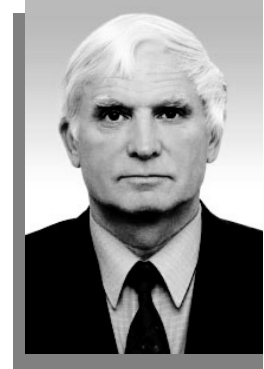


THEORY AND HISTORY OF STATE AND LAW

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UDC 340.15:94(477)»1921/1929»

CONSTITUTIONAL DEVELOPMENT IN UKRAINE DURING THE NEW ECONOMIC POLICY (1921-1929)

History of State and Law of Ukraine is rich in important events. An important place in it belongs to constitutional development. A unique document is the Pylyp Orlyk Constitution 1710 – an outstanding monument of Ukrainian political and legal thought of 18th century. Approved April 29, 1918 by Ukrainian Central Rada UNR Constitution included the introduction in Ukraine parliamentary republic. A huge experience was accumulated in Soviet times, the study of which allows to receive additional arguments in favor of the conclusion of the futility of the Soviet model of functioning government in the country.

In the history of Soviet Ukraine researchers isolated state and law in the days of the New Economic Policy

(1921–1929) in independent period. Within this period, there have been many changes in regulation of law, state, economic, social and cultural development of the country. Quite active at this time was constitutional development in the UkrSSR.

At the beginning of the new economic policy in the republic acted Constitution of the UkrSSR 1919, which was adopted on March, 10 1919 at the Third All-Ukrainian Congress of Workers, Peasants and Red Army Deputies, held in Kharkiv. Finally, the first Constitution of the UkrSSR was approved at a meeting of Ukrainian CEC (VUTsVK) March 14, 1919. The basis of the UkrSSR Constitution 1919 Constitution of the RSFSR was signed in 1918, which was evi-

dence of a significant dependence of constitutional development in Ukraine of state processes in Bolshevik Russia. The Constitution of the UkrSSR 1919 «was based on program provisions of the Marxist-Leninist theory of socialist revolution and the dictatorship of the proletariat»¹. Delusional ideas of socialism and the dictatorship of the proletariat had penetrated almost all articles of the Constitution. For example, the basis for building a new social order in Ukraine SSR Constitution laid the principle of the abolition of private ownership of land and the means of production, as emphasized in the first chapter of the Constitution «basic regulations». Owners such as capitalists and landlords in Article 1 of the Constitution called «age oppressors and exploiters» of the proletariat and poor peasantry². The attitude of the Constitution and other wealthy classes of society was negative (Art. 2 of the Constitution). In the same article directly stated that the task of the proletarian dictatorship «is the transition from bourgeois society to socialism through socialist reforms and systematic pushing all counter-revolutionary intentions of the wealthy classes»³. Thus, the basis of social and political system in the USSR the first Soviet Constitution of Ukraine pinned class principle. It is appropriate to note that very different ob-

jectives set for the Ukrainian National Republic UPR Constitution adopted Ukrainian Central Council of 29 April 1918 Article 1 of the Constitution emphasized the following: «I restored their state law as the Ukrainian People's Republic, Ukraine, for better defense of their land, to ensure more certain rights and liberties health, culture and welfare of its citizens, proclaimed itself and now is the sovereign state, independent and independent of anyone»⁴.

At the beginning of a new economic policy norms of the Constitution of the UkrSSR 1919 showed its effect in various forms. Thus, according to the Constitution functioned central and local government authorities. All-Ukrainian Congress of Workers, Peasants and Red Army Deputies were convened regularly. But according to Article 10 of the Constitution of the UkrSSR 1919 Ukrainian Congress of Soviets was the highest authority in the UkrSSR. As predicted by the Constitution, the National Congress of Soviets elected Ukrainian Central Executive Committee, which is between the Ukrainian Congress of Soviets appeared higher authority in the country. In turn VUTsVK Ukraine elected members of the government – the Council of People's Commissars of the Ukrainian SSR. Functioned at the beginning of a new economic policy and local Soviet authorities, which were, under Article 18 of the Constitution of the UkrSSR 1919: a) of the Workers, Peasants and Red Army Deputies (urban and rural) and their elected Executive Committee (executive committees); b) Congress of So-

¹ Таранов А. П. Історія Конституції Української Радянської Соціалістичної Республіки / А. П. Таранов. – К.: Вид-во АН УРСР, 1957. – С. 52.

