Constitutional Control in Russia: issues of evolvement, theory and practice

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The history of constitutional control in Russia is rich in events, highly sophisticated, and closely connected with the national constitutionalism having evolved during turbulent period following the Russian revolution. This crucial transitional period of Russian history (from 1917 to 1922) both gave rise to a new type of state and the development of certain political and legal traditions that are still in effect today. It was not long ago when the Soviet legal doctrine expressly claimed that independent and specific bodies aimed at the Constitution protection were absolutely alien for both the Soviet society and the State. However, the principle of the Constitution supremacy has never been denied either by the Soviet ideology or by the Soviet legal doctrine. Moreover, the Russian authorities have always used it to achieve the political goals of their own. In its turn, this fact has caused the development of the special Soviet doctrine of ”constitutional control”, the key function of which was to identify the acts and actions of governmental authorities being inconsistent with provisions contained in the Constitution as well as to take urgent measures to remedy such identified contradictions.

The basic principles of modern Russian constitutional control were laid down by the Constitution of the Russian Federation adopted in the hard environment of ”the 1993 constitutional revolution”. According to the formal legal evaluation by A. N. Medushevsky, the development of Russian constitutional control «occurred in the difficult situation involving weak civil society and split of the Russian ruling elite as a result of too fast and unprepared democratic transformations».

In the scholar’s opinion, «unlike a number of Southern and Eastern European states, Russia’s transition to democracy was based not on a contractual model representing the consensus between social movements and political parties, but on a model claiming the split of legal succession». The analyst underlines that «the 1993 Constitution of the Russian Federa-
tion was adopted not as a result of a constitutional reform, but due to a constitutional revolution during which the winning party had imposed their will on the losers. This fact, to his mind, determined the key characteristics of the Russian Constitution.

In our opinion, the same determines the choice of the modern Russian constitutional control model, the key characteristic of which depends on the extent to which legal rights and interests of a citizen are protected. The question whether constitutional control can be an efficient means of such protection, is still open in Russia.

In this connection, the question remains whether and to what extent the foreign models of constitutional control have been accepted by the Russian legal system, and if the traditional model of constitutionalism formed in the Soviet era will have effect on their incorporation into modern Russian legal environment.

The first state of the dictatorship of the proletariat rejected the "bourgeois" idea of separation of powers and vested the All-Russian Congress of Soviets with the entirety of power in the country empowering the All-Russian Central Executive Committee of Soviets to be in charge during periods between congresses. Article 12 of Chapter 5 of the Constitution of the Russian Soviet Federative Socialist Republic of 1918 (the "RSFSR") provided that «the supreme power in the Russian Soviet Federative Socialist Republic belongs to the All-Russian Congress of Soviets, and during the time periods between such congresses, to the All-Russian Central Executive Committee of Soviets».

The first Soviet Constitution granted virtually unlimited powers to such bodies. Article 50 of Chapter 9 of the RSFSR Constitution of 1918 proclaimed that «the Congress of Soviets and the All-Russian Central Executive Committee (the VTSIK”) shall be authorized to decide all the questions deemed to be subject to their decision».

The same article laid down the basics for the formation of the specific "Soviet" model of constitutional control to be exercised by the state supreme representative agency.

Due to the semiannual mode of work of the Congress of Soviets (under the Constitution, it was held not more than twice a year), the VTSIK had the entirety of real power in the Russian State. Subject to Article 31 of Chapter 7 of the RSFSR Constitution of 1918, the VTSIK was described as «the supreme legislative, executive and controlling body of the RSFSR». Pursuant to the creators of the Constitution, it was the VTSIK which was to «determine the general direction of the activities of the workers' and peasants government and all Soviet power bodies in the country», to unify and negotiate law making and administration, and «to monitor the implementation of the Soviet Constitution».

One can hardly share the opinion of certain researchers claiming that «the RSFSR Constitution of 1918 established the parliamentary form of constitutional control based on the principle that the entirety of power involving constitutional control should be granted to the highest representative body of people». The constitutional doctrine of the first years of the Soviet power having been bluntly formulated by professor M.A. Reisner clearly determined the place and role of the Constitution in the Soviet State.

In his lectures given to the Academy of the General Headquarters of the Workers’ and Peasants Red Army, professor M.
A. Reisner underlined that the adopted Constitution was «an interim measure» meaning that Russia needed a flexible constitution which would «prevent the establishment of fixed forms», that’s why the constitution should be based not on legality, but on the principle of appropriateness and teleology allowing to imbue it with any necessary meaning. As the scholar further emphasized, «where we say that our constitution is based on the ideas of fixed goals and appropriateness, we mean that our basic law does not embody immobility and dead justice, but is just a draft of public construction».

It is true that the “flexibility” of the first Soviet Constitution was clearly reflected in the peculiar understanding of the unity of state power permitting the concentration of legislative, executive and controlling functions within the highest governmental bodies for the purposes of revolutionary reasonableness. A bright example to this is the first Soviet Government, the Council of People’s Commissars, empowered to perform legislative and any other unlimited functions, which, subject to Article 37 of Chapter 8 of the Constitution, «shall carry out the general management of the affairs of the Russian Socialist Federative Soviet Republic».

Article 38 of the same Chapter expressly stated that «to implement these objectives the Council of People’s Commissars shall issue decrees, directions, instructions, and generally take all measures required for the proper and prompt governmental activities». In practice, such “flexibility” in identifying the powers of governmental authorities entailed the situation where the Council of People’s Commissars (the “Sovnarkom” or “SNK”) presided by Vladimir Lenin started being involved in legislative activities since its establishment in more active manner than the VTSIK. Analyzing the adoption of Decree “On Court” #1 by the Sovnarkom, T. E. Novitskaya writes, that «from formal legal perspective, this can be described as the outright violation of the traditionally established procedure for enactment of laws». It is worth mentioning that the Constitution was prepared and adopted concurrently with the establishment of one-party system. According to T.E. Novitskaya, the most important decrees of the Soviet power were based on the provisions of the RSDRP (b) program and other party documents.

In addition, the Council of Peoples’ Commissars, together with the governmental authorities stipulated in the Constitution, exercised constitutional control in compliance with Note to Article 41 of the same Chapter 8, as «measures to be exercised promptly». For example, in its Decree of July 22, 1918, the SNK of the RSFSR indicated that the term «comrade of the peoples’ commissar» should not be used since «such position is not stipulated in the Constitution».

It is noteworthy that the Marxists’ attitude towards the basic law of the country which was described as “interim” by professor Reisner, relates to the Soviet state in general. Such state was established for a transitional period of time (until the World Revolution bursts out) with certain and clear objectives «to totally suppress the bourgeoisie, completely abolish all exploitation, and establish socialism with no class division or power of state». It is quite obvious that this state would never allow the very existence of such democratic institution as parliamentarism.
Not without reason, while positively evaluating the «special formal protection» of the US Constitution by means of a «special federal court», and admitting its role in the enforcement of legality and support for «legal and constitutional character of modern democracy», M.A. Reisner considered the institution of a constitutional court totally inappropriate for the Russian environment hence the adopted Constitution is «an interim measure» and is not worth protecting by «such mammoth and cumbersome agency».

The concept of an interim (transition-al) nature of state pretty much explains why both the Declaration of Rights of the Working and Exploited People, which was adopted at the Third All-Russian Congress of Soviets and proclaimed Russia a federal state, and the RSFSR Constitution of 1918, which followed the Declaration and contemplated the principle of federalism via priority of nations to self-determination failed to solve key issues of federation and separation of powers in Russia.

Two resolutions were adopted following the discussion of the report On the norms governing federation in the Republic and national strategy of the Soviet power made by Josef Stalin at the Third All Russian Congress of Soviets. The former described the general principles of state power and claimed that «the Russian Social Soviet Republic is established on the basis of the voluntary union of all peoples of Russia as the federation of Soviet republics of such peoples». The latter approved the national strategy of the Soviet Government aimed at self-determination of peoples and creation of the «fraternal union of the Soviet republics of Russia».

Both resolutions of the Congress were prepared on the basis of the text of one of the very first acts made by the Soviet State, the Declaration of Rights of Peoples of Russia, having been approved by the RSFSR Council of Peoples’ Commissars in November 1917 and signed by V.I. Lenin, the Chairman of the Council of Peoples’ Commissars, and J.V. Stalin, as the Peoples’ Commissar in charge of nationalities. The Declaration clearly condemned the policy of systematic inciting people against each other by the Tzar and Interim Governments of Russia.

The Declaration determined the following new principles of national policy of the Soviet State and further formation on its basis of the “fraternal union of Soviet republics”:

1. Equality and sovereignty of all peoples of Russia;
2. Priority of peoples of Russia to self-determination involving secession and formation of independent states;
3. Abolishment of any and all ethnic and confessional privileges and limitations;
4. Free development of ethnic minorities and groups inhabiting Russia.

The Declaration announced the formation of «fair and voluntary union of peoples of Russia» and complete trust among them as the ultimate goal of the national strategy of the Soviet State. It is worth noting that subject to this Declaration, at the end of 1917, Finland, Poland, the Baltic states gained full independence while numerous peoples of the Caucasus, Transcaucasia, Siberia and Asia were granted national autonomy. However, having stated the goal, the Declaration failed to shape the idea of the future state structure of young Soviet State.

The principles and model of a new state structure became law in the text of the most
important constitutional act of the Soviet Republic, i.e. the Declaration of Rights of the Working and Exploited People. Being written by V. I. Lenin, the Declaration was adopted on January 3, 1918, at the VTSIK meeting, and further on January 12, 1918 by the Third All-Russian Congress of Soviets. The Declaration proclaimed Russia as «the Republic of the Soviets of Workers’, Soldiers’ and Peasants’ Deputies» being vested with the entirety of power in the country (both centrally and locally), and established the federation of the Soviet national republics «based on the voluntary union of free nations» as a model of the Soviet Republic state structure. The Declaration specifically stated that

the lasting and strong union of all working peoples of Russia could be based solely on freedom and good will, that is why the Third Congress of Soviets is limited to the establishment of the basics of the federation of the Soviet republics of Russia entitling workers and peasants of each people to convene their own authorized Soviet congress and independently decide whether they wish to participate in the federal government and other Soviet agencies and on what grounds.

The announcement of priority to self-determination created only a legal framework to modify the form of the former unitary state and to transform it into a federation. The first constitutional acts made by the Soviet State just outlined its future federative structure entitling each people to determine on their own the forms of their participation in the federal government and other federal bodies. There was no establishment of any governmental formations or territorial entities having specific legal status.

Special emphasis will be put on the expressly stated point of view of the Third All-Russian Congress. It was limited to the establishment of declarative basics of the state federative structure entitling each people to determine on their own «the basics of their participation in the federal government and other federal bodies». The Congress’ Resolution On Federal Institutions of the Russian Republic left these issues open until the VTSIK and local authorities of republics and regions to be established on the territory of Russia had reached an agreement.

Moreover, the Congress failed to fix the ways of participation of the federation entities in the federal government. However, the Third All-Russian Congress admitted the necessity to delimit authority between federal bodies and the bodies of the federation entities. For instance, Clause 6 of the Resolution of the Congress vested central authorities with power «to the events» to be held only at national level subject to mandatory respect for rights of the federation entities. Local issues were within the exclusive jurisdiction of local Soviets whereas higher Soviets were granted the right to govern relationship between the local ones and solve any disputes that could arise.

The preparation and enactment of the most important constitutional laws resulted in forming the concept of a new proletarian state. This concept was based on the Marxist idea that the state would inevitably wither away during its transition to communism, together with the Bolsheviks’ idea of the formation of the proletariat dictatorship state which is transitional by nature and designed to overcome the resistance of the bourgeoisie and build communism in the future. The idea of a proletariat dictatorship state was fixed in the form of a Sovi-
Fondamenti et republic. The Bolsheviks thought that the system of Soviets as independent bodies of peoples’ self-government would create a new type of state being able to overcome alienation existing between people and power. As L. V. Kabanova rightly states, the system of Soviets was viewed by the Bolsheviks as an alternative to the “bourgeois” system of separation of powers, meaning to constitute a brand new vehicle of democracy22.

Therefore, all the foregoing gave rise to the controversy on which the Soviet constitutionalism was developed. Soviets as direct democracy bodies and a brand new vehicle of power started forming in the first months of the October Revolution within the proletariat dictatorship state. They were established on a social but democratic and multi-party basis. At a local level power was granted to urban and rural Soviets as well as the Congresses of Soviets held at regional or district levels. The permanent working bodies formed by such congresses were represented by various executive committees, councils of people’s commissars, etc.

Thus, the Soviets of all levels became the bodies controlling and administering all fields of social, political and economic life in situ. They were granted the variety of legislative and executive powers. But the forms of revolutionary creativity seemed rather bizarre. The literal understanding of the Bolsheviks’ slogan “All power to the Soviets!” lead to various local autonomies established by working people, which, in its turn, resulted in the establishment of lots of independent self-governing territories on which local “sovvnarkoms”, “labour communities”, and other formations considered themselves entitled to independently determine whether they should comply with decrees and other laws enacted by central authorities23.

As N.V. Krylenko commented, the point of view of local authorities was as follows: “We are power in situ, we accept the decrees of central authorities only to the extent they are acceptable for us…”24. Local Soviets were engaged in their own law making activities trying to adapt their laws to local environment. For example, the Tverskaya Republic adopted the law on earth, which was based on the respective Decree of the Second Congress of Soviets, but at the same time had considerably modified the main provisions of the former. Sometimes the Soviets used to take so much authority that could amount to impinging on the domain of national interests25. In strict compliance with the indicated post-revolutionary practices, the Regional Assembly of the Soviets of Moscow Region established their own Council of People’s Commissars located in Moscow. As soon as the Soviet Government moved to Moscow, it turned out that there were two Sovnarkoms: the All-Russian Council of People’s Commissars, and regional Council of People’s Commissars. The regional Soviet body immediately started competition with the All-Russian agency. The RKP(b) Committee considered such situation improper, and on March 30, 1918 the Central Committee of the Party decided to dissolve the Moscow Regional Sovnarkom and to start drafting a constitution26.

In spring 1918, the beginning process of power decentralization made the Bolsheviks address a range of crucial concerns. The Bolsheviks had to curb the collapse of the state, rescue the state from the chaos of devastation and civil war, maintain order and discipline. Therefore, it became impossible for them to combine the declared
power of the working people and necessity to maintain the state. Before the spring of 1918, the key task of the Bolsheviks was to stoke the fire of the World Revolution, but then they faced the challenge of clinging to power and stabilizing the situation in the country. It was the time called "a historic turning point" by academic scholars, which had material effect on many future phenomena of political life, state structure, and ways of policy-making. The civil war and foreign intervention entailed the transition of the Soviet Government first to limitations on democracy, and then to the policy of terror against counter-revolutionary organizations and their followers, finally ending up with mass terror launched against dissidents.

We cannot but share the evaluation of English researcher S. A. Smith who discovered the reason for «depletion of democracy in the political life of the Soviet State» in the first post-revolutionary years and the objective conditions of its existence. In the situation where numerous local Soviets would not comply with the regulations of higher authorities or follow them partially, depending on whether such regulations were beneficial for them, the Bolsheviks launched the centralization of power starting from local bodies to central executive authorities, and what is more important, from the Soviets of all levels to the Party of Bolsheviks.

The regulation of federative relations and their legal determination in the forms consistent with the centralization in progress required the adoption of a formal constitution. The period during which the Constitution of 1918 was prepared and adopted, gave rise to a new phenomenon, i.e. the conversion of the proletariat dictatorship into the party dictatorship. It is necessary to admit the reasonableness of conclusions made by L. V. Kabanova who wrote that the party had become «the informal organization forming the Soviet Government and making informal appointments to its supreme agencies», while «the party managing bodies were gradually transformed into the informal government of Russia».

It was the Communist Party, which posed the question of the Constitution formation and inspired its development and adoption. However, in the course of the preparation of the first Soviet Constitution there was no debate on constitutional justice since the very idea of it was deemed unacceptable. In January 1918, the people’s commissar of justice, P. I. Stuchka in his article Old New Court wrote that in reforming the former judicial system «we don’t need a sole law interpreter, and at any rate we will object to "a US type court" authorized to make judgments even on the constitutionality of legislative acts».

The first Soviet Constitution was adopted on July 10, 1918 at the Fifth All-Russian Congress of Soviets. It stipulated the principle of voluntary union of entities and widened the list of such entities. Article 11 set forth:

Any regional councils with specific way of life and ethnicity composition may unite in autonomous regional unions which likewise any other possible regional associations shall be governed by regional Congresses of Soviets and their relevant executive bodies. These autonomous regional unions shall be incorporated in the Russian Socialist Federative Soviet Republic on a federative basis.
The Constitution stipulated the entirety of power granted to the Soviets as a strictly centralized system where a higher body was entitled to cancel any decision made by a subordinate body, and subject to Article 50, the All-Russian Congress of Soviets and the VTSIK had right to handle any issues at their sole discretion. The first Soviet Constitution was not designed for governing the relations existing between central and local authorities. The vague language of certain most important and basic provisions suggested it is freely interpreted in future.

In addition, due to the entirety of power granted to the Soviets, the Constitution of 1918 did not admit that the constitutionality of acts and regulations could be subject to judicial supervision. Pursuant to the Constitution, constitutional control should be exercised by the All-Russian Congress of Soviets and the VTSIK, and subsequently, to certain extent, by the VTSIK Bureau.

In the situation where the State basic law had clearly determined legal and political nature, conflict of law arising in the course of governmental activities had material effect on the role and objectives of constitutional control. As it was stated above, the Constitution of the RSFSR entitled all supreme governmental authorities to exercise constitutional control. For this purpose, the VTSIK and its Bureau were granted right to cancel any acts running contrary to the Constitution of 1918, as well as to construe the Constitution per se. The Sovnarkom of the RSFSR was also in charge of preventing any constitutional violations.34

The Constitution neither provided for the principles determining the relations between the Russian Federation and its autonomies, nor specified the legal nature of such relations. For this reason, in practice these relations were governed within constitutional control procedures exercised by supreme governmental authorities. However, there was no clearly determined legislative regulation of constitutional control. The basic law did not contain any provisions for its procedure either.

The whole situation is reasonably explained by M.A. Reisner who emphasized that the Soviet power «treated the basic law or constitution differently than the constitution with clear legal nature is normally treated. If the principal object of the latter is to construe and apply fixed law with necessity to adapt any possible and even unpredictable cases to it, our constitution is primarily targeted at criticizing and improving constitutional law on a permanent basis».

As M.A. Reisner put it, «that is why where we say that our constitution is based on the idea of goal and appropriateness, we mean that our basic law does not embody any immovable or dead justice, it is just a draft, or the plan of building up the society. And such plan cannot be flawless». «All the foregoing, as professor Reisner states, leads us to the attitude to the basic law or constitution differing from the constitution with clear legal nature. If the principal object of the latter is to construe and apply fixed law with necessity to adapt any possible and even unpredictable cases to it, our constitution is primarily targeted at criticizing and improving constitutional law on a permanent basis»35.

It is noteworthy that such doctrine of constitutionalism did not view the basic law of the State as a basis for legality, it deemed such law as a reliable tool for revolutionary appropriateness. The first Soviet Constitution created legal framework for the exist-
ence and further evolvement of the unique political phenomenon, i.e. "democracy within dictatorship". According to Robert Wesson, the essence of this «remarkable Russian invention» is that the variety of democratic forms in Russia were frequently used to strengthen the authoritarian state.

In strict compliance with the provisions of the Russian Constitution of 1918, in the Soviet State constitutional control was exercised by supreme governmental authorities, the VTSIK and SNK RSFSR (the Council of Peoples’ Commissars). In practice, the VTSIK Bureau had right to cancel any acts inconsistent with the Constitution. However, the Council of Peoples’ Commissars being involved in basic law making activities in early Twenties did great deal of work connected with interpreting the basic law and preventing any constitutional violations.

Unseparated powers and lack of coordination of actions taken by the Soviet supreme authorities used to give rise to conflicts in governmental activities in terms of constitutional provisions.

The VTSIK communist members who participated in the 8th session in March 1921, made different evaluations of the role of the Soviet supreme representative and executive authorities. For instance, L.M. Kaganovich acting as a member of the Turkestan Bureau of the Central Committee of the All-Russian Communist Party (the Bolsheviks) (the VKP(b)), criticized the VTSIK Bureau for lack of activities and defined the Sovnarkom «as a body directly involved in activities», while the VTSIK Bureau was termed as «a controlling body». It means that instead of the legislative power of the VTSIK, the controlling and administering functions of this body were recognized its basic powers. To our mind, the evaluation made by M.I. Kalinin is even of more interest. Judging by practice, he stated that «we have three highest legislative bodies, and their activities are so closely interlaced, that no one will be able to determine which of these bodies prevails. These three bodies are the Council of Peoples’ Commissars, the Party Central Committee and the VTSIK Bureau». This statement illustrates that the actual political life in the Soviet Russia was far from complying with the provisions contained in the basic law of the State. Moreover, the fact that the management body of the party was mentioned as a policy-making agency under the Constitution of 1918, allows us to determine the actual role of the party in making major decisions in the country. It is true, that by 1921, the Party had been able to gain control of legislative and any other activities of the Soviet highest authorities and acquire the exclusive right to all major political decisions. For example, the shift from "military communism" to "new economic policy" was attributed to the resolution taken at the 10th Congress of VKP (b) in 1921 subject to no involvement of the Congress of Soviets.

The adoption of the first Soviet Constitution resulted in the rapid process of creating autonomies, forming the system of federative relations with independent Soviet republics, laying the foundations for their association within the new Soviet State. Promptly upon the adoption of the RSFSR Constitution of 1918, as a measure of protection of the basic law of the State, the VTSIK in its instruction of July 23, 1918 addressed to the Baku Council demanded that the Council «should strictly observe resolutions of the All-Russian
One should share the opinion expressed by A.A. Plotnikov to the effect that though the Constitution of 1918 established firm foundations for regulating ethnic relations having provided for the priority of nations to self-determination, at the same time it left the question what form of national and state structure will it take actually open. Contrary to the issue of separation of powers between central and local authorities, the question of a special federal mechanism was not reflected. The scholar states that the basic points of view on this question were outlined in the course of the Constitution formation. However, debate on national and state structure had been in progress until the USSR Constitution of 1924 was adopted. A.A. Plotnikov places special emphasis on the fact that in discussing the form of the national unity in the course of working at the USSR Constitution of 1924 there were attempts to reject the strict unification of nationhood.

But, as A.A. Plotnikov claims, «in the clashes between political and ideological priorities and real interests of peoples, the former won». The researcher believes that it could not have been otherwise hence the party was able to grasp power only within strictly unified party and governmental system. All the foregoing lead to artificial control of national movements by tough administrative measures. Time has shown that whenever the system of public administration became weak, these movements appeared again together with lots of hard and complicated problems.

The adoption and implementation in practice of the USSR Constitution of 1924 required further development of the concept of constitutional control in the Soviet State. The tendency in strengthening union basics and limiting the independence of republics is traced both in the Constitution of 1918 and the Constitution of 1924. It becomes clear in investigating the institutions of separation of powers of the Union and Soviet republics, analyzing the balance of All-Union and republican legislations which became subject to constitutional control in future.

In compliance with the provisions contained in the 1924 Constitution, at a federative level the Soviet Union established the complicated system of constitutional control bodies. Firstly, they include the Congress of Soviets of the USSR and the Central Executive Committee of the USSR (the USSR TSIK), which were entitled to exercise the highest constitutional control. Secondly, the Bureau of the USSR TSIK which exercised main constitutional control in practice. Thirdly, the Council of the Peoples’ Commissars of the USSR (the SNK of the USSR) acting within its broad legislative competence. And, finally, the Supreme Court of the USSR as a body established within the USSR TSIK and designed for «supporting revolutionary legality on the territory of the USSR».

Such sophisticated structure of constitutional control was targeted at two crucial tasks, i.e. to strengthen the federative model and form the unified legal system of the Soviet Union. But even following the USSR formation and the USSR Constitution adoption the Soviet State failed to develop clear legislative basis for constitutional control. Thus, in spite of the fact that the Council of the Peoples’ Commissars of the USSR was the executive and legislative body
of the Central Executive Committee of the USSR under the 1924 USSR Constitution, at the same time it had right to issue decrees and regulations binding upon all the territory of the USSR, subject to Article 38 of the Constitution.

Moreover, pursuant to Article 39, the SNK of the USSR was entitled to consider decrees and resolutions to be issued both by individual peoples' commissars of the USSR and central executive committees of the Soviet republics. According to clause "b" of Article 3 of Regulations on the Council of the Peoples' Commissars of the USSR, the SNK of the USSR was vested with right to consider and approve decrees and resolutions at the all-union level (within the limits provided by the Constitution of the USSR). Since that moment this body became engaged in intense law making activities. In addition, subject to clause "c" of the same article of the Regulations, all draft decrees and resolutions to be approved by the USSR TSIK and its Bureau were subject to preliminary consideration of the SNK.

A thorough review of legislative powers delegated to the SNK of the USSR permitted O.D. Maksimova to come to the conclusion that during the period from 1922 to 1929 this governmental agency had been engaged predominantly in law making activities developing all major acts which served foundations for the strategy of the Soviet State. At the same time day-to-day management of national economy was carried out by the Council of Labor and Defense. Intensive law making activities of the SNK of the USSR entailed the participation of this body in exercising constitutional control by means of taking resolutions on unconstitutionality of laws provided to it for consideration.

The most significant difference of the new constitutional control system was that during the period from 1923 to 1933 the Supreme Court of the USSR acted as a mechanism for constitutional control. The first Regulations on the Supreme Court of the USSR approved by the TSIK of the USSR on November 23, 1923, indicated the competence of the Supreme Court of the USSR as to general supervision of legality, judicial review and direct performance of judicial functions. The competence was clarified in the Instruction to the Supreme Court of the USSR adopted by the Central Executive Committee of the USSR, and further in the new Regulations on the Supreme Court of the USSR adopted on July 24, 1929.

Subject to the Regulations on the Supreme Court of the USSR approved by the TSIK of the USSR on November 23, 1923, the Court started performing functions of constitutional review of the laws made by the Soviet republics and central governmental authorities. Within constitutional review the Supreme Court of the USSR made resolutions upon request of the USSR TSIK Bureau on constitutionality of resolutions made by the TSIK and SNK of the Soviet republics, and the SNK of the USSR. In addition, the Supreme Court of the USSR was vested with right to suspend or cancel the resolutions of central authorities due to their unconstitutionality.

Nevertheless the Supreme Court had no right to determine the constitutionality of any acts made by the All-USSR Congress of Soviets, the USSR TSIK and its Bureau. One of the first questions the Supreme Court of the USSR faced was to construe legality from prospective of the Constitution. Moreover, it was necessary to fix the limits of constitutional review by answering the
question, whether the Supreme Court of the USSR should prevent solely direct violations of the Constitution, or the breach of All-Union law as well? The Supreme Court of the USSR in its jurisprudence considered non-compliance with law as violation of the Constitution.

As the research conducted by V.K. Dyablo shows, in its performance of constitutional review, the Supreme Court faced constitutional violations in the activities of both central and local authorities. These violations included, first and foremost, changes in the structure of the highest management bodies of the Soviet republics, and amendments made to the texts of the constitutions of these republics not provided by the USSR Constitution. The most frequent ones were

the violations of competence of All-Union bodies by the authorities of the Soviet republics, expansion of competence of the USSR bodies at the expense of the Soviet republican bodies, the breach of competence of one All-Union narkomats (ministries) by the others, etc. Also there were the violations of the constitutional requirement to coordinate laws of the USSR and the Soviet republics, breach of procedure for issuing legal rules and regulations of ministries both at All-Union and republican levels53.

Subject to the monograph written by Kh. Shein, in 1924 the Supreme Court of the USSR received 2197 rules and regulations to be examined for constitutionality. In 1928 the Supreme Court of the USSR considered already 6272 laws and evaluated their constitutionality. The number of issues relating to constitutional review that had been considered at its sessions increased with the years54.

On July 24, 1929 the TSIK and SNK of the USSR approved new Regulations on the Supreme Court of the USSR. Subject to these Regulations, the Supreme Court had right to conduct constitutional review, to provide the Bureau of the USSR TSIK with its resolutions on constitutionality of rules and regulations of the TSIKs and the Bureaus of the Soviet republics, together with the rules and regulations issued by the SNK, the USSR and the Council of Labor and Defense (the CLD). These resolutions were made by the court only upon request of the Bureau of the USSR TSIK. At its own discretion, as well as at the discretion of the Attorney-General of the Supreme Court of the USSR and the Bureaus of the TSIK of the Soviet republics, the Supreme Court was able to make recommendations to the Bureau of the USSR TSIK to suspend and cancel the...
regulations of the TSIKs of the Soviet republics and their Bureaus for the reason of their non-compliance with the USSR Constitution and All-Union legislation.

In spite of the fact that practices involving the Supreme Court of the USSR in Soviet constitutional control proved rather efficient, they didn’t exist long. According to the Regulations On Establishment of General Prosecutor Office of the USSR by the TSIK and SNK of the USSR dated July 20, 1933, the Supreme Court was deprived from constitutional review functions which were transmitted to the prosecutor agencies.

Early Thirties witnessed fundamental changes in Soviet legislature caused by Stalin’s victory in dramatic inter-party wars during the period of transition to total collectivization and forced industrialization of national economy. At that time the leading role in law making passed to the party vehicles including the practice of decision making in the form of joint resolutions taken by both party and Soviet bodies. Ordinary practices also involved rules and regulations issued by the party independently, with no participation of the Soviet bodies what constitutes direct violation of constitutional provisions. Stalin, possessing broad personal power, did not need any constitutional control.

The USSR Constitution of 1936 fixed the prevailing nature of All-Union legislation in a more detailed way as compared with the basic law of 1924. The Stalin Constitution did not contain any provisions entitling republican bodies to appeal against the acts issued by the All-Union authorities as it was the case in the Constitution of 1924. The basic law of 1936 contained a general and vague definition of constitutional control. The Presidium of the Supreme Court of the USSR acquired right to construe laws and repeal laws made by the All-Union and republican governments (the Council of Ministers).

In practice, the tradition of preliminary constitutional control was established. Thus, in the Soviet State constitutional control had existed for many years in a formal imitation form of no actual importance. Concurrently the Soviet legal doctrine developed a negative attitude towards the very institution of constitutional control.

Therefore, the Soviet period of the Russian statehood gave rise to two models of constitutional control having such common characteristics as the performance of constitutional control by supreme governmental authorities with no clear separation of constitutional control from any other functions of such governmental authorities, including, inter alia, law making activities and support for legality, together with no institution protecting constitutional rights and freedoms of citizens within the constitutional control system.

The main problem of post-Soviet constitutionalism in the context of analyzing previous constitutional experience is the balance between initial constitutional principles and their future implementation in legislature, jurisprudence and law application practices in general. It can be the key issue of recent numerous academic debate discussing the effect of domestic political traditions according to which political and legal novelties are reflected in the basic law.

Even in the course of changes in Russian constitutional paradigm following the adoption of the 1993 Constitution you can see the reproduction of certain sustainable models in Russian political tradition, such as clearly indicated connection between
Fondamenti

domestic constitutionalism and necessity to modernize the country. One can recall the development of adoption of constitutions during the periods of new economic policy and Stalin industrialization.

Therefore, the retrospective analysis of the formation and evolution of Russian constitutionalism will allow to avoid making mistakes in the situation where in our country the place and role of constitutional control in a democratic country are reconsidered, as well as to outline the ways of new public and state development.

4. The Constitution of the RSFSR of 1918, in Collection of Instructions and Decrees of the Workers and Peasants Government of the RSFSR (the SU RSFSR), 1918, n. 51, p. 582.
10. T.E. Novitskaya, Formation of Sovi-
Ampleeva, Karaulova

Santa Barbara, University of California Press, 1972, p. 206.


At that time he headed the VTSIK Bureau.


*Decrees of the Soviet Power*, cit., Volume 3 Doc. 44.


Ibidem.

Ivi, p. 157.

*The Basic Law (Constitution) of the Union of Soviet Socialist Republics*, Moscow, s.e., 1924.

Ibidem.

See: «Tribune of the TSIK, SNK, and STO», n. 10, 1923, p. 298. Thus, to perform legislative competence the SNK of the USSR established special commissions involved in lawmaking activities. From 1923 to 1926 within Sovnarkom the Commission of Legislative Proposals worked, then from 1926 to 1930 the Preparation Commission worked. See: ivi, pp. 123-124.


Thus, on June 23, 1925, the meeting of the SNK of the USSR passed the resolution on the unconstitutionality of the range of laws issued by the Transcaucasia Soviet Federative Socialist Republic. See: ivi, pp. 123-124.

«Tribune of the TSIK, SNK, and STO», n. 10, 1923, p. 311.

«Collection of the USSR Legislation» (the CUL), n. 2, 1924, p. 25; the CUL, n. 50, 1929, p. 445.

«Tribune of the TSIK, SNK, and STO», n. 10, 1923, p. 311.


Kh. Shtein, *The First Years of Activities of the Supreme Court of the USSR (1924-1929)*, in 40th Anniversary of the Supreme Court, Moscow, s.e., 1965, p. 71.

Nasyrova, *Constitutional Control*, cit., p. 27.

The CUL, n. 40, 1933, p. 239.