

**ON THE WAY BETWEEN UTOPIA AND TOTALITARIANISM.
THE BOLSHEVIK CONSTITUTION OF 1918 AS A MODEL
OF SOCIALIST CONSTITUTIONALISM**

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Although Russian constitutionalism has a rich past and present, its place on the global map of the history of constitutional thought is not clearly defined yet. This paper contributes to the analysis of the early stages of development of Russian constitutionalism. The first Russian act resembling a “true” Constitution was the Constitution of the RSFSR of 1918. It was aimed not at the realization of the ideas of constitutionalism, but at the formation of a model of a totalitarian state. It sanctioned radical social changes and led to the liquidation of the concept of the division of power and the omnipotence of the non-constitutional organs (like VChK, various “tribunals”). However, this act and its ideological sources deserve a more in-depth analysis. First of all, its utopian ideas about the new social system have to be identified and examined. The analysis shows that the 1918 Constitution reflects Lenin’s fascination with the ideas of direct democracy drawn from the experience of the Paris Commune and the French Revolution after 1789. In particular, it is about the perception of the idea of unlimited supreme power, undivided and combined, and at the same time federated in the form of loose communes. If we consider the range of constitutional ideas, the Bolsheviks adopted nothing more original than the concept of Rousseau’s national sovereignty. However, the implementation of utopian ideas ended with the creation of a totalitarian system, which contemporaries called “state despotism,” more powerful than the despotism of the Russian Empire.

Keywords: legal history; Bolshevism; Soviet Russia 1918–1921; 1918 Constitution of the RSFSR; totalitarianism; war communism; direct democracy; radical democracy; Lenin.

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Introduction

Russian constitutionalism, or its establishment, is still a little-researched public law card. In spite of the short attempts to make such a statement, the constitutional institutions discussed in this country are quite rich, despite the obvious defeats of building constitutionalism, defined as a sham constitutionalism.

In the Soviet and later Russian historiography, the view prevails that the basic laws of October 1905 and April 1906 were not a constitution. The self-governing power of the Russian emperor was preserved, and his influence on lawmaking, including the veto potentially solving any legislative initiative, was legally significant.

Disagreeing with this thesis, it is worth noting that the essentially indicated constitutional laws of 1905–1906 did not constitute a constitutional monarchy, although the question is obviously whether Russia could become such a monarchy as a result of it and against the will of the emperor. Against this background, the first Soviet or Bolshevik Constitution was more like a legal act of this type, assuming, of course, that it shaped the model of a totalitarian state from which Lenin as a leader of such a state and as a lawyer obviously had to be aware. This Constitution, in particular, sanctioned very radical social changes after the Bolshevik Revolution in October 1917: attempts to abolish the property right, in the form of the so-called socialization of land and the abolition of real estate in cities, so-called the nationalization of industry and banks, state terror without legal grounds, or even the abolition of institutions of inheritance.

However, later in the historiography of the Stalinist era, the first Soviet Constitution of the USSR in 1924 was treated as the first Soviet one, where the issue of the state came to the fore. For this reason, the first Constitution of the new state (the Russian Soviet Federative Socialist Republic) is also worth a deeper analysis from the point of view of utopian visions of the social system. However, assuming – as it was stated – it sanctioned and enabled the construction of a totalitarian system, taken from the beginning of the Bolshevik state.

1. On the Way to the 1918 Bolshevik Constitution

After the overthrow of the monarchy, the postulate of choosing the Constituent Assembly (*Uchreditel'noe sobranie*), capable of enacting the constitution, contained

programs of all, including anarchist, important political parties. Along with the setting of the crisis of power, visible especially in the second half of 1917, the Provisional Government was striving to pass a new constitution. Also in a formal sense, this authority was to exercise power (after the dissolution of the Provisional State Duma Committee not only executive) only until the new basic law was passed.

Due to many delays, the convocation of the constituent did not take place before the Bolsheviks took power. The State Duma, albeit, adopted a relevant law in this matter, on the basis of which the Provisional Government in the second half of September 1917 published a detailed electoral law. By virtue of the regulations, electoral districts were established throughout the country. Constituent Assembly elections were to be five-adjectives, and all political, national and social groups were allowed to participate in them, with the exception of the anarchist organizations banned under the Act. The latter, *ex definitione*, were defined as anti-state.¹

After the seizure of power, the Bolsheviks consistently declared their attachment to the idea of the Constituent Assembly. Therefore, the new government, like the previous one, described itself as temporary (*Vremennoe raboche-krest'yanskoye pravitel'stvo*). In the resolution of the Second All-Russian Congress of Soviets of Workers' and Soldiers' Deputies (peasant congress held separately), written by Lenin on the day of taking over power, there was a sentence from which it appeared that the cabinet would rule until the summoning of the Constituent Assembly. The Bolsheviks also reserved the right of the Assembly to repeal the Decree on Peace proclaimed at that time by the congress. Also before the takeover of power, the Bolsheviks were fighting the Provisional Government, among others under the slogan of the struggle to find a Constituent Assembly, and Lenin, as having been accused of opposing the idea of the *Konstytuanta*, repudiated it as nonsense and delusion. However, the political reality after the Bolshevik coup denied these claims.

It is difficult to completely reconstruct the discussions on the shape of the constitution in 1917 after the Bolshevik takeover of power. It is known, however, that the new authorities tried to influence the course of the election campaign. The freedom of agitation of individual groups was limited; in general, however, the elections were considered democratic.²

At the same time, however, the Bolsheviks in a short time made a real delegation of political parties and the press, apart from the Bolshevik and leftist factions of the

¹ Some thoughts in this chapter have been quoted earlier in the work Adam Bosiacki, *Utopia, władza, prawo: Doktryna i koncepcje prawne "bolszewickiej" Rosji 1917–1921* [*Utopia, Power, Law: Doctrine and Legal Concepts of "Bolshevik" Russia 1917–1921*] (Warsaw: Liber, 1999).

² Oliver H. Radkey, *The Election to the Russian Constituent Assembly of 1917* 50 (Cambridge, Mass.: Harvard University Press, 1950). M. Heller and A. Niekricz even determined the elections to the Legislative Assembly as the most democratic in the history of Russia. Michail Heller & Aleksander Niekricz, *Utopia u władzy. Historia Związku Sowieckiego. T. 1* [*Utopia in Power. History of the Soviet Union. Vol 1*] 34 (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1989).

Socialist-Revolutionist Party. The relevant Decree in this case, signed by Lenin, was one of the first normative acts of the Bolshevik state.³

The idea of the Legislative Assembly met with the support of the Bolsheviks,⁴ because they probably believed that it was certain to gain a large majority of seats in the Constituent Assembly. A month before the election, the Council of People's Commissars even issued a resolution on the establishment of the All-Russian Constituent Assembly Election Commission (*Vserossiyskaya po delam o vyborakh v Uchreditel'noe sobranie komissiya*⁵).

The Commission, which, according to its name, was to prepare the elections, was obliged to cooperate with the Council of People's Commissars. Moisei Solomonovich Uritsky (1873–1918), who was also the chairman of the *Petrograd Extraordinary Commission to Fight with the Counter-Revolution and Sabotage (VChK)*, was appointed the coordinator of these contacts. The Commission consisted of fifteen members and their six deputies. They were all completely unknown as in the later history of the USSR.⁶

Even before the election, rumors spread about the intention of the Bolsheviks not to allow the opening of the assembly. In response to similar rumors, the Council of People's Commissars issued a special Decree, which promised that such a situation would certainly not take place. According to *Decrees of the Soviet Authorities*, the document was adopted no later than 5(18) December and published in the daily press.⁷ It did not find himself in the official journal, or, of course, in the indicated re-edition of the Bolshevik documents that began to be published after Stalin's death.

Elections to the Constituent Assembly took place on 12 November and covered almost all territories of Russia, including the front lines. In such areas, the vote took place earlier, in some later. However, the entire voting was carried out until 14 November. The Socialist Revolution Party (39.5%) received the most votes, to which 19.1 million voters voted. The Bolsheviks were in second place; they gained 22.5% of votes, and 10.9 million of them voted. A further number of votes was obtained by constitutional democrats (4.5% from 2.2 million votes cast) and Menshevik (3.2% from 1.5 million votes). Other voices were won by local groups (including conservatives

³ Декрет от 28 октября 1917 г. «О печати» // Собрание узаконений и распоряжений Рабочего и Крестьянского правительства. 1917/1918. № 1. Ст. 8 [Decree of 28 October 1917 "On Press," Collection of Laws and Orders of the Workers' and Peasants' Government, 1917/1918, No. 1, Art. 8].