² Історія конституційного законодавства України: зб. док. / упоряд. В. Д. Гончаренко. – Х.: Право, 2007. – С. 60.

³ Ibid (p. 60)

⁴ Ibid (p. 44)

viets (provincial, county and township, as well as their elected Executive Committee (executive committees)¹. These local governments were formed through elections. Namely norms of the Constitution of the Ukrainian SSR 1919 were involved, which defined the general principles of the election law in Ukraine. Thus in the electoral process considered of the norms of the Constitution, which entire layers of UkrSSR citizens deprived of voting rights². In some way acted norms of section of the Constitution of the Ukrainian SSR 1919 «Declaration of the rights and duties of the Ukrainian people working and exploited», which gave workers «all the rights and opportunities in the field of civil and political life»³. Thus, Article 32 of the Constitution noted that «the Ukrainian SSR, recognizing equal rights for workers, regardless of their race and nationality – reveals contradictory basic laws of the Republic... which would not be oppression of national minorities or restriction of their equality»⁴. Thus, for the sake of objectivity, it should be noted that during the New Economic Policy in the UkrSSR much attention was paid to security of economic, political, cultural rights and interests of national minorities

in the USSR paid much attention. This is no accident. As of 1920's in Ukraine from the population, which totaled 28,894,742 persons, ethnic minorities accounted for 5,741,431 people⁵. Thus, in the language of national minorities opened schools, theaters, seemed periodicals, books, art and other literature⁶. Was launched special national chamber of people's courts. Legal proceedings were carried out in the language of national minorities. This is supposed to Article 18 of the decree VUTsVK and RNA SSR from August 1, 1923 «On measures to ensure equality of languages and the promotion of Ukrainian language»⁷. Important among the measures to ensure the rights of national minorities occupied allocation of national administrative units (districts, village councils).

The development of the Constitution of the UkrSSR 1919 the system of government of the UkrSSR in the early years of the new economic policies were adopted regulations that detail regulate their activities. For example, the piece of legislation which concerned the fundamental points of the organization and activity of the All-Ukrainian Congress of Soviets, Ukrainian CEC Presidium VUTsVK was ruling the V All-Ukrainian Congress of Soviets (February 25 –

¹ Історія конституційного законодавства України: зб. док. / упоряд. В. Д. Гончаренко. – Х.: Право, 2007. – С. 63.

² See: Гончаренко В. Правовий статус населення України за Конституцією УСРР 1919 р. / В. Гончаренко // Вісник Акад. прав. наук України. – 2011. – № 4. – С. 62–64.

³ Історія конституційного законодавства України: зб. док. / упоряд. В. Д. Гончаренко. – Х.: Право, 2007. – С. 64.

⁴ Ibid (p. 65)

⁵ Стоян П. К. Адміністративно-територіальна реформа УСРР 1922–1925 рр. / П. К. Стоян // Проблеми правознавства. – 1967. – Вип. 7. – С. 59.

⁶ Буценко А. І. Радянське будівництво серед нацменшостей УСРР / А. І. Буценко // Тези допов. на IV сесії ВУЦВК Х скликання. – Х.: ВУЦВК, 1928. – С. 9, 10.

⁷ СУ УССР. – 1923. – № 29. – Ст. 435.

