

**Development of the Constitution Between China and the  
Visegrad States During the Communist Period:  
A Comparative Perspective**

PhD Dissertation

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(Completed on: 28 September 2018)

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Szeged, 2018.

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## Acknowledgement

It is my great honor to express my thanks for all of the kindness people who I met in Europe, particularly in Hungary and my home country, China during the three and half years PhD program.

I would like to express my special appreciation and thanks to my PhD Supervisor, Dr. Norbert Varga. I would like to thank you for encouraging my research and for allowing me to do the research which I really want to study. Your valuable advice on both my future career as well as on my personal life have been inspired me so much.

I would like to thank you my dear colleagues from Hungary. Professor Dr. Maria Homoki-Nagy, Professor Krisztina Karsai, Dr. habil. Peter Mezei, Dr. habil. Tamas Antal, Dr. Zsuzsanna Fejes, Dr. Mate Petervari, and Santiago Vallejo Galárraga and his family. Thank you, Professor Dr. Attila Bado, Professor Dr. Ivan Halasz and Dr. Gyorgy Kepes, for your kindness advice. Dr. Zsuzsanna Peres and Dr. Gergely Salat helping me a lot on my dissertation, thank you so much for your brilliant opinions.

My learned colleagues from Poland, Dr. Wladyslaw Peksa, Dr. Maciej Mikula and Professor Dr. Ralph Schattkowsky, thank you so much for your opinions on my dissertation and for encouraging me on my research.

Dear knowledgeable colleague Professor Dr. Tomas Gabris from Slovakia, thank you for your helping on my dissertation of the Czechoslovakia part.

In China, Professor Qin Jie and my master program supervisor Professor Zhang Yonghe also helped me a lot for my PhD application.

Last but not least, a special thanks for my family, my parents always encourage me chasing my dream, even that means we can't meet often. They also taught me the importance of responsibility.

This work is sponsored by the Stipendium Hungaricum Scholarship Program and China Scholarship Council, without their generous support, this PhD project can't be completed.

# **Development of the Constitution Between China and the Visegrad States During the Communist Period:**

## **A Comparative Perspective**

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### ***Abstract:***

*Constitutional law, or fundamental law in some countries, usually regulates the ultimate rules and general principles in each state. Even in socialist states, followed the Soviet model, fundamental rights of citizens, the competences of each constitutional institutes were regulated in the Constitution and adopted by the highest organ of state power in the socialist states usually.*

*In this PhD dissertation, the author payed his focus on the development of Constitution between China and Visegrad states, that is Hungary, Czech Republic, Slovakia and Poland. It is a legal history study, the author looked back to the communist period, examined the establishment of the communist regime in China and Visegrad states. It is easy to notice that China and the Visegrad countries shared a common history of socialist experiences and social system since the late 1940s. However, the history of communist party in each state which will be presented in this dissertation is much longer than the history of these socialist states. Therefore, after the introduction part, the author presents a detailed introduction of the communist party in each state and focuses on China and Hungary, since at that moment, the communist party had a very valuable experience of the soviet republic, even the provisional constitutional documents had been introduced to public. Even though both constitutional documents never entered into force.*

*The author spent time and space on the dissertation of the first communist Constitution in each state, the structure and important provisions in each Constitution were examined. Meanwhile, the constitution-making process also introduced by the author, in the last part, the author employed a comparative analysis method.*

*During the reform period, socialist system was established in each state. The author examined the important constitutional amendments in each state. Since it is a legal study, even though the famous Hungarian 1956 Revolution, Poznan protest in the same year in Poland, Prague Spring in former Czechoslovakia and Cultural Revolution happened in the reform period, the author exercised restraint by not spending much time to describe and analyze these significant events. The main focus always is on constitutional development, by examining the changes of concrete provisions in different*

*version of Constitution in each state. In this section, a comparative work on the highest organ of state power in each State is presented.*