⁴ Cf. Oleg Znamenski & Walery Szyszkin, *Lenin, ruch rewolucyjny i parlamentaryzm* [*Lenin, Revolutionary Movement and Parliamentarism*] 149 (Warsaw: Książka i Wiedza, 1981).

⁵ The quiriness of the name caused the word "committee" to be translated at the end of the phrase.

⁶ Text of the resolution in Декреты Советской власти. Т. 1 [*Decrees of the Soviet Authorities. Vol. 1*] 167 (Moscow: State Publishing House of Political Literature, 1957).

⁷ *Id.* at 184.

and Cossack groups),⁸ but the total of liberal groups, led by the Constitutional and Democratic Party, gained a total of 16.4 per cent.⁹ During the elections, minor inaccuracies occurred: no data were collected from two electoral districts in the country, and the voting time was extended.

The election results clearly showed the radicalization of society. It became clear, however, that the Constituent Assembly might prove to be not susceptible to the Bolshevik postulates, in a more or less formative way. The functioning of the Constituent Assembly also put into question the existence of the institution of Bolshevik power, first of all the All-Russian Central Executive Committee (VTsIK) and the government (Council of People's Commissars). It could also lead to the repetition of the situation of the dual power of both parliaments, just as before October 1917. After the election to the highest authority, which many pre-revolutionary oppositionists dreamed about, the shawl would probably tilt the Bolsheviks to their disadvantage.

Probably that is why the day before the opening of the session, the executive organ of the congressional parliament (VTsIK), in which the Bolsheviks obtained an advantage more or less from August 1917, issued a resolution in which it was stated that

[t]he Constituent Assembly can play a salutary role in the development of the revolution only if it stands firmly and unconditionally on the side of working classes, approves decrees on land, workers' control, nationalization of banks, grants the rights of all nations of Russia to self-determination and approves the foreign policy of the councils aimed at achieving the democratic peace as soon as possible.¹⁰

This was already a clear ultimatum which, if it were fulfilled, would incorporate the constituent into a Bolshevik system of exercising power. It is not known whether a similar situation could last a long time. It is also not clear what role VTsIK would play in the resulting situation.

⁸ Протасов Л.Г. Учредительное собрание: прерванный опыт становления демократической представительной власти // Представительная власть в России: история и современность [Lev G. Protasov, *Constituent Assembly: Interrupted Experience of Democratic Representative Power in Russia: History and Modernity*] 343, 361 (Moscow: ROSSPEN, 2004).

⁹ Heller & Niekricz 1989, at 34.

¹⁰ Резолюция ВЦИК о созыве Третьего Всероссийского съезда Советов рабочих и солдатских депутатов и Третьего Всероссийского съезда крестьянских депутатов от 22 декабря (4 января) 1918 г. [Resolution of the All-Russian Central Executive Committee on the Convening of the Third All-Russian Congress of Soviets of Workers' and Soldiers' Deputies and the Third All-Russian Congress of Peasants' Deputies of 22 December (4 January) 1917] in *Decrees of the Soviet Authorities. Vol. 1, supra* note 6, at 276.

The first and at the same time, as it turned out, the meeting of the Constituent Assembly was held on 23 December 1917 (5 January 1918). The elected parliament consisted of four hundred deputies.¹¹

The balance of power after the elections enabled the Bolsheviks to rule in a coalition with the Socialist Revolutionary Party (but only less with its left wing). Lenin, however, had no intention of sharing power in this way and there are credible testimonies that the dissolution of the Constituent Assembly was decided by Lenin directly after the lost elections.¹² On the other hand, a month earlier, the opening of the Assembly was announced by the adoption of a separate Decree of the Council of People's Commissars.¹³

The immediate pretext for the dissolution of the Assembly was the refusal to approve, at its first meeting, adopted by VTsIK two days earlier the Declaration of Rights of Working and Exploited People, having the rank of a constitutional norm.¹⁴ The prepared Declaration was published in the journals *Pravda* and *Izvestia*, but did not appear in the official journal.¹⁵ According to one of the authors, adoption by the Constituent Assembly of the Declaration of Rights would be the acceptance by her of all new rights that have been passed by the Bolshevik government so far.¹⁶

The factual description of the dissolution of the Constituent Assembly, also referred to in multilingual literature¹⁷ is not of course the object of investigation of the presented study. Let us note only that on the opening day of the Assembly, the Bolshevik faction made a declaration at its first meeting

¹¹ Постановление о сроке открытия Учредительного собрания от 20 декабря (2 января) 1918 г. [Resolution on the Date of Opening of the Constituent Assembly of 20 December 1917] in *Decrees of the Soviet Authorities. Vol. 1, supra note 6*, at 266.

¹² Бонч-Бруевич В.Д. На боевых постах Февральской и Октябрьской революций [Vladimir D. Bonch-Bruевич, *On the Battle Stations of the February and October Revolutions*] (Moscow: Federation, 1931); Heller & Niekricz 1989, at 34;

¹³ *Decrees of the Soviet Authorities. Vol. 1, supra note 6*, at 159.

¹⁴ Hubert Izdebski, *Rewolucja a prawo w Europie w XX wieku. Część II: Rewolucja a prawo dawne i nowe: tradycja prawna i środowisko prawnicze w obliczu rewolucji* [Revolution and Law in Europe in the Twentieth Century. Part II: Revolution and Old and New Law: Legal Tradition and Legal Environment in the Face of Revolution], 39(1) *Czasopismo Prawno-Historyczne* [Legal and Historical Journal] 111, 118 (1987).

¹⁵ The text of the document is quoted in *Decrees of the Soviet Authorities. Vol. 1, supra note 6*, at 321–323.

¹⁶ Cf. David R. Marples, *Historia ZSRR. Od rewolucji do rozpadu* [History of the USSR. From Revolution to Decay] 60 (Wrocław: Ossolineum, 2006).

¹⁷ Heller & Niekricz 1989, at 35–36; Richard Pipes, *Rewolucja rosyjska* [The Russian Revolution] 424 ff. (Warsaw: Magnum, 1994). Cf. Ludwik Bazylów & Paweł Wieczorkiewicz, *Historia Rosji* [History of Russia] 386–387 (Wrocław: Ossolineum, 2005); Marples 2006, at 61–62.

demanding recognition of the gains of the Great October Revolution, Soviet decrees on land, peace, workers' control, and above all the recognition of the power of the Soviets of Workers', Soldiers' and Peasants' Deputies.¹⁸

The Bolsheviks also stressed the fact that

[t]he Constituent Assembly in its current composition is the result of a balance of power that was formed before the Great October Revolution,

stating, moreover, that the majority of the assembly is counter-revolutionary, which was not only a feature of political blackmail. After reading the declaration, written by Lenin, the Bolsheviks and leftist Social Revolutionaries left the meeting, which was continued, despite the fact that the commander of the Assembly guard – in the words of the Bolshevik leader – the particularly dedicated team of seafarers – all the time directed the chairman of Viktor Chernov's machine gun rounds.¹⁹

At Lenin's command, however, the dissolution of the Constituent Assembly took place without bloodshed. The day after the commencement of the debates the deputies were not allowed to enter into the building. It was a repeat of the procedure used in the dissolution of the State Duma of the second term in 1907. The same situation was repeated in the period of probably the most serious constitutional crisis in Russia in 1993.

The issue of the fate of the Constituent Assembly was resolved during the first day of the session at the session of the Council of People's Commissars. The leader of the Bolsheviks appeared with him on the draft decree regarding the assembly. In the document, he suggested that the only bodies of state power should remain the councils of delegates. In the draft containing the justification of the decree, Lenin contrasted "the parliamentary bourgeoisie with the Soviet type of state."²⁰ He also outlined a scheme for the evolution of the Bolshevik system.

The Republic, he argued, is higher than the republic with the parliament with the Constituent Assembly. The council's republic is higher than the republic with a legislative assembly. A republic of the complete socialism stands higher than the republic of councils. The communist society is higher than the socialist republic.²¹

¹⁸ The text of the Declaration in the Polish translation in Włodzimierz Lenin, *Dzieła wszystkie*. T. 35 [Vladimir Lenin, *The Complete Works*. Vol. 35] 223 (Warsaw: Książka i Wiedza, 1988).

¹⁹ Heller & Niekricz 1989, at 35.

²⁰ Znamienski & Szyszkin 1981, at 153.

²¹ Lenin, *The Complete Works*. Vol. 35, *supra* note 18, at 427; Znamienski & Szyszkin 1981, at 153.

It follows from the argument that parliamentarism ceases to exist from the stage of liquidation of the legislative assembly. Lenin suggested that bourgeois parliamentarism would be replaced by a new form of parliamentarism based on a system of councils.²² However, one could have the impression that the institution of the parliament would disappear in an evolutionarily in the Bolshevik state.²³

The document also repeated, well-known from Lenin's earlier statements, strictly political arguments, arguing for the dissolution of the constituent.

The Constituent Assembly – wrote Lenin in the draft decree – selected on the basis of the lists arranged before the October Revolution, was an expression of the old political power system, when in power were conciliators and cadets. By voting for the candidates of the SRs, the people could not choose between right-wing Socialist Revolutionaries, supporters of the bourgeoisie and left-wing supporters of socialism. Thus, the Constituent Assembly, which was supposed to be the crowning of the bourgeois parliamentary republic, had to become a hindrance on the path of the October Revolution and the Soviet power ... Working classes had to convince themselves, on the basis of the experience that the old bourgeois parliamentarism had survived, completely incompatible with the tasks of realizing socialism.²⁴

Later in the decree, the Bolshevik leader sought to justify his stance on the Constituent Assembly, which in his opinion served as *a cover for the counter-revolutionary struggle for the overthrow of Soviet power*.²⁵ Lenin was keen to ensure that the proposed draft decree was formally adopted by the VTsIK, not only by the Council of People's Commissars, i.e. by the executive. That is why the adopted Decree of the Council of People's Commissars contained a sentence stating that *the Constituent Assembly was dissolved by the All-Russian Central Executive Committee*. The VTsIK has indeed approved the Decree written by the Bolshevik leader at the meeting convened, probably specifically for this purpose, on the night of 6 to 7 January.²⁶ According to the official communication, Lenin's draft was adopted by a majority (two deputies were against, five abstained). Like the previous regulations, the VTsIK Decree was published the next day in the press. In official journals no normative act adopted in connection with the institution of the Constituent Assembly has been published.

²² Znamenski & Szyszkin 1981, at 153.

²³ Cf. *Id.* at 163.

²⁴ Lenin, *The Complete Works*. Vol. 35, *supra* note 18, at 229–230.

²⁵ *Id.* at 231.

²⁶ *Id.* at 460, nt. 96.

2. Work on the Creation of the Bolshevik Constitution

After the dissolution of the Constituent Assembly, it became clear that the legal right of three months before the coup had to be taken by another institution. Perhaps the Bolshevik leader also came to the conclusion that the legitimacy of the system being created would ensure an act of the constitutional rank, the adoption of which was to be the main task of the Constituent Assembly in the past. The adoption of the written constitution could also end the creation of the foundations of the new system.

The Third Congress of Soviets, which began the proceedings on 18 January 1918, became an occasion to start work on the Bolshevik Constitution. Ten days earlier, at the VTsIK meeting (6–7 January 1918), Lenin gave a speech devoted to the issue of the Constituent Assembly dissolution. In the speech he repeated the arguments presented earlier in the Decree of his authorship.

In a more systematic form, he stated that since 1905 the socialists were aware that the council system was a new form of state, different from the parliamentary system. He also pointed to the inevitability of the conflict between the Constituent Assembly and the institutions of councils.²⁷

Lenin's speech did not contain any mention of the need to draft a new constitution. However, this happened at the congress. According to the first chronicler of the Bolshevik Basic Law, the rise to the problem of the new Basic Law gave the statement of the VTsIK chairman, Yakov Sverdlov, on the need to create "all-Russia power" in the state. Recalling the casus of the dissolved constituent, the assemblers agreed with the proposal of Leon Trotsky that the new system could have nothing to do with the former bourgeois form of government. Delegates also stated that

... the Third Congress was called to become the full Constituent Assembly of the victorious proletariat.²⁸

The leftist Socialist-Revolutionaries insisted on writing the constitution, who, however, reportedly, according to Bolsheviks, did everything later, not to take part in the work on its formulation.²⁹

During the meeting, two documents were accepted, which were considered part of the future constitution. It was the Declaration of Rights of Working and Exploited People (*Deklaratsiya prav trudyashchegosya i ekspluatiruyemogo naroda*) adopted by VTsIK on 3(16) January and the VTsIK Decree on Federal Institutions of the Russian

²⁷ Cf. also Znamienki & Szyszkin 1981, at 148–155.

²⁸ Гурвич Г.С. История Советской Конституции [Gregory S. Gurvich, *History of the Soviet Constitution*] 1 (Moscow: Socialist Academy Edition, 1923).

²⁹ *Id.* at 5.

Republic adopted already during the convention (*Dekret o federal'nykh uchrezhdeniyakh Rossiyskoy Respubliki*).³⁰ The first of the documents, written entirely by Lenin, announced the new state of the Republic of Soviets of Workers' Soldiers' and Peasants' Deputies, based on the principle of free association of free nations. This relationship was first defined as a federation. In addition, the document confirmed the existence of many institutions previously adopted in the decrees of the RKL. Thus, he constituted the main goal of the state is the elimination of human exploitation by a human, the division of society into classes, the final liquidation of exploiters and the "realization of socialism in all countries." The Declaration also confirmed the previously introduced in the Bolshevik legislation the abolition of private land ownership, the introduction of workers' control over production, the nationalization of banks. For the first time, the obligation to work (*trudovaya povinnost'*) was established in the document, then codified in the Labor Code (*Kodeks zakonov o trude*) and in the Constitution of the RSFSR. *General armaments of all workers* and a *complete break with the adventurous policy of bourgeois civilization* were also proclaimed.

Probably for the first time in the Declaration it was stated *expressis verbis* that

at the moment of the decisive struggle of the people with its exploiters, there can be no place for any exploiters in any organ of power.³¹

In the Bolshevik Constitution, this principle was later extended to several categories of the population, applying the criterion of origin or profession to the deprivation of rights. This principle was in contradiction with the social system projected in the same Declaration. It set itself the goal

... to create deeply free and voluntary, and hence, a more complete union of the working classes of all the peoples of Russia ... united on the principles of full voluntariness.

As the addressee, the Declaration mentioned the dissolved Constituent Assembly. However, unlike the Constituent Assembly, which was established two weeks earlier, it accepted the proposed regulations without reservations.

The second of the issued normative acts, being the federal authorities, confirmed the existence of three central institutions of the Bolshevik state: the Congress of Soviets, its Executive Committee (VTsIK) and the Council of People's Commissars, which also had wide legislative powers, according to the *Decree on the Procedure of Passing Laws*.³²

³⁰ Gurvich 1923, at 2. Text of the Declaration in *Decrees of the Soviet Authorities. Vol. 1*, *supra* note 6, at 341–343.

³¹ Part IV of the Declaration. *Id.*

³² *Id.* See also Исаев И.А. История государства и права России [Igor A. Isaev, *History of State and Law of Russia*] 262 (Moscow: Yurist, 1995).

Prior to the adoption of the Constitution, other regulations were also included in constitutional statutes. Because of the significance and changes in ownership relations, they actually included Decrees on Land and Peace, and even the Decree on the Socialization of the Land from February 1918.³³

In addition to Trotsky and Sverdlov, participation in the work on the constitution of the Third Congress of the Council entrusted to the People's Commissar for Nationality, Joseph Stalin. It was Stalin who proposed the term central authorities as federal.³⁴ He also proposed that the constitution should pass the next congress of councils.

After the congress, for unknown reasons, the work on the new basic law was stuck. A similar condition lasted over two months. According to official publications, the reason for postponing the topic was the involvement of many Bolsheviks in the matter of swift commencement of peace negotiations, which ultimately led to the conclusion of peace in Brest (March 1918).³⁵

Work on the new constitution has gained pace since 1 April 1918. On that day, the VTsIK chairman, Yakov Sverdlov, spoke at the parliamentary meeting with the lecture "On the Need for a Strict Separation of Functions Between Different Authorities."³⁶ Based on the nominal occurrence of the head of state, it can be concluded that the need to initiate work on the basic law was caused by the competence clash of the new authorities and administration. It resulted directly from strictly formal reasons.

After the Sverdlov's speech, a resolution was passed immediately on establishing a Commission for the Development of the Constitution of the Republic of the Soviet Republic.³⁷ The first meeting of the commission took place on 5 April 1918.

³³ Izdebski 1987.

³⁴ Gurvich 1923, at 2–3.

³⁵ Cf. Lenin, *The Complete Works*. Vol. 35, *supra* note 18, at 530, nt. 13; Портнов В.П., Славин М.М. Этапы развития Советской Конституции (историко-правовое исследование) [Victor P. Portnov & Marc M. Slavin, *Stages of Development of the Soviet Constitution (Historical and Legal Research)*] 12 (Moscow: Nauka, 1982); Romuald Wojna, *W ogniu rosyjskiej wojny wewnętrznej 1918–1920 [In the Heat of the Russian Internal War of 1918–1920]* 20, 39 (Warsaw: Państwowe Wydawnictwo Naukowe, 1975).

³⁶ О необходимости строгого разграничения функций между различными органами власти // Известия. 2 апреля 1918 г. [On the Need for a Strict Separation of Functions Between Different Authorities, *Izvestia*, 2 April 1918]. See also Gurvich 1923, at 5.

³⁷ Gurvich 1923, at 5. On the basis of the archival data cited later, the name of the commission was *Komissiya po vyrabotke proyekta konstitutsii Sovetskoy Respubliki pri Vserossiyskom Tsentral'nom Ispolnite'nom Komite* [Commission on Drafting the Constitution of the Soviet Republic Under the All-Russian Central Executive Committee] (ГА РФ. Ф. 6980. Оп. 1. Д. 1–18 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 1–18]). G.S. Gurvich instead, used the name consistently *Komissiya dlya razrabotki Konstitutsii Sovetskoy Respubliki* (Commission for Drafting the Constitution of the Soviet Republic). This is probably the colloquial name.

The commission consisted of fifteen people representing several ministries and three political groups: the Bolsheviks, left-wing Social Revolutionaries and the most radical faction of the latter – the so-called Socialists-Revolutionaries Maximalists.³⁸

The only non-Bolshevik member of the commission was the deputy and closest associate of the people's commissar of justice, Isaac Steinberg, A.A. Shreyder (around 1894–1930).

The first draft of the constitution was prepared in early April by the People's Commissariat of Justice. Three days before the committee was formally appointed, during a meeting of the VTsIK, it was decided to delegate to the commission on behalf of the head of the Department of State Law, Mikhail Reisner,³⁹ to the commission. He was considered the actual creator of the draft constitution.⁴⁰

At the beginning of the committee's meeting, attention was paid to the need to develop a solemn preamble, which is a form of agitation under the Soviet regime.⁴¹ It was also stated that the constitution should not be issued by the "working class of Russia" as proposed, but the Congress of Soviets as a formal authority. Reisner, who from the beginning of the committee's work set the tone of the meeting, also proposed to make VTsIK absolutely the supreme body in the state. According to him, this body had the role of a third instance in relation to all issued normative acts, decisions or court judgments.⁴²

Attention was also paid to the agitation repercussion of the constitution. Reisner's proposal was also approved in order to replace the word "state" (*gosudarstvo*) in the original text of the constitution with the expression "socialist republic."⁴³

On 10 April 1918, at a meeting of the Committee, Reisner gave a lecture on the basic principles of the new constitution⁴⁴. Such principles were federalism, democracy and Soviet power (*sovetskaya vlast'*). Reisner declared the federal type state free of any nationalist tendencies. He defined democracy as a direct and representative

³⁸ ГА РФ. Ф. 6980. Оп. 1. Д. 17. Л. 1а [State Archive of the Russian Federation, F. 6980, Op. 1, D. 17, P. 1a] (the list comes from 8 April 1918).

³⁹ ГА РФ. Ф. 6980. Оп. 1. Д. 17. Л. 2 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 17, P. 2].

⁴⁰ This is suggested by the author himself, *Гойхбарг А.Г. О Советской конституции // Пролетарская революция и право. 1918. № 3/4. С. 3–14* [Alexander G. Goikhbarg, *On the Soviet Constitution, 3/4 Proletarian Revolution and Law 3 (1918)*]. Cited in *Гойхбарг А.Г. Пролетариат и право* [Alexander G. Goikhbarg, *Proletariat and Law*] 26 (Moscow: Publication of the People's Commissariat of Justice, 1919).

⁴¹ ГА РФ. Ф. 6980. Оп. 1. Д. 12 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 12].

⁴² *Id.* at 5.

⁴³ *Id.* at 13.

⁴⁴ Доклад члена комиссии М.А. Рейснера об основных началах Конституции РСФСР // ГА РФ. Ф. 6980. Оп. 1. Д. 12. Л. 97–97а [Report of the Member of the Commission M.A. Reisner on the Basic Principles of the Constitution of the RSFSR, State Archive of the Russian Federation, F. 6980, Op. 1, D. 12, P. 97–97a].

participation in governing the country, to which, however, only working workers and peasants were entitled in the Soviet Republic. The principle of Soviet power consisted in a uniform structure of organs of authority, based on the principles of direct democracy at the local level. According to Reisner, the state ruled on the Soviet principles did not need the institution of the division of powers, and it could also have happened without the organs guaranteeing the observance of civil rights. These functions, like all other ruling activities, were served by councils.

On 10 April, the second draft of the constitution was also prepared by the communists commissar for the nationalities, Joseph Stalin, who already had far-crystallized assumptions of the future constitution. Unlike all other proposals, the project of the future dictator of the USSR consisted of only three points, occupying less than half a page of the typescript.⁴⁵ According to the literature, the document was published only in the late nineteen nineties by myself.⁴⁶

The Stalin project, as titled at the committee meeting, consisted of a miniature preamble and three “points” defining the basic features of the Soviet state. In the first part, the author, like the basic act later passed, stated that the constitution is of a temporary character and its primary purpose is

... establishing the dictatorship of the urban and rural proletariat ... in order to completely suppress the administration of the bourgeoisie, the liquidation of human exploitation by man and the establishment of socialism in which there will be neither class oppression nor state power.

Stalin also stated that the Russian Republic is a free socialist society for all working Russia. In the seemingly voluntary organizational structure, however, there was a definite rigor: the entire organization of society was to rely on the system of councils. The difference, however, was in the very nomenclature: unlike all the other

⁴⁵ ГА РФ. Ф. 6980. Оп. 1. Д. 1. Л. 5–6 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 1, P. 5–6]. After the departure from legal nihilism, Stalin’s project was discussed as a thesis “On the Type of Federation of the Russian Soviet Republic” (title as of the original). *Вышинский А.Я. К истории Советской Конституции* [Andrey Ya. Vyshinsky, *On the History of the Soviet Constitution*] 11 (Moscow: Partizdat, 1937). However, this is an obvious untruth.

⁴⁶ The full text of the constitution draft by Stalin was as follows:

“The basic task of the RSFSR Constitution in the current transition is to establish the urban and rural dictatorship of the proletariat and impoverished peasants, in the form of the All-Russian Soviet Authority for the total suppression of the bourgeoisie, the liquidation of human exploitation by man and the establishment of socialism, in which will not be either class oppression or state power.

1) The Russian Republic is a free socialist society of all working Russia, joining the city and rural councils.
2) Circuit councils are distinguished by a separate subjectivity and national composition – they combine into autonomous peripheral unions, led by peripheral conventions of deposed councils and their executive bodies.

3) The Soviet peripheries are united in the Russian Soviet Republic, headed by the All-Russian Congress of Soviets, and in the period between the congresses, the All-Russian Central Executive Committee.”

regulations of wartime communism in the Stalin project, the councils received the names of the unions (*soyuzy*). The preservation of the current name of the People's Commissar for Nationalities predicted only for VTsIK.

The Stalin project deserves to be presented primarily because of the originality, the person of the designer and the ideological determinants of the era. In the last aspect, there are strong nihilist tendencies. It is all the more interesting that Stalin, as it is known, never belonged to the group of nihilists, moreover – he was a strong opponent of similar ideas.

It is also interesting that the Stalin Project resembled the Constitution of Nicholas II. Both documents were equally short, and on the first one, implicitly, they tried to build Russian constitutionalism. The Constitution of 1905–1906 was certainly known to Stalin. It is also difficult to suppose that the People's Commissar for Nationality could have known many constitutional acts.

Obviously, Stalin's project was not accepted. The points proposed by Stalin have, however, become part of the fifth chapter of the Constitution (General Provisions), entering into them as individual points (9–12).

In the constitution, from the very beginning, great importance was attached to issues of civil rights, but understood mainly as an active and passive right to vote. This was understandable due to limitations imposed in earlier electoral regulations for the State Duma. In the case of the Bolsheviks, the originality was to exclude the active and passive electoral rights of the category of people who, during the time of the monarchy, enjoyed the opportunity to participate in the election. Deprivation of similar elective rights (*lishenie prav* – hence the name of *lishentsy*) in the conditions of the civil war resulted in various ailments, ranging from food cards that the refugees were not entitled to, through the list of hostages to which they were the first candidates, to actual civilian death. The version of the article proposed at the beginning of the meeting (about 10 April) in this case included groups with much wider rights, doing so on the principle of a negative definition. The population groups enjoying civil rights as well as the persons deprived of such rights have been defined comprehensively. Due to the uniqueness of the material presented, the original version of the article is probably for the first time provided in its entirety. The constitution article entitled "On the Electoral Law" constituted the following (the original style was retained in the translation):

1. The following citizens of both sexes of the Russian Soviet Federative Socialist Republic, who are at the age of 18 on the day of the election, have the right to elect and be elected to the councils of delegates [*sovdepy*]:

1) All those who take their means to live productively or socially useful work, taking place after [confirmation] trade unions, namely:

a) Of the workers.

b) Peasants, landowners,

- c) Officials – representatives of manual labor,
 - d) Craftsmen,
 - e) Officials – representatives of intellectual work,
 - f) Practicing profession, science, art, literature and technology without distinction of branches and specialties;
- 2) Members of the a-b-c group families in the case of: 1) continuous work at home, such as running a household, bringing up children and caring for ill and infirm persons, even if these members did not belong to a trade union ...
2. They do not choose and cannot be elected:
- 1) Everyone, in general, people resorting to [employment] hired force to make a profit,
 - 2) All those living on non-work-related income, such as: capital interest, property benefits, etc.,
 - 3) All merchants, merchants and traders,
 - 4) Religious worshipers [*sluzhiteli religioznykh kul'tov*] as such,
 - 5) Employees and agents of former protected units, as well as members of the house in Russia,
 - 6) Persons recognized in a defined procedure incapacitated or in part, as well as deaf people in custody.⁴⁷

As you can see, the design of the Bolshevik Constitution formed the very beginning assumed formal limitation of civil rights. The regulation also did not raise any objections from committee members. The postulates of depriving citizens of political rights because of the activities they performed were also known to the public. In the introductory article, published in the Bolshevik daily *Pravda* in mid-May, the described principle is presented as distinguishing the new constitution from the basic laws of other (bourgeois) states. The tone of the article testified that a similar recipe was already widely criticized in the Bolshevik circles. In the article, under the mocking title Constitution does not like, *Pravda* warned groups of people who were to be excluded from participation in elections before breaking the constitutional ban: “get out from electoral lists” (*Von iz izbiratel'nykh spiskov*), and also to you do not have access to the election. According to the newspaper, the exclusion of groups of people from participation in political life was exceptional. “Capitalists and the bourgeois” could – as the *Pravda* reported – get electoral rights if they took to work. It depends – the newspaper stated – only from themselves (*eto v ikh vlasti*).⁴⁸

Other proposals for restricting civil rights were also made during the deliberations of the committee. The most bizarre proposal was put forward by the Social Revolutionaries, who presented their own draft constitution. The name of the state

⁴⁷ ГА РФ. Ф. 6980. Он. 1. Д. 1. Л. 8–9 [State Archive of the Russian Federation, F. 6980, Op. 1, D. 1, P. 8–9].

⁴⁸ *Id.*

was different in the draft Social Revolutionaries, which was defined only as the Republic of Labor (*Konstitutsiya Trudovoy Respubliki*). The basic law was further divided into paragraphs, not articles. Besides, the presented text did not differ much from that of Bolshevik. It even contained a provision permitting the choice of a place of work (which the Bolsheviks did not envisage in the *Kodeks zakonov o trude*). The Socialists-Revolutionaries Maximalists proposed very strict adherence to the obligation to work (*trudovaya povinnost'*), they also insisted on the complete abolition of private property. Most probably, the radical provision of the Socialists-Revolutionaries Maximalists project provided for exceptions to the basic entitlement of citizens – the right to life.

In § 7 it was written that

... the right to life is not entitled to:

- a) The ones who shall not work,
- b) Enemies of the working people [to the wrath of a troubled nation] or [persons] violating the legal order of the Republic,
- c) Persons performing forced labor or deprived of their liberty.⁴⁹

In comparison to similar projects, the Bolshevik concepts were considered quite moderate. This also concerned left-wing Social Revolutionaries showing greater radicalism, for example in the matter of abolishing the right to land ownership, which the Bolsheviks approved without exception, first in decrees on land and on the socialization of the land, and then in the constitution. Discrepancies between the left-wing Social Revolutionaries, Socialists-Revolutionaries Maximalists and the Bolsheviks in the drafting the constitution also concerned many other issues. For example, the left SRs advocated for a decentralized state, although not according to nationality criteria⁵⁰. They also postulated the inclusion of councils in the system of municipal institutions, depriving them of political functions. Similarly, the project of the People's Commissariat of Justice, which recognized the so-called *communes*, associating in federated unions (*federativnye ob'edineniya*), then – in provinces (*provintsii*), and finally – in federal republics, on the principles of full voluntariness joining an independent state (RSFSR). The essence of the project developed by M.A. Reisner and the NKJ Collegium, under which the work was headed by A.G. Goikhbarg (1883–1962), was to create a system of maximum decentralization of

⁴⁹ Материалы III Всероссийской конференции Союза эсеров-максималистов. Москва, 10–15 мая 1918 г. Проект основ Конституции Трудовой Республики, принятый на конференции // Союз эсеров-максималистов. 1906–1924 гг. Документы, публицистика [Proceedings of the III All-Russian Conference of the Union of Socialists-Revolutionaries Maximalists. Moscow, 10–15 May 1918. Draft of the Constitution of the Labor Republic, Adopted at the Conference in Union of Socialists-Revolutionaries Maximalists. 1906–1924. The Documents, Journalism] 128 (Moscow: ROSSPEN, 2002).

⁵⁰ Further discrepancies are described based on cited work: Isaev 1995, at 292.

the state administration. Municipal, provincial and peripheral management bodies (*oblastnye*) imposed economic tasks, but not political ones. Nevertheless, the project of Reisner and Goikhbarg was more restrictive than the adopted draft constitution. For example, the authors of the NKJ project proposed to include the following article in the constitution:

... in the event of violation by individual Councils and their congresses of this Constitution and the socialist system they establish, the All-Russian Central Executive Committee has the right to: 1) revoke the relevant provisions with new elections; and 2) adopt all necessary measures, including mobilization of the Soviet Army and military interference [*voennoe vmeshatel'stvo*].

All groups, besides Bolshevik, also insisted on a closer dependence of the Council of People's Commissars from VTsIK and the Congress of Soviets. This was motivated by the need for a more complete connection of the authorities. Most of the proposed regulations were absolutely irreconcilable with the Lenin concept, which by July 1918 had never participated in the development of the draft. Nonetheless, before directing the final version to VTsIK, the Bolshevik leader took the decision to take action into his hands. At the beginning of July, the VTsIK appointed a special commission for the final elaboration of the project, headed by the chairman of the Council of People's Commissars in person.⁵¹ Lenin personally made only one amendment, adding to the basic act an article on the right to grant in the RSFSR full political rights to foreigners staying on the territory of the country, if they deal with production work.⁵²

However, all the postulates of the decentralization of the state disappeared from the final version of the project. The leader of the Bolsheviks also rejected the NKJ project, which foresaw – according to Goikhbarg – “a combination of state and social system.”⁵³ A similar concept was unacceptable to Lenin due to the strong executive power in the center and in the field. Speaking at the next (Sixth) Congress of Soviets in November 1918, the Bolshevik leader, as he often did – in the margins – assessed the whole situation, stating:

... we know that this Soviet constitution, which we approved in July, is not a figment of a commission, it is not a creation of lawyers, it is not copied from other constitutions. There was no such constitution in the world as ours.⁵⁴

⁵¹ Isaev 1995, at 292–293.

⁵² Włodzimierz Lenin, *Dziela wszystkie. T. 37* [Vladimir Lenin, *The Complete Works. Vol. 37*] 492 (Warsaw: Książka i Wiedza, 1988).

⁵³ Goikhbarg 1918; Goikhbarg 1919, at 22–23.

⁵⁴ Włodzimierz Lenin, *Wystąpienie w rocznicę rewolucji 6 listopada* [Speech on the Anniversary of the Revolution of 6 November] in Lenin, *The Complete Works. Vol. 37, supra* note 52, at 138.

3. Important Principles and Provisions of the RSFSR Constitution of 1918

The Constitution of the Russian Soviet Federative Socialist Republic was finally accepted at the Fifth All-Russian Congress of Soviets on 10 July 1918. However, the extraordinary resolution was dictated by the adoption of the Constitution only *de jure*. According to the published on 5 July 1918 in the newspaper *Pravda* of the agenda, the adoption of the Basic Law is provided only in the fourth, penultimate point of the agenda. However, previous cases concerned such issues as the report of the Council of People's Commissars (the first item of the meeting), *the problem of food supply* and *the organization of the Socialist Red Army*.⁵⁵ Establishing a similar procedure was probably supposed to prevent discussion of particular provisions of the Constitution. In view of the earlier development of the project, the Congress of Soviets passed the Constitution without special discussion at the final stage of the debate. The Basic Law came into force immediately after its adoption. During the congress, neither Lenin, who was apparently involved in suppressing the so-called rebellion of left-wing Socialist Revolutionaries, which took place on 6–7 July, did not sacrifice the new Constitution.

The adopted Constitution of the Bolshevik state constituted, to some extent, a compromise between the previously described postulates of political groups and people's commissariats preparing it. It consisted of six parts, seventeen chapters and ninety articles. As in other particularly solemn regulations, the Constitution was given the name "law" to which – as in European systems – the adjective "basic" was attached. The document was published in a separate official journal, issued on 20 July 1918.⁵⁶

The Basic Law – the Constitution of the Russian Soviet Federative Socialist Republic – was opened by a short preamble. Unlike other preambles in Bolshevik

⁵⁵ Пятый Всероссийский съезд Советов рабочих, солдатских, крестьянских и казачьих депутатов: стенографический отчет. Москва, 4–10 июля 1918 г. [*Fifth All-Russian Congress of Soviets of Workers, Peasants, Cossacks and Red Army Deputies: Shorthand Report. Moscow, 4–10 July 1918*] (Moscow: Publishing House of the All-Russian Central Executive Committee, 1918).

⁵⁶ Собрание узаконений и распоряжений Рабочего и Крестьянского правительства. 1918. № 51. Ст. 582 [Collection of Laws and Orders of the Workers' and Peasants' Government, 1918, No. 51, Art. 582]. During the war communist period, the Constitution was repeatedly reprinted in the form of a separate brochure. Bolshevik lawyers also attached it to their work on this subject. This was done, for example, by M.A. Reisner (*Рейснер М. Что такое Советская власть?* [Mikhail Reisner, *What Is Soviet Power?*] 32–46 (Moscow: People's Commissariat of Agriculture, 1918) and P.I. Stuchka (*Стучка П.И. Конституция РСФСР в вопросах и ответах* [Peter I. Stuchka, *Constitution of the RSFSR in Questions and Answers*] 66 (Moscow; St. Petersburg: Communist, 1919)). The reprint of the Constitution of 1918 was also published in the sixties (*see, e.g., Декреты Советской власти. Т. 2* [*Decrees of the Soviet Authorities. Vol. 2*] 550–564 (Moscow: State Publishing House of Political Literature, 1959) and *Советские Конституции. Справочник* [*Soviet Constitutions. Encyclopedia*] 128–153 (P.S. Romashkin (ed.), Moscow: State Publishing House of Political Literature, 1963)).

legislation, it contained no ideological content, only formal information. In addition to the statement of the publication of the Constitution by the congress of councils, information about the adoption of the Basic Law by the congress of the councils and the inclusion in the Constitution of the Declaration of Rights of Working and Exploited People. The People's Commissariat of Education was also recommended in the preamble:

to introduce in all schools and educational units, without exception, the teaching of the basic principles of this Constitution as well as their explanation and interpretation.

The ideological goals of the Constitution are explained in the second chapter. It confirmed the abolition of private land ownership in the Land Decree, which is to constitute "nationwide property" and the nationalization of forests, minerals and model land estates, constituting "national property." The nationalization of basic industries was also confirmed, recalling the Decree on Workers' Control. The principles adopted in the Decree on Peace were also repeated, complementing them with the Declaration on the proclamation of Finnish independence, the commencement of withdrawal of troops from Persia and recognition of Armenia's sovereignty.

One of the initial articles also stated:

In order to eliminate parasitic layers of society and organize the economy, a general obligation of work is introduced [*vseobshchaya trudovaya povinnost*].

A similar rule was repeated once again in famous Article 18 of the Constitution, stating that

... the Russian Soviet Federative Socialist Republic recognizes work as an obligation for all citizens of the Republic and proclaims the slogan "He who does not work shall not eat" [*"Kto ne rabotaet, tot ne dolzhen est"*].

The Basic Law also managed the general "arming of working people." Several chapters of the Constitution mainly contained propaganda regulations. Therefore, the following was condemned:

bourgeois civilization, building the prosperity of the exploiters of the few selected nations on oppression of hundreds of millions of people working in Asia, in general in colonies and small countries.

The main political goals of the RSFSR were:

... the liquidation of human exploitation by man, the complete removal of division into classes, the ruthless [*besposhchadnyy*] suppression of exploiters, the assurance of a socialist organization of society and the victory of socialism in all countries.

As in all the previously adopted normative acts, the Constitution does not formulate the definition of repeatedly repeated concepts (for example, “exploiters” or “socialist organization of society”).

In the fifth chapter, devoted to the general principles of the Constitution, literally the rules of territorial organization, proposed in the Stalin project described earlier, were repeated. The only change introduced was the replacement of the name “union” (*soyuz*) proposed by the People’s Commissar for Nationality, the name “district council.” As in the project, all federation entities were to belong to it on an autonomous basis. However, these concepts are not specified in the text of the Constitution.

Many articles of the Constitution were devoted to social rights and, to a much lesser extent, to political ones. According to the latter, the freedom of the press was recognized and citizens were granted the right to freedom of religion, free organization of meetings, rallies, parades, etc. and the right to a comprehensive and free education. The laws in question were largely due only to “working people” or “the poorest.” Only in the case of freedom of assembly, the Act did not use similar terms, as we shall see, however, it could only be a mistake of the legislator, which was corrected by another general clause.

Similarly to the discussion on the draft constitution, the Constitution of the RSFSR introduced inequality of citizens, depriving some of them of political and social rights. At first glance, it seemed that the restrictions apply only to active and passive electoral law. However, this principle was extended by the provision of the Constitution, constituting in this case a specific provision of the *legi generali*. It stated:

Guided by the interests of the entire working class, the Russian Soviet Federative Socialist Republic deprives individuals and groups of rights used by them to the detriment of the interests of socialist revolution.

Similar rules were repeated twice in the Constitution. Earlier, in the next general norm it was stated that *for exploiters cannot be a place in any of the authorities*. Clarification of the above principles was made in Article 65, concerning electoral rights. It was a repetition of the provision cited when discussing the draft constitution.

The analysis of the provisions of the Bolshevik Basic Law penalizes that the circle of persons having electoral rights was significantly narrower than the circle of persons excluded from the right to use them. The right to choose and eligibility was vested only in persons *gaining resources for a socially useful production and social work*, that is, workers, peasants, Cossacks and soldiers of the Red Army.

It was only in the second part of the Constitution that the structure of the Soviet power was used to use the terminology taken from the Act. At the central level, it was the All-Russian Congress of Soviets of Workers', Soldiers', Peasants' and Cossack' Deputies. This body was elected proportionately at two levels – city councils (one delegate for 25,000 voters) and county councils (one delegate for 125,000). A similar procedure had to break the delegates from voters, despite the Constitution being able to appeal to delegates at any time.

What seems strange, the Constitution of the RSFSR did not mention almost any competences of the congress, which were included in a rather scattered form. It was limited to the statement that it is the supreme power in the republic. It has also been added that the congress should be convened at least twice a year by the All-Russian Central Executive Committee (VTsIK) elected from among its members. At the request of the councils representing the town counting at least one third of the country's population, VTsIK may have convened an extraordinary meeting. It could do it on its own initiative.

The All-Russian Central Executive Committee, just as before the Constitution was adopted, constituted the parliament *sensu stricto*. The number of this body was fixed by the Basic Law for not less than two hundred people. The VTsIK received the competences of the highest legislative, management and control body of the state. Its tasks also included “determining the general direction of the government's activities” and harmonizing legislation. The VTsIK also had the right to issue its own decrees and orders (*rasporyazheniya*). Theoretically, the All-Russian Central Executive Committee created the Council of People's Commissars, approving the draft decrees and other normative acts submitted by it and by other central offices.⁵⁷

One of the next articles of the Constitution, however, limited the principle of subordinating the Council of People's Commissars to parliament in the event of issuing a decree to *resolutions and decisions having important political significance*. As the modern Russian theoretician of the law writes, in fact in the Bolshevik state of that period there were as many as three legislative institutions: the Council of Ministers, the VTsIK and the Council of People's Commissars.⁵⁸ By virtue of the Constitution, however, the exclusivity of the Council of People's Commissars in law making was nominally limited, which was *de facto* assumed shortly after the Bolshevik takeover of power *Dekret o poryadke utverzhdeniya i o publikovaniya zakonov*.

The Council of People's Commissars was from the beginning of the Bolshevik state the proper center of exercising power. The Constitution of 1918 confirmed this state of affairs. The Council, consisting of eighteen members acting under the direction

⁵⁷ Article 33 of the Constitution. However, the dependence of RKL on VTsIK was incomplete (see below), although some authors simply refrained from citing only the article described. See, e.g., Stanisław Ehrlich, *Ustrój Związku Radzieckiego. T. 1 [System of the Soviet Union. Vol. 1]* 30 (Warsaw: Państwowe Wydawnictwo Naukowe, 1954).

⁵⁸ Isaev 1995, at 293.

of its chairman, was given the competence of the general management of state affairs. Therefore, it was not a purely administrative body, in line with the Leninist and cruise-oriented concept discussed earlier, rejecting the division of powers. The Basic Law gave the Council of People's Commissars the right to *issue decrees, orders, instructions and to take all steps necessary for the proper and rapid course of state life.*

Therefore, it was not a purely administrative body, in line with the Lenin's and Reisner's concepts discussed earlier, rejecting the division of powers. The Basic Law gave the government (*Sovet narodnykh komissarov*) the right to *issue decrees, orders, instructions and the adoption in general of all the steps necessary for the correct and rapid running of the life of the state.*

In law, the VTsIK received the right to repeal or suspend all resolutions or decisions of the Council of People's Commissars, however, as far as it was possible to determine – it never used this option. The limitation of the VTsIK's competences was also a provision granting Council of People's Commissars the right to implement projects directly (*meropriyatiya*) requiring immediate implementation.⁵⁹

Pursuant to the provisions of the Constitution, the scope of competences of individual People's Commissars was broad. Their competence included *sole decision-making in all matters falling within the scope of activities of the relevant people's commissariat.* The decision of the People's Commissar could be repealed only by the decision of the head of the Council of People's Commissars or the All-Russian Central Executive Committee. The decision to these bodies could also be appealed against by a member of the auxiliary body of the People's Commissar (*Collegium of the Commissariat*).

A similar system was used in local organs, which were the provincial and municipal, district (*uezd*), and commune councils. Such bodies were appointed by the appropriate level of congresses, and individual, usually five-member executive committees exercised power over the conferences. The latter constituted the most important authority in the field, and the organs of the executive power could also establish their own resolution. However, contrary to the name describing the state as a republic of councils, all local institutions had little power. Article 61 of the Constitution stipulated that the scope of activity of local councils at all levels was primarily *the implementation of all resolutions [postanovleniya] of the respective superior organs of the Soviet power.* Other permissions boiled down to tasks of much smaller importance. Local councils could only take steps "in order to raise a given area in terms of culture" and settle all matters of purely local significance (*imeyushchiye chisto mestnoe znachenie*). Local councils were also obliged to unite "all Soviet activities" within a given area.

The system created in this way was characterized by full hierarchy, not allowing any self-government of local authorities. With the appearances of decentralization, the pyramid of power organs was created, at the top of which the omnipotent VTsIK stood, and in fact – making decisions on its behalf, a few-man presidium. Even the

⁵⁹ Notice to Article 41 of the Constitution.

competences of the latter body were however limited in relation to the Council of People's Commissars. Only his organ had real and the greatest power.

The competences of many important ruling institutions have not been included in the Constitution at all. This concerned the Bolshevik party,⁶⁰ the system of extraordinary commissions, as well as the supreme governing body for the transformation of industry – the Supreme Council of National Economy. The Bolshevik Constitution mentioned very few institutions at all.

The extensive influence of the Bolshevik party resulted primarily from the fact that the party of Lenin was from the middle of 1918 the only party forming part of the Council of People's Commissars. It had an absolute majority in central institutions (VTsIK) and local councils. This state was perfectly in line with Lenin's position, which he believed that RCP(b) *should gain for himself an indivisible political rule in councils and real control over their activities.*⁶¹

However, the Bolshevik party maintained its position in the organs of government, administration and the judiciary on the basis of a factual majority, not normative, which apparently resembled a model of European parliamentarism with a winning grouping. However, this system was not applied in Russia to the consistent taking over of power by the Bolsheviks – as the only political group.

The adoption of the Constitution was given a broad propaganda frame. A similar function seemed the most important thing for the Bolshevik leader himself. In his works, however, Lenin did not devote much attention to the Basic Law, limiting himself to recalling some of its principles on the margins of the fundamental subject matter of his political journalism. Only in the work "The Proletarian Revolution and the Renegade Kautsky," written in October 1918, the Bolshevik leader devoted a separate chapter of the chapter to the Basic Law.⁶²

He stated in it that the Constitution was born as a result of the revolutionary struggle, and the councils themselves "were formed without any constitution and for over a year ... they lived without any constitution."⁶³ The Bolshevik leader also pointed out to the adversary that he saw the "arbitrariness" of the new Constitution, and "... from us requires a constitution drawn up to the last letter within a few months."⁶⁴ Lenin quoted Lenin in his characteristic, polemical style:

⁶⁰ Wictor Sukiennicki, *Ewolucja ustroju Związku Socjalistycznych Republik Radzieckich w świetle oficjalnych publikacji władzy radzieckiej* [Evolution of the Constitution of the Union of Soviet Socialist Republics in the Light of Official Publications of Soviet Power] 31 (Vilno: Research Institute of Eastern Europe, 1938); Waclaw Komarnicki, *Nowy ustrój państwowy Związku Sowieców* [New State System of the Soviet Union] (Wilno, 1938) (Aug. 1, 2019), available at <http://www.polskietradycje.pl/artykuly/widok/301>.

⁶¹ Sukiennicki 1938, at 86; Isaev 1995, at 319.

⁶² Włodzimierz Lenin, *Rewolucja proletariacka a renegat Kautsky* [The Proletarian Revolution and the Renegade Kautsky] in Lenin, *The Complete Works. Vol. 37, supra note 52*, at 267–275.

⁶³ *Id.* at 267 (underlining Lenin).

⁶⁴ *Id.* at 269.

...“The willfulness”! Just think how much bottomless, most filthy servility towards the bourgeoisie, how much the most dull pedantry reveals such a charge – he wrote. – When the bourgeois and mostly reactionary lawyers of the capitalist countries worked out the most detailed regulations over the centuries or decades, they wrote dozens and hundreds of laws and commentaries on laws opposing the worker, embarrassing the poor hands and legs, making every ordinary man work and people thousands of obstacles and harassment – oh, then the bourgeois liberals and Mr. Kautsky do not see in this “arbitrariness”! There is “order” and “rule of law”!⁶⁵

The quoted passage was at the same time the only theoretical reference to the Bolshevik Basic Law. Looking at the text, it can be said that Kautsky considered one of the tasks of the Basic Law to be the ultimate liquidation of the exploiters and the creation of a state in which they do not exist. Lenin also accused the adversary that he was “interested only in the formal and legal aspects of the case” in the matter of the constitution, from which it can be inferred that the Bolshevik Constitution was not rigid in sticking to the letter of the law. The next part of the text was insulted by Kautsky himself, like: “Judas Kautsky,” “despicable renegade,” “snoophant of the bourgeoisie” and similar.

In his other works, the leader of the revolution did not add anything original about the Constitution of 1918, once again reminding only of its role of suppressing exploiters.⁶⁶

In addition to Lenin’s work, a few more thorough studies were devoted to the Constitution. Shortly after the adoption of the Basic Law, a special issue of the bi-weekly of the People’s Commissariat of Justice appeared on this subject, which was given the subtitle as the Book of the Constitution.⁶⁷ As in previous issues, the editor of the edition was A.G. Goikhbarg. The journal also included an article by Goikhbarg, reprinted a year later in a collection of articles by him. However, the author’s work on the subject of the 1918 Constitution ended, although it seems that he had greater ambitions in this case.⁶⁸ Nevertheless, the main exegete of the new Constitution was P.I. Stuchka.

In the considerations of Bolshevik lawyers regarding the Constitution of 1918, contrary to the concept of other regulations or institutions, the fundamental

⁶⁵ Lenin, *The Complete Works*. Vol. 37, *supra* note 52, at 269–270 (underlining Lenin).

⁶⁶ Cf., e.g., Włodzimierz Lenin, *Sprawozdanie Komitetu Centralnego na IX Zjeździe RKP(b)* [Report of the Central Committee at the Ninth Congress of the RCP(b)] in Włodzimierz Lenin, *Dzieła wszystkie*. T. 40 [Vladimir Lenin, *The Complete Works*. Vol. 40] 239–242, 258 (Warsaw: Książka i Wiedza, 1988); *Przemówienie na III Zjeździe związków zawodowych* [Speech at the Third Congress of Trade Unions] in *Id.* at 258; Włodzimierz Lenin, *O państwie* [On the State] in Włodzimierz Lenin, *Dzieła wszystkie*. T. 39 [Vladimir Lenin, *The Complete Works*. Vol. 39] 79–80 (Warsaw: Książka i Wiedza, 1988).

⁶⁷ Пролетарская революция и право. 1918. № 3/4 [3/4 Proletarian Revolution and Law (1918)].

⁶⁸ Goikhbarg 1918; Goikhbarg 1919, at 21–32.

convergence of the views expressed prevailed. The main feature of all the works was mainly popularization, consisting in quoting entire articles of the basic act and explaining some phrases. In this case, only strictly commenting activities were carried out, and if theoretical considerations were made, they always came down to the statement that the purpose of the basic act was to “suppress exploiters” or the possessing classes. Goikhbarg’s article, though in many places containing similar content, is an exception in this respect. The author included a remark that the Constitution, despite the need to create a strong organization of state and power, is based on the ideas of freedom, equality and brotherhood.⁶⁹ Goikhbarg also repeated the concept approved by Lenin and included in the text of the Basic Law, concerning the transition of the Bolshevik Constitution, the death of state power and law. He also included in the article the thesis that the only formal guarantee of real equality of all people is economic equality. It can only arise through the complete abolition of private property, to which, according to Goikhbarg, the Constitution also sought. The article, however, contains ideas that are absent in any instance of Lenin or Stuchka. Goikhbarg tried to prove that *the proletariat never desired and never wants to rule over other classes, putting it under the rule of its social system.*⁷⁰ He also stated that the proletariat also *liquidates the conditions for the existence of antagonisms between classes, eliminates the classes themselves, and thus their existing class rule. In place of the old bourgeois society, with classes and their antagonism, there is an association in which the free development of each is a condition for the free development of all.*⁷¹

The proletarian state was to evolve towards complete harmony in the absence of pressure measures and the disappearance of political power for social sake.⁷² The author warned that the described order could only prevail after “choking the enemies of the proletariat,” but similar, solidarist ideas were unacceptable for political reasons, especially that according to Goikhbarg’s idea, “proletariat rule” was to be of short duration only.⁷³

Peter Ivanovich Stuchka understood the Bolshevik Basic Law in a completely different way, calling it the “constitution of the civil war.” The most orthodox of the Bolshevik lawyers drew attention to the necessity of liquidation – also by means of a constitution – of class enemies and “... establishing the urban and rural dictatorship of the proletariat and poor peasantry” (Art. 9 of the Constitution). In Stuchka’s article, expressing the principles discussed, there were absolutely no solidaristic elements. The author, partly against his own views, also advocated the possibility of various

⁶⁹ Goikhbarg 1918; Goikhbarg 1919, at 23.

⁷⁰ Goikhbarg 1919, at 23.

⁷¹ *Id.* at 24.

⁷² *Id.*

⁷³ *Id.*

interpretations of the constitution in a way that would allow the fight against “hostile classes.” In the article described by P.I. Stuchka, he strongly opted for the advantage of unwritten or vague provisions, which was all the more surprising as he was the least die-hard nihilist among the Bolshevik lawyers.

At the most acute moment of the civil war – he began his argument – we had to put on the written form of the constitution we have in force. And the question clearly arose whether a transitional time constitution was possible at all. For this reason, for example, that the transitional era in which “only movement is a permanent thing” does not form a hard framework for the written constitution. For this reason, that in this transitional era “the state cannot be anything other than the revolutionary dictatorship of the proletariat,” and the dictatorship somehow wrongly connects with the words “written act.”⁷⁴

Although Stuchka’s concept presented a greater than official nihilistic radicalism, it was much closer to the official ideology and the objectives of the Constitution. Probably for this reason P.I. Stuchka, who did not take part in the work on the Constitution, was given the task of making it officially exegesis. A semi-official commentary on the basic act of Stuchka’s pen was published in 1919 by a Bolshevik party publishing house (and not – as the vast majority of publications of those years – by the *Narodnyy komissariat yustitsii*). The author gave it a form of short questions and answers already tested in his former work on the people’s court. The work developed the thoughts contained in the article published earlier. In his work P.I. Stuchka explained the articles of the Constitution step by point. The deliberations included the thought of oppression by the proletariat of classes possessing on an analogous basis to the principle of oppression in a bourgeois state, where, according to the author, the proletariat was always oppressed by the bourgeoisie. The difference, however, was that in the bourgeois state the majority was oppressed, while in the Soviet Republic – the minority of society.⁷⁵ In both cases, the organization described was permanently antagonistic, not allowing any agreement between the different groups. In Stuchka’s work for the first time, the concepts used repeatedly in normative acts were defined. And so the term “bourgeoisie” meant for the author

a social class, a category of population, using not its own, and from someone else’s work, living from income received from industrial, commercial and credit operations, including all elements, either living as such or serving as income supporting the bourgeoisie.⁷⁶

⁷⁴ Goikhbarg 1919, at 15.

⁷⁵ *Id.* at 11–12.

⁷⁶ *Id.* at 9–10.

On the other hand, the dictatorship of the proletariat meant

taking over [*zakhvat*] of all state power and the full realization of this power ... The working class, by its dictatorship, understands the “powerful All-Russian Soviet power,” which appoints its brave fighters for responsible positions before the councils. The outcome of the civil war depends on the victory of this or other dictatorship.⁷⁷

The definitions, however, very broad in meaning, were only the terms proposed by the author. Their essence was confrontationality and the far-reaching degree of ideologization. With this understanding of the new Basic Law, it could be a good explanation of the fight to the death with the enemies of the Bolshevik system.

Conclusion

The adoption of the Constitution did not end, of course, the creation of the Bolshevik legal system, which in the case of even the revolutionary tribunals lasted until 1920. However, it was the closure of one of the stages of creating a similar system. The main task of the Constitution was to systematize the hierarchy of normative acts and dependencies between individual organs of authority and administration in the Bolshevik state. This means that as early as in mid-1918, it began to realize the organizational and competence chaos that the nihilist legal system had, showing, on the other hand, many strictly political advantages.

We can look for some features of the common basic laws 1905–1906 and the Bolshevik Constitution. Both constitutions aimed to give the state some kind of cohesion, which manifested itself, *inter alia*, in the adoption of laws jointly by both chambers of parliament and executive authority. In the first Constitution, such power was the monarch, while in the second the government, endowed with broad prerogatives, also in the field of legislating. Starting from other premises, the Bolshevik doctrine adopted the concept of a unified state, with no opposing and inhibiting authorities.

Of course, the analogy with the earlier tradition would not be much. Also, formally, the Bolshevik state in the first period programmatically rejected all earlier Russian political traditions, and in a broader sense, the constitutional theory and practice of other states. Antennas were only sought in the utopias existing in the history, above all in the experiences of the French Revolution in its egalitarian dimension and in the achievements of the so-called Paris Commune of 1871. In the latter, the Bolshevik leader saw a direct pattern of defining the Constitution of the state he was forming.⁷⁸

⁷⁷ Goikhbarg 1919, at 16.

⁷⁸ Cf. Jerzy Stembrowicz, *Rzqdy Komuny Paryskiej z 1871 r. a państwo socjalistyczne* [*The Rule of the Paris Commune of 1871 and the Socialist State*], 31 *Studia Prawnicze* [Studia Prawnicze] 33, 43 (1971).

In the Constitution, Lenin therefore saw the document primarily of political and not legal significance. The legal aspect was also irrelevant in the way that from the beginning, the revolutionary practice did not coincide with reality, of which Lenin, even as a lawyer, had to be aware as well. However, the Constitution was designed to legitimize the principles of the new system, and, as it was always stressed, as a form of propaganda in Bolshevik Russia and beyond. In a broader sense, the Constitution of 1918 expressed Lenin's fascination with the idea of direct democracy, of which it was already mentioned, including the experience of anarchizing the so-called Paris Commune and the idea of the French Revolution after 1789. In the last case, the idea of unlimited supreme power, undivided and combined, and at the same time federated in the form of loose communes, whose idea in Bolshevik Russia took over, obviously only nominally, revolutionary councils, was adopted. Nominally, they were meant to express the conception of the rule of the congregation, the direct rule of the people, and the transmission of divided power to the sovereignty of the people. This simple projection of the Rousseau concept, however, resulted in the creation of a totalitarian system, which the People's Commissar of Justice, Isaac Nachman Steinberg, though unable to name yet, described it as state despotism, which was far more powerful than the tsarist despotism.

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