March 3, 1921) «On the Soviet construction». Standards resolution «On Soviet construction» in content were constitutional norms, thereby complementing the Constitution of the UkrSSR 1919 in the part of the central authorities concerned SSR. Due to the fact that the Constitution of the UkrSSR 1919 did not touch many, is to say, procedural points, because these issues are regulated by other regulations. Thus, the second session of the fifth convocation VUTsVK adopted May 8, 1921 «Regulations on Ukrainian Central Executive Committee»¹. The resolution contained a number of innovations that complement the UkrSSR Constitution 1919 and thereby ensure the efficient operation VUTsVK sessions, members of Ukrainian CEC. The accumulated experience of the VUTsVK organization and VUTsVK Presidium and the first years of the NEP was enshrined in legislation adopted by the third session of the eighth convocation VUTsVK October 12, 1924 «Regulations on the Ukrainian Central Committee of Soviets of Workers, Peasants and Red Army Deputies (VUTsVK)». This legal act provisions of the Constitution of the UkrSSR 1919, concerning VUTsVK got its logical development. The rules said «Regulations» are constitutional in nature.

Thus, in the first years of the new economic policy acted as norms of the Constitution of the Ukrainian SSR 1919 and acts adopted on the basis of this

Constitution. At the same time it should be noted that certain rules adopted during the so-called «war communism» Constitution of the UkrSSR 1919 by the NEP is somewhat at variance with the norms of certain regulations adopted for legal support new economic policy. As already noted, the Constitution declared the abolition of private property not only on land but also to «all other means of production» (Article 3 of the Constitution). Adopted in 1922 under the NEP Civil Code of the Ukrainian SSR, along with state and cooperative owned allow private ownership. Article 54 of the Civil Code of the Ukrainian SSR in 1922 stated that «the subject of private property can be: not nationalized buildings, retail, manufacturing, with employees no longer provided special laws quantity, means and instruments of production, money, securities and other valuables including gold and silver coin and foreign currency, domestic objects and personal items, goods which are not prohibited by the law to sell, and not removed from every turnover of private property»². Regarding entrepreneurs quilted jacket in a summary NEP period was the term «Nepmen». But in general economic position Nepmen Soviet authorities through the use of various limitations as an economic and administrative nature were weak and hopeless under the domination of the Soviet regime in the Ukraine in the underlying period.

Thus, in the early years of the NEP was adopted a number of constitutional regulations that are supposed to reflect

¹ Отчет Второй сессии Всеукраинского Центрального Исполнительного Комитета 5-го созыва (5–8 мая 1921 г.). – Харьков: ВУЦИК, 1921. – С. 78, 79.

² СУ УССР. – 1922. – № 55. – Прилож. к ст. 780.

in the text of the Constitution. Besides major changes in the state building of the USSR occurred in connection with the formation in 1922 of the USSR and its constituent entering the Ukrainian SSR. This event is reflected in the Constitution of the USSR in 1924, the adoption of which had to be displayed in the Constitution of the USSR. Can not affect the constitutional development in the USSR and important events such as the creation in 1924 as a part of the Moldavian Autonomous SSR Soviet Socialist Republic (AMSRR) and holding at the beginning of 1920 territorial reform. That is the question of amending the Constitution of the Ukrainian SSR in 1919 matured. And so, guided by Article 6 of the Constitution of the USSR in 1919, the VIII All-Ukrainian Congress of Soviets, held in January 1924, instructed the CEC to revise the Constitution all-Ukrainian SSR in 1919 in accordance with the Constitution of the USSR and provide a draft revised Constitution for approval by IX Ukrainian Congress of Soviets¹. This project was developed. 9 May 1925 at a meeting of the Presidium of the USSR VUTsVK and RNA was People's Commissar of Justice heard a report, while the public prosecutor M. O. Skrypnyka to amend the Constitution of the Ukrainian SSR in 1919 was decreed to adopt the draft resolution on amending the Constitution granted Constitutional Commission VUTsVK². May

¹ Съезды Советов союзных и автономных советских социалистических республик: сб. докум. 1923–1937 г. г. в 7-ми т. – М.: Изд-во «Юрид. лит.», 1964. – Т. V. – С. 140.

² ЦДАВОВУ. – Ф. 1. – Оп. 2. – Спр. 1746. – Арк. 165.

10 IX Ukrainian Congress of Soviets adopted a resolution «On the change of the Constitution of the Ukrainian Soviet Socialist Republic»³.

In the said institution primarily stated that the Constitution of the USSR in 1919 «for over sexennial its force was so basic law, which it strengthened and developed state building worker-peasant power in Ukraine»⁴. And then in the order cited circumstances which require amendments to the Constitution of the Republic. Here is the text of this resolution: «With the formation of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic is the task given to article 5 of the Constitution of the USSR, do about changes in its constitution according to the Constitution of the Union of Soviet Socialist Republics.

Just range revolutionary solution of the tasks that were scheduled for the immediate implementation of the Constitution, with the installation of a number of basic laws of the UkrSSR in the sphere of the Soviet state building and national cultural life, to form a part of the Moldavian Autonomous SSR Soviet Socialist Republic and the transition to 3-stage management system ripened a need to do the appropriate changes to the current Constitution of the UkrSSR»⁵. Following indications IX Ukrainian Congress of Soviets decided to instruct the All-

³ ЗУ УСРР. – 1925. – №47. – Ст. 302.

⁴ Історія конституційного законодавства України: зб. док. / упоряд. В. Д. Гончаренко. – Х.: Право, 2007. – С. 79.

⁵ Історія конституційного законодавства України: зб. док. / упоряд. В. Д. Гончаренко. – Х.: Право, 2007. – С. 79.

Ukrainian CEC to prepare for the next X-Ukrainian Congress of Soviets draft new Constitution of the UkrSSR, the implementation of compliance objectives approved a number of amendments to the Constitution of the UkrSSR 1919.

First of all, Congress made significant changes to Article 6 of the Constitution to bring it to the Constitution of the USSR in 1924. Joining the UkrSSR to the USSR reflected in other articles of the Constitution of the UkrSSR. Thus, Article 8 now indicated that the relationship between the highest authorities of the UkrSSR and the Soviet Union, as well as the relationship between the central authorities of the UkrSSR and the UkrSSR central authorities established by the Constitution of the USSR. Article 14 of the Constitution of the UkrSSR in the new edition defines the structure and position of RNA SSR-Union Commissariats authorized under the government of the UkrSSR. Article 4 of the Constitution of the UkrSSR new version of solidified entry into the SSR AMSRR. Article 18 of the Constitution as amended in 1925 found its consolidation administrative-territorial reform carried out in the country, particularly in connection with the liquidation provinces and the transition to 3-stage management system.

The IX Ukrainian Congress of Soviets heard a report about the Constitution AMSRR, approval and All-Moldavian Congress of Soviets and decided to approve this Constitution¹.

¹ IX Всеукраїнський з'їзд Рад робітничих, селянських та червоноармійських депутатів (3–10 трав. 1925 р.). – Резолюції. – Х.: ВУЦВК, 1925. – С. 32.

Adding IX All-Ukrainian Congress of Soviets of the Constitution of the UkrSSR 1919 undoubtedly important and urgent changes are removed, however, from the agenda the question of the need to adopt a new Constitution SSR. Therefore IX Ukrainian Congress of Soviets, as already noted, found it necessary to completely rework the X All-Ukrainian Congress of Soviets of the Constitution of the Republic. This M. O. Skrypnyck in a report to Congress on the Constitution of the UkrSSR said that the new draft Constitution SSR should be required to submit to «a broad discussion of all our councils at all district and district conventions in all workers' and peasants' organization». «This – continued the speaker – will make the Constitution a collaborative thoughts of our broad masses of workers and peasants»². This approach to the discussion of the draft constitution has not lost relevance in our time.

However difficult and long work on the creation of the new Constitution of UkrSSR to the X All-Ukrainian Congress of Soviets, which was convened in May 1927, was never completed. Secretary VUTsVIK A. I. Butsenko explained by the fact that the Ukraine government found it necessary to conduct a broad discussion PCF Justice developed the new Constitution of the Ukrainian SSR SSR local authorities, but the opening of the All-Ukrainian Congress of Soviets X

² IX Всеукраїнський з'їзд Рад робітничих, селянських та червоноармійських депутатів (3–10 трав. 1925 р.): стенограф. звіт. – Х.: ВУЦВК, 1925. – С. 379.

«feedback and suggestions on places were not obtained in sufficient quantity»¹. In addition, there is evidence that the draft new Constitution of UkrSSR following the district executive committees not be sent. As noted in the literature, «evidence that the draft Constitution wasn't discussed widely in enterprises and villages»². Therefore, most comments on the draft Constitution of the UkrSSR, according to Yu. Mazurenko, «had the character of bureaucratic work», and the majority were editorial and not fundamental nature³. It is no accident X-Ukrainian Congress of Soviets, after hearing April 13, 1927 Secretary VUTsVK information about AI Butsenko draft Constitution of UkrSSR, decided to «authorize regular session of the All-Ukrainian Central Executive Committee approve the new version of the Constitution of the Ukrainian SSR and submit it for final approval XI Ukrainian Congress of Soviets»⁴.

Pursuant to Resolution X All-Ukrainian Congress of Soviets VUTsVK Constitutional Commission established for the provisional draft a new Constitution of the UkrSSR sub-commission composed of the Chairman and subcommittee members – representatives of the CC

CP (B) U VUTSVK, RNA SSR, the UkrSSR People's Commissariat of Justice⁵. March 23, 1929 an enlarged meeting of the Constitutional Commission VUTsVK, which thoroughly considered the draft Constitution of the USSR developed referred to the subcommittee. Constitutional Commission adopted the new Constitution of the UkrSSR and elected drafting committee so that and made the final editing of the draft Constitution SSR. The final draft of the new Constitution of USSR was approved by the Bureau before the opening of the next VUTsVK XI All-Ukrainian Congress of Soviets.

May 15, 1929 XI All-Ukrainian Congress of Soviets after a thorough discussion of the draft new Constitution of the UkrSSR and the commission to prepare a resolution on the Constitution of the Ukrainian SSR Constitution adopted in 1929 which consisted of five sections: 1) General Principles; 2) The Soviet authorities; 3) Voting rights; 4) On budget Ukrainian SSR 5) On the emblem, flag and capital of the Ukrainian SSR.

In the Constitution of the Ukrainian SSR in 1929, as the Constitution of the UkrSSR in 1919, the concept was utopian Marxist-Leninist dictatorship of the proletariat and the rejection of private ownership of the basic means of production and natural resources. At the beginning of the first chapter of the Constitution declared that «the Constitution defines the main objectives and forms of

¹ Буценко А. Конституції СРСР і УСРР / А. Буценко // Рад. Україна. – 1927. – № 7–8. – С. 10.

² Мазуренко Ю. Кілька слів про проект Конституції УСРР / Ю Мазуренко // Рад. Україна. – 1919. – № 1–2. – С. 28.

³ Ibid.

⁴ Съезды Советов союзных и автономных советских социалистических республик: сб. докум. 1923–1937 г. г. в 7-ми т. – Т. V. – М.: Изд-во «Юрид. лит.», 1964. – С. 199.

⁵ Таранов А. П. Історія Конституції Української Радянської Соціалістичної Республіки А. П./ Таранов. – К.: Вид-во АН УРСР, 1957. – С. 103.

the dictatorship of the proletariat, which set itself the goal to finally overcome the bourgeoisie, destroy the exploitation of man by man and to make communism, when there will be neither division into classes nor state power»¹. And because Article 1 of the Constitution emphasized that «Ukrainian republic is a socialist state of workers and peasants. All power within the Ukrainian Socialist Soviet Republic belongs to the Soviets of Workers, Peasants and Red Army Deputies»². Economic foundation of the State Constitution of the UkrSSR in 1929 defines in Article 4 as follows: «4. All land, minerals, forests and water, as well as factories, banks, rail, water and air transport and communications are a socialist state property on the grounds defined by the legislation of the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic. Foreign trade recognized state monopoly»³. It should be noted that in the cited article in the first place is the legislation of the UkrSSR. It is not by chance. At the time of adoption of the new Constitution of the UkrSSR Ukrainian SSR was part of the UkrSSR – the Union State. This fact is reflected in the Constitution of the UkrSSR 1929 in Article 3. It noted that the Ukrainian SSR is part of the UkrSSR «as a sovereign state, and reserves the right freely to secede from the Union». In this regard appropriate to underline that while the mechanism of seceding from the UkrSSR

did not exist in nature, and therefore the right to withdraw remained a fiction. In addition to in paragraph 2 of the article indicated that the sovereignty of the Ukrainian SSR is limited only within the limits specified in the Constitution of the UkrSSR and only items that they are within the jurisdiction of the UkrSSR and that «beyond these limits, Ukrainian Soviet Socialist Republic has its own state power»⁴. Given that the Constitution of the UkrSSR 1924 at the highest level, reinforcing the rule of union of government and administration and Union legislation in the main areas of law, then, as rightly observed O. M. Myronenko, all this turned proclaimed in the Constitution of the UkrSSR 1929 sovereignty «in a political myth»⁵.

In the first chapter of the Constitution of the UkrSSR 1929 listed political rights for workers. At the same time, the Constitution deprived the right to elect and be elected to state authorities a range of categories of citizens of Ukraine, as mentioned in Article 67 of the Constitution. That class approach was inherent to the Constitution, which defined the legal status of the population. Given the fruitful experience of previous years to ensure the rights and interests of ethnic minorities who lived in the USSR, the Constitution insisted on the inadmissibility of suppression or restriction of the rights and freedoms of national minorities that lived here, gave them the opportunity to enjoy all their native lan-

¹ Історія конституційного законодавства України: зб. док. / упоряд. В. Д. Гончаренко. – Х.: Право, 2007. – С. 86.

² Ibid (p. 86)

³ Ibid (p. 87)

⁴ Ibid (p. 86)

⁵ Мироненко О. М. Історія Конституції України / О. М. Мироненко. – К.: Ін. Юре, 1997. – С. 40.

guage, and to create national administrative-territorial unit. Other Law actually been implemented in practice. So, work on national zoning was completed in early 1931 at this time in the USSR, there were 25 national areas¹. National, there were 995 village councils, national village councils – 89². SSR Constitution 1929 also contained provisions on the entry to the village lay Moldavian SSR Autonomous Socialist Republic. The constitution carefully regulated the organization and legal status of the central and local authorities in governance. Constitution classified as the central authorities the All-Ukrainian Congress of Soviets, Ukrainian CEC Presidium and VUTsVK People's Commissars of the Ukrainian SSR. By local law SSR included the main circuit and district con-

gresses of Soviets of Workers, Peasants and Red Army Deputies and their executive committees.

Ended Constitution by article 82, which stated that the capital of the Ukrainian SSR is the city of Kharkiv.

The Constitution of the UkrSSR 1929 ceased to have effect with the adoption in 1937 of the new Constitution of the USSR Extraordinary Congress of Soviets of UkrSSR XIV.

Thus, during the New Economic Policy in Ukraine there was an active process of constitutional development, during which gained a lot of experience in this field.

Published: Вісник Національної академії правових наук України. – 2015. – № 2 (81). – С. 17–25.

¹ Болтенкова Л. Ф. Интернационализм в действии / Л. Ф. Болтенкова. – М.: Мысль, 1988. – С. 69.

² Скрипник М. О. Перебудовчими шляхами (Проблеми культурного будівництва нацменшин України) / М. О. Скрипник // I Всеукр. конф. культурно-освітніх робітників нацменшостей 20.05.1931 р. // Укр. істор. журнал. – 1989. – № 8. – С. 123.