the latter can also be significantly influenced by international relations. The political system of the Fourth Republic was fairly short-lived. In the wake of the coup d'État in May 1958, Charles de Gaulle came to power and the political system changed as a consequence thereof. The Fifth Republic began based on the Constitution of 4 October. The constitution received special common support in the referendum in the atmosphere of criticism of the previous republican system. These issues go beyond the objectives of this work. However, I would like to add that also during the Fifth Republic some ideas of the republican tradition (e.g. the role of the constitution) were restored quite promptly.

The Constitution of the Fifth Republic (1958) marks another new beginning in France's rich political history. It is a republican constitution, but with a completely different optic. According to its creators' intentions, it was intended to restore state stability through fundamental change: while maintaining the continuity of public authorities, the President of the Republic was placed at the center of state bodies, eliminating the dominant role of parliament (the National Assembly). Although the Constitution

of the Fifth Republic has been in force for several decades, its original text has already been amended twenty-five times. The Constitution is therefore constantly evolving, not only in terms of changes to its text but also in the impact of constitutional practice and, as a result, the case law of the Constitutional Council and the Council of State. A significant reform of the Constitution of the Fifth Republic took place in 2008, when, among other things, some of the powers of Parliament were strengthened, primarily in relations with the government, in order to balance the powers of the government and parliament in legislative work (and not only). However, the President retains a dominant position in the system, although a small portion of his powers have also been reduced.

The Constitution of the Fourth French Republic (1946) thus proved to be just another constitutional episode. It established a "hybrid system of government", an intermediate system between the rule of the Assembly and the parliamentary system.[28] Rooted in the republican tradition, it produced results entirely different from its original intentions. For this reason, it is not surprising that it did not provide positive inspiration during the work on the new constitution in 1958. Nevertheless, it is in the current Constitution of the Fifth Republic that reference is made to the Preamble of the 1946 Constitution and the Declaration of 1789. In this way, these documents constitute part of the so-called "constitutional bloc", i.e. the constitutional provisions that are in force. This stems from the jurisprudence of the Council of State, which in 1950 (and later in the aforementioned 1956 ruling) recognised the juridical force of the Preamble to the 1946 Constitution, and of the Constitutional Council, which in 1971 confirmed the normative value of the Preamble to the 1958 Constitution, and simultaneously the constitutional rank of the freedoms and rights set forth in the Declaration of 1789 and the Preamble to the 1946 Constitution.

Therefore, if we consider the positive effects of the 1946 Constitution, or its influence on the present-day political system of the French Republic, we must first and foremost highlight the area of the fundamental individual freedoms and rights. These were protected at that time by the Council of State, which, through essentially normative activity, recognised and protected them, drawing on the republican constitutional traditions.

[28] Broadly, see: J. Stembrowicz, op.cit, pp. 22–23.

Adopted as a result of a remarkable political compromise, the 1946 Constitution faced a challenging social, economic, and political reality from the outset. There is no doubt that the fall of the Fourth Republic was accelerated by the national liberation struggles in the French colonies (an external factor). Internal factors, however, directly impacted the constitution's durability.

Wiesław Skrzydło highlighted two categories of factors that contributed to the fall of the Fourth Republic: political and social. The political factors included primarily: flaws in the electoral system, particularly the adoption of the proportional principle, which resulted in the lack of a permanent majority in parliament; the nature and essence of the parties, which were poorly disciplined and internally fragmented; and the existence of two extreme oppositions within the National Assembly, capable of overthrowing the government at any moment but unable to form a new cabinet.[29] In his view, the social factor was of fundamental importance. He emphasised "general discouragement and passivity in the society," "political fatigue in society," and the collapse of the government's authority, but he also pointed to the role of economic factors (financial capital).[30]

Marek Sobolewski, citing the words of Janina Zakrzewska, emphasised that the Constitution "was based on democratic principles and testified to the universal aspirations to revive the role and prestige of parliament." However, he rejected the claim that it established "the regime of the National Assembly, its absolute and unhealthy supremacy and sovereignty." He pointed, however, to the significant influence of political practice on the shape of the system.[31] In his opinion, it was not the Constitution that caused the crisis and fall of the Republic, but rather the governance shortcomings stemmed from the political relations of the period, including the relations between political parties.

The Constitution established the supremacy of the National Assembly, but also strengthened the power of the president and the government, creating conditions

[29] W. Skrzydło, *Geneza i społeczna istota V Republiki*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1963, no. 25, vol. 1, pp. 53–54.

[30] Ibidem, pp. 57–59, passim.

[31] M. Sobolewski, *Od Drugiego Cesarstwa do Piątej Republiki. Z dziejów politycznych Francji 1870–1958*, Warszawa 1963, p. 214.

for stabilising governments and creating lasting cabinets based on a majority in the Assembly.[32] This author also pointed to the influence of economic factors – economic and financial problems, which were an indispensable element of the state in the post-war period.[33]

Therefore, when assessing the Constitution of the Fourth Republic, an analysis of its provisions alone is not sufficient. A comprehensive characterisation of the Constitution should take into account its broader context, encompassing the historical period of its application in the immediate post-World War II years, constitutional practice, political relations, including those between political parties, the electoral system, as well as social, economic, financial, and macropolitical factors.

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32 Ibidem, pp. 244–246, passim.
33 Ibidem, pp. 251–255, passim.

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SUMMARY

The Constitution of the Fourth French Republic (1946) in the Historical Perspective

The Constitution of the Fourth Republic, in the assumptions of its creators, was to be a confirmation of the "new opening" of the political system in France. The extremely parliamentary system of the Third Republic and the resulting instability of governments turned out to be one of the reasons for the political and military defeat of France in 1940. For this reason, after the liberation of France (1944), work began on a new constitution, which was also to be a symbolic break with the period of the Third Republic. After two years of constitutional work and the rejection of the first version of the constitution by the people in a referendum (May 5, 1946), the newly elected Constitutional Assembly managed to successfully develop a second draft. The second draft of the constitution was much less radical than the previous one, which was the result of the weakening of the importance

of the left and radicals in the new Constitutional Assembly; it was accepted by the people in another referendum (October 13, 1946).

The Constitution of the Fourth Republic, adopted by the nation, rejected both radical republican concepts (characterising the first, rejected draft) and the constitutional concepts of the presidential model (proclaimed by General Charles de Gaulle). The compromise assumptions of the Constitution of the Fourth Republic shaped its content within the parliamentary system, but not in its extreme version. Awareness of the problems of the Third Republic's system was still present both in the society and among the political elites. However, in the practice of the Fourth Republic's system, over time, the elements known from the Third Republic began to dominate. The dominance of parliament became evident, even though the president had the power to dissolve it in the event of repeated government crises. In fact, the government's dependence on parliament began to resemble the earlier political period.

The constitution of the Fourth Republic, although symbolically breaking with the Third Republic, in practice turned out to bring a similar effect of permanent instability of government. The resignation of the government did not actually depend on the president, but on the balance of political forces in the National Assembly (support for the government depended on this). The second reason for the dominance of the parliament was that laws (statutes) were still considered to be acts of expression of the will of the sovereign himself, which confirmed the already known principle of the primacy of the law (statutes) and its recognition as the actual supreme act of applying the law.

During the Fourth Republic, there was also no constitutional court as an independent body deciding on the conformity of laws with the constitution. The short period of validity of the Constitution of the Fourth Republic clearly demonstrated that a constitution is not only norms resulting from the legal text, but also from the constitutional tradition and the balance of political forces, and that international relations can also have a significant impact on the balance of political forces.