*Transform period is the next stage. The crucial point finally came in 1989, after the Revolutions of 1989, Visegrad States abandoned the socialist system and it immediately reflects on the Constitution. The socialist system has been removed from the Constitution, a western style Constitution had been established in a short period. The Revolutions of 1989 also effected China, which led to the Tiananmen incident. However, the Communist Party of China insisted the socialist system in the Constitution, and some important economic reforms have been made, and ensured in the Constitution by adopting a constitutional amendment. The Constitution should not only exist on paper, it should be followed by everyone and every institution in the state. Therefore, a constitutional review system has been established in many countries. In this section, the author also gave a comparative analysis on this system.*

*This dissertation also conducted a comparative constitutional law approach. Three methods are employed by the author. First of all, as the title may imply, the author employed the historical method. The author reviewed the history of constitutional development in chronological order in each state. What is more, how the historical conditions influenced the Constitution-making. Secondly, contextualism is used in this research. The author compared the context in the Constitution in each state. Thirdly, as most comparative scholars do, author employed functionalism in this research. The development of socialist Constitution in each state are different, especially between China and Visegrad states, which considered as a whole group. The most significant example is the Revolutions of 1989. It affected every socialist state, included China and Visegrad states. However, as we all know later, Visegrad states abandoned their socialist Constitution, and Chinese socialist Constitution continue valid, even some crucial amendments had been adopted.*

*In conclusion, as we realize, currently, China and Visegrad states have different roads to develop, at the last part of the dissertation, the author also gives three reasons for the different choice, first is the social economic condition, second is the culture and the last is the relationship with Soviet Union. It is hard to judge the pros and cons of the road that taken by China and Visegrad states, and declare that which one is the best. However, there is still some conclusions could be made. Firstly, a prosperous country can't exist without a Constitution. Secondly, a Constitution must be respect and fully enforced, a constitutional review system should be established. Last but not least, there are some common grounds in the Constitution around the world. However, it is harder to say that there is a model Constitution which every country can be followed, the Constitution in each state should reflect its own condition.*

## Chapter One: Introduction

### 1. Brief Introduction of the Comparative Constitutional Law

It is easy to notice that this is a research paper on comparative law, more specific, comparative constitutional law. In this part, brief literature review of comparative constitutional law shall be presented. Specifically, the author will introduce the history of comparative constitutional law, the concept of comparative constitutional law and why should we compare the constitutional law.

#### 1.1 History of the Comparative Constitutional Law

In Michel Rosenfeld and Andras Sajo's edited book, it described comparative constitutional law as the subfield of comparative law and even only rates a small proportion in the field of comparative law. Comparative law, in an academic sense, appeared in 1900. However, the discipline of comparative constitutional law established much later, since in the very beginning, the comparative study is much more focused on private law field. It is believed that the existence of comparative constitutional law was an academic discipline after the Second World War in Europe. In United States, the Supreme Court also played an important role during the establishment of comparative constitutional law. Later, this discipline is gradually integrated into the legal education system in US and Europe.<sup>1</sup>

In Ran Hirschl's introduction, several books on comparative constitutional law were published in the late of 19th century in the United States. However, at that time, the narrative of this topic was given only in the political domain.<sup>2</sup> Meanwhile, shared the similar idea with Rosenfeld and Sajo, Hirschl also agreed that after the Second World War, especially the establishment of communist regime, which brought different type of Constitution in the world. A comparative constitutional inquiry appeared and it finally revived in the middle of 1980s.<sup>3</sup>

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<sup>1</sup> Michel ROSENFELD and Andras SAJO, 'Introduction' in Michel ROSENFELD and Andras SAJO (eds), *The Oxford Handbook of Comparative Constitution Law* (Oxford University Press 2012).

<sup>2</sup> In general, most scholars agree that the discipline of comparative constitutional law was established later than 1900, since the widely recognized masterpiece of state law was published in 1900 by Georg Jellinek. Georg JELLINEK, *Allgemeine Staatslehre*, the digital version is available <<https://archive.org/details/allgemeinestaat00jellgoog>>, accessed 5 September 2018.

<sup>3</sup> Ran HIRSCHL, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (1st edn,

In Dixon and Ginsburg's edited handbook, it clearly introduced the development of comparative constitutional law. Comparative constitutional studies could be traced back to Aristotle's Politics. However, as a discipline in education system, especially in the United States, it suddenly became a heated topic in the early of 1950s, late the development in social science and newly constitutional design in several states greatly enriched the studies of comparative constitutional law.<sup>4</sup>

Frankenberg argued that the studies of comparative constitutional law may trace back to Aristotle's comparison work, Politics. Nevertheless, comparative constitutional law as an academic discipline was still not established, and it remained as a department of comparative law. Even the discipline standard of the comparative constitutional law has not been established yet, recently development of this topic is more and more notable.<sup>5</sup>

In conclusion, the studies of comparative constitutional law have a long history, at least it could be traced back to the ancient Greece. Aristotle's comparative works, especially his book politics presented different constitutional systems in different political systems. Notwithstanding, most scholars agreed that the comparative law as an academic discipline appeared in the beginning of 20th century<sup>6</sup> and it mainly focused on the private law. In 1940s and 1950s, comparative constitutional law as a discipline was recognized in Europe and United States, in 1950s, numerous comparative constitutional law courses were provided in the law school in US.<sup>7</sup> Until now, this subject is still developing and becoming more and more popular.

## **1.2 Concept of the Comparative Constitutional Law**

Relatively, comparative constitutional law is still a very new subject even in the legal field.<sup>8</sup> What is the meaning of comparative constitutional law and how is the scope of

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Oxford University Press 2014).

<sup>4</sup> Rosalind DIXON and Tom GINSBURG, 'Introduction' in Rosalind DIXON and Tom GINSBURG (eds), *Comparative Constitutional Law* (Edward Elgar Publishing Ltd. 2011).

<sup>5</sup> Grunter FRANKENBERG, 'Comparative Constitutional Law' in Mauro BUSSANI and Ugo MATTEI (eds), *The Cambridge Companion to Comparative Law* (Cambridge University Press 2012).

<sup>6</sup> A Hungarian legal scholar, Prof. Elemér Balogh, even contributed his knowledge to the comparative law. Ivan HALASZ, 'The Institutional Framework and Methods of the Implementation of Soviet Legal Ideas in the Czechoslovakia and Hungary during Stalinism' (2015) Vol. 6, No. 2, *Journal on European History of Law*.

<sup>7</sup> Ibid, Rosalind DIXON and Tom GINSBURG.

<sup>8</sup> As introduced above, most scholars agreed that comparative constitutional law as an academic discipline appeared in the late of 1940s and 1950s.

this subject is still under debate.

It is difficult to find a simple definition of comparative constitutional law. However, as the name of topic implies, it is a subfield of comparative law, and specifically related to constitutional law. In Meuwese and Versteeg's article, it refers the comparative constitutional law as the "comparative study of constitutional law" and the new trend of the development of comparative constitutional law is so called "quantitative constitutional comparison", which by employing statistical method to numerous constitutional documents.<sup>9</sup> In Harding and Leyland's article, it emphasized that "Comparative constitutional law is the branch of comparative law that studies constitutions as legal phenomena..." What's more, the authors also introduced comparative politics, since there is no clear boundary between these two subjects. In their opinion, the main scopes of comparative constitutional law are constitution-making, constitutional reform and constitutional adjudication.<sup>10</sup> Frankenberg argued that comparative constitutional law is still not form a discipline, it "oscillated" among several disciplines, like political science, philosophy and comparative law. And he also agreed that comparative constitutional law is a subfield of comparative law, rather than an independent discipline.<sup>11</sup> In Dixon and Ginsburg's introduction to their handbook of comparative constitutional law, several phrases are employed by authors to describe this subject, "interdisciplinary interest", "institutionalized". Comparative constitutional study is a maturing field, as Dixon and Ginsburg's introduction mentioned. Therefore, it is a difficult to give a clear and comprehensive concept.

Notwithstanding, as most scholars agreed that comparative constitutional law is the subfield of comparative law, and in Zweigert and Kotz's book, a simple enough concept has been given. In a more internationalism sense, "Comparative law is the comparison

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<sup>9</sup> Anne MEUWESE and Mila VERSTEEG 'Quantitative Methods for Comparative Constitutional Law' in Maurice ADAMS and Jacco BOMHOFF (eds), *Practice and Theory in Comparative Law* (Cambridge University Press 2012).

<sup>10</sup> Andrew HARDING and Peter LEYLAND 'Comparative Law in Constitutional Contexts' in Esin ORUCU and David NELKEN (eds), *Comparative Law: A handbook* (Hart Publishing 2007).

<sup>11</sup> Grunter FRANKENBERG, 'Comparative Constitutional Law' in Mauro BUSSANI and Ugo MATTEI (eds), *The Cambridge Companion to Comparative Law* (Cambridge University Press 2012).

of the different legal systems of the world.”<sup>12</sup> Therefore, it may be possible to consider that comparative constitutional law is the comparison of the constitution in different legal systems of the world.

### **1.3 Why We Need to Compare the Constitutional Law**

It is worth to inquire why should we compare the constitutional law, what is the meaning to compare the constitution in different country. This is the question which constitutional comparatist can't avoid.

In Dorsen, Rosenfeld, Sajo and Baer's book, they gave us reasons why should we compare constitutional law. Firstly, our curiosity pushes us to compare, and recently, with the development of communication, it is much easier to access the constitutional materials in different countries. Secondly, the world has become “smaller”, Constitutions in different states are much more interdependent, and Constitution may cross the national boundaries, that means there are more similarities among the Constitutions in each state. Meanwhile, each state has its own social condition and history background, even the Constitution may beyond the boundaries, there are still some unique characters in each Constitution. Thirdly, more and more Constitutional materials are available, since almost every country has its own Constitution.<sup>13</sup> Basu provides a new perspective for this question. Referring to the domestic sphere, comparing the former Constitutions is also very important for the Constitution-making.<sup>14</sup>

Bring this question to the author's PhD research, which is to compare the development of Constitution between China and Visegrad states during the communist period on the text level, since it will much more complicated to compare the text in the Constitution but also in the real life.

Why should we compare the Constitutional development in these countries? In order to answer this question, the author did a quick research to figure out is there any studies on this topic, the result is somehow shocking. There is no single research work that only

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<sup>12</sup> Konrad ZWEIGERT and Hein KOTZ, *Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Oxford University Press 1998).

<sup>13</sup> Norman DORSEN et al., *Comparative Constitutionalism: Cases and Materials* (2nd edn, West, 2010).

<sup>14</sup> Durga Das BASU, *Comparative Constitutional Law* (3rd edn, LexisNexis, 2014).

focuses on the constitutional development between China and Visegrad states. Even the monograph of Constitution of People's Republic of China to foreigners also rare, the most notable work recently is Zhang's 'The Constitution of China: A Contextual Analysis'. Therefore, this work will also offer a comprehensive picture of the Chinese Constitutional development in the text level. And it implies that in reality, the Constitutional practice in China may operate in a different direction. Readers of this work need to have clear awareness that from the ancient time until now, the role of law in practice in most time is treated as the tool of the leadership.<sup>15</sup> However, it is not means this atypical Western legal system is inferior to the Western one. In reality, it is functioned well in China.

Why there is little comparative constitutional law scholarship in this area? The following facts must be considered. Firstly, As Dixon and Ginsburg mentioned in their edited handbook, "...90% of comparative work in English language covers the same ten countries..."<sup>16</sup> It is true that most research works in comparative field are focus on "important country". Secondly, Countries in Visegrad region have their own language. For Chinese, Hungarian, Czech, Slovakia and Polish are not familiar at all. The same situation for scholars who live in Visegrad states, Chinese is also a very exotic language. What make the situation even worse is these languages are not easy to learn, the language difficulty ranking which provided by Foreign Service Institute made five categories for each language, Chinese belongs to Category Five, languages in Visegrad states are ranked in Category Four.<sup>17</sup> The distance between China and Visegrad states may intensify this unfamiliarity. For this reason, the author has to rely on the Chinese and English literature, the most literatures used here are English and Chinese, and some Hungarian, Czechoslovakia and Polish literatures are also used in this work, like there are only Hungarian, Czech or Polish version of Constitutional provisions.

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<sup>15</sup> For example, A masterpiece of Qin's criminal law from Hungary is Gergely Salát's PhD Dissertation, *The System of Criminal Law of the Ancient Chinese State of Qin*. In his work, Hungarian readers may realize how law was be treated in China, and it needed to be admitted, some theories from the antient China still existed.

<sup>16</sup> Rosalind DIXON and Tom GINSBURG, 'Introduction' in Rosalind DIXON and Tom GINSBURG (eds), *Comparative Constitutional Law* (Edward Elgar Publishing Ltd. 2011).

<sup>17</sup> Language Difficulty Ranking, it is a ranking based on English speaker's perspective. <<http://www.effectivelanguagelearning.com/language-guide/language-difficulty>>, accessed 18 December 2017.

Therefore, here the author brings the first reason to answer the question why the author conducts his PhD research. There is little scholarship on this topic, the author hopes his work may contribute to the comparative research in both sides.

In reality, with the cooperation between China and Visegrad states are strengthening, especially the “Road and Belt Initiative” is proposed by the Chinese government. It is worth to make the comparative work on the development of Constitution between both sides.

Another reason should be taken into account is that both sides experienced a similar system. After the Second World War, China and Visegrad states entered the communist period, and established a socialist system in the Constitution. However, each country has its own conditions. Therefore, the similarities and differences are provided in the development of Constitution period.

## 2. Methodology

It is still difficult to find a standard methodology for comparative legal research. As an academic discipline, some general concerns need be fully discussed.<sup>18</sup> Referring to comparative constitutional law, it is still “maturing”.<sup>19</sup> Therefore, there is no well recognized methodology for comparative constitutional law. In Hoecke’s article, it provides several methods for comparative legal research, namely, the functional method, the structural method, the analytical method, the law-in-context method, the historical method, the common-core method.<sup>20</sup> More specific methodologies for comparative constitutional law were introduced by Jackson and Venter. In Jackson’s article, the following methods are presented. Classificatory work, historical work, universalist research, functionalism and contextualism.<sup>21</sup> Venter provided his view on methodology

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<sup>18</sup> Researchers agree that the history of modern concept comparative legal research can be traced back to 1900 in Paris, which some leading scholars found an International Congress for Comparative Law. See Konrad ZWEIGERT and Hein KOTZ, *Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Oxford University Press 1998).

<sup>19</sup> Rosalind DIXON and Tom GINSBURG, ‘Introduction’ in Rosalind DIXON and Tom GINSBURG (eds), *Comparative Constitutional Law* (Edward Elgar Publishing Ltd. 2011).

<sup>20</sup> Mark Van HOECKE, ‘Methodology of Comparative Legal Research’ (2015) *Law and Method* <<https://biblio.ugent.be/publication/7145504>>, accessed 18 December 2017.

<sup>21</sup> Vicki C. JACKSON, ‘Comparative Constitutional Law: Methodologies’ in Michel ROSENFELD and Andras SAJO (eds), *The Oxford Handbook of Comparative Constitution Law* (Oxford University Press 2012).

of comparative constitutional law. He concluded the following five methods: functionalism and neo-functionalism, transplantation, dialogical interpretation, contextualism and the observance of difference.<sup>22</sup>

Specific to this research, there are mainly three methods used. Firstly, as the title may imply, the author employed the historical method. During the communist period, China and Visegrad states witnessed the development of socialist Constitutions in each state. The author reviewed the history of constitutional development in chronological order in each state. What's more, how the historical conditions influenced the Constitution-making. Secondly, contextualism or law-in-context method is used in this research. The author compared the context in the Constitution in each state. For instance, the first communist Constitution in each state are strongly influenced by 1936 Soviet Union Constitution if we examined the context of the Constitution, it is easy to make this conclusion. Thirdly, as most comparative scholars did, the author employed functionalism in this research. The development of socialist Constitution in each state are different, especially between China and Visegrad states, which considered as a whole group. The most significant example is Revolutions of 1989. It affected every socialist state, included China and Visegrad states. However, as we all know later, Visegrad states abandoned their socialist Constitution, and Chinese socialist Constitution continue valid, even some crucial amendments had been adopted.<sup>23</sup>

### **3. Terminology**

In this part, the author will explicitly address what is the meaning of the term of Visegrad states in this research work and the same terminologies used in the Constitution in different countries may functioned in a different way.

#### **3.1 The Brief Introduction of Visegrad and the Visegrad Group**

Visegrad is a historical town in north Hungary, nowadays this name is famous of Visegrad Group, which consisted of four countries currently, namely Hungary, Czech Republic, Slovak Republic and Republic of Poland. This organization formed in

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<sup>22</sup> Francois VENTER, *Global Features of Constitutional Law* (1st edn, Wolf Legal Publishers 2010).

<sup>23</sup> More detailed information of functionalism in comparative law sees Ralf MICHAELS, 'The Functional Method of Comparative Law' in Mathias REIMANN and Reinhard ZIMMERMANN (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006).

February 1991, three states leaders had a meeting in Visegrad, and inspired by the historical meeting of three Kings in this area in 1335. Since 1993, Czechoslovakia split into two states, Czech Republic and Slovak Republic, both successor countries kept their membership in the Group.

### **3.2 Different Names for This Region in Academic Sense**

In this research, the author mainly focuses on two parts, the first part is People's Republic of China and the second one is Hungary, Czechoslovakia before 1993 and Republic of Poland. How to give an accurate general name for these three countries is not easy. Since from geography to political geography, several words were used to describe this region. For example, in the official introduction of Visegrad Group, this area is considered as Central Europe.<sup>24</sup> However, if we examine the location of these countries with a political geography perspective during the communist period, many literatures prefer to describe they are as Eastern Europe.<sup>25</sup> Besides, countries in this region in many occasions belong to this political geography concept, East Central Europe or Central and Eastern Europe. Numerous scholars present their comparative studies and not only the Visegrad countries, but also several former socialist states belong to this group.<sup>26</sup>

### **3.3 The Definition of the Visegrad States in the Research Work**

As mentioned in the last part, no matter the term Central Europe or Eastern Europe or East Central Europe, it is hard make this conclusion that these terms mentioned above are explicitly refer to Hungary, Czech Republic, Slovak Republic and Republic of Poland. In order to make a more accurately narrative of the country in this region, the author defined the meaning of Visegrad states. More specifically, in this work, Visegrad states means Hungary, Czechoslovakia and Poland during the communist period.

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<sup>24</sup> About the Visegrad Group <<http://www.visegradgroup.eu/about>>, accessed 19 December 2017.

<sup>25</sup> During the cold war period, this area is considered as Eastern Bloc. For instance, in Ramet's edited book, the term of Eastern Europe refers to thirteen countries, and includes countries in this area. Gale STOKES, 'Eastern Europe's Defining Fault Lines' in Sabrina P. RAMET (ed) *Eastern Europe: Politics, Culture, and Society Since 1939* (1st edn, Indiana University Press 1998).

<sup>26</sup> A very common example is given here. See Andrei ZAGORSKI (ed), *Russia and East Central Europe After the Cold War: A Fundamentally Transformed Relationship* (Human Rights Publishers, 2015) <<http://library.fes.de/pdf-files/id-moe/11384.pdf>>, accessed 19 December 2017. See also, Tomas GABRIS, *Prolegomena to Legal History of East-Central Europe* (Wolters Kluwer, 2018), p. 8.

### 3.4 Same Terminologies in the Constitutional Text, Different Conducts in Practice

It is needed to be well-informed that some terminologies used in the Visegrad Constitutions and the Chinese Constitution during the Communist period, may operate by its own Government in a different way in reality. Take “election” as an example, in the 1954 Constitution of PRC, the detailed regulations of election of different levels Deputy to the People’s Congress were presented in the Electoral Law of the People's Republic of China for the National People's Congress and Local People's Congresses in 1953 (Thereafter 1953 Electoral Law).

Compared with the Deputy election in the Visegrad states during the Communist period, the first impression of the Deputy election in China at most of its time is the whole election procedure was conducted in an unprofessional way. In some elections, approval by acclamation even became the main election procedure.

Then, the secret ballot was restored with a thoughtless approach. In practice, the city level and higher level’s Deputy election were operated in an indirect way. The Deputy was elected by the lower level People’s Congress, during the election, each Deputy will receive a ballot ticket. If the Deputy dissent from the candidate, then a “x” mark should be marked, an abstention should mark a “√”, for an affirmative vote, the Deputy do not need to mark any sign in the ballot ticket.<sup>27</sup> This thoughtless procedure led a fact, it violated the value of secret ballot. It will be very obvious to show your abstention or dissent to the public, since you need to use a pen to mark in the ballot ticket and for an affirmative vote, there is no need to use a pen.

Besides, some other Constitutional terminologies, like “legislation” and “Judiciary” institutions functioned in a different way. As mentioned in the very beginning of the Dissertation, People’s Republic of China neglected the role of law for a long period, the first Criminal Law of People’s Republic of China adopted until 1979, thirty years after the People’s Republic’s establishment. The first General Principles of Civil Law even

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<sup>27</sup> Yi WANG, ‘“两会”表决“进化史”: 从投豆子到按键子 [The “Evolution” of “The Two Meeting”: From Bean Voting to Electronic Voting]’ *Jiefang Daily* (Beijing, 7 March 2014) <[http://newspaper.jfdaily.com/jfrb/html/2014-03/07/content\\_1147675.htm](http://newspaper.jfdaily.com/jfrb/html/2014-03/07/content_1147675.htm)> accessed 6 July 2018.

adopted until 1987.

#### **4. Structure of the Research Work**

The whole PhD research work consists of six chapters. Chapter one is a brief introduction and literature review of the research work. The last chapter is the conclusion of the research topic, and some comments also presented in this part. The remaining parts of this research work are the main part of the topic, namely the comparative work of the development of Constitution between China and Visegrad states during the communist period.

The first chapter is the introduction part, more specifically, it included four parts. The first part is the literature review of the comparative constitutional law, the history of this subfield discipline, and the definition of the comparative constitutional law. The second part is the methodology of this research work. The third part is terminology in this article and the last part in this chapter introduced the structure of this article.

The second chapter is the early exercise of communist party and the soviet Constitution between China and Visegrad states. There are four parts in this chapter. First part examined the birth of the Chinese Communist Party and its early exercise. Soviet Republic established in China in 1930s and outline of soviet Constitution also provided. However, this regime sooner lost its ruling power. The second part examined Bela Kun's Communist Party and the only 133 days Soviet Republic in 1919 in Hungary. The third part is the introduction of the early exercises of communist party in Czechoslovakia and Poland. The fourth part is the comparative part.

The third chapter is the first communist Constitution between China and Visegrad states. As we all know, after the Second World War, communist system was established in Visegrad region and China. People's Republic of China adopted its first communist Constitution in 1954, a very detailed examining of the text and the structure of the Constitution was included in this part. What's more, the Constitution-making process of the 1954 Constitution was introduced. In this chapter, the author also examined the 1949 Hungarian Constitution, 1948 Czechoslovakia Constitution and 1952 Polish Constitution one by one. The third part made a comparative work of the first communist

Constitution in each state, which mainly focused on text and structure of Constitution between China and Visegrad states. The fourth part is the conclusion of this chapter.

Chapter four mainly focuses on the development of Constitution between People's Republic of China and Visegrad states during the reform period. In this article, reform period started from the middle of 1950s to 1980s. In the Chinese case, three different versions of Constitution were adopted by the National People's Congress. Among the constitutions, the first two Constitutions were strongly influenced by Cultural Revolution, the current Constitution adopted in 1982 and restored many provisions of the 1954 Constitution. The second part introduced the constitutional development in Visegrad states. In the Hungarian case, the author payed a special attention on the 1972 Constitutional Amendment. In Czechoslovakia case, two constitutional documents were examined. The 1960 Constitution announced Czechoslovakia became a socialist state, 1968 Constitution declared Czechoslovakia is federal state. In the Polish case, several important constitutional amendments were introduced. The third part compared the development of Constitution between China and Visegrad states during the reform period. The last part in this chapter examined the supreme organ of the state power in each state and a comparative analysis approach was employed.

Chapter five introduces the development of Constitution between China and Visegrad states during the transform period. After the Revolutions of 1989, socialist system was abandoned in Visegrad states, in this part, the author focused on this vital point, even though the communist Constitution in each state didn't desert immediately, the crucial amendments were adopted by the legislature body in each state in Visegrad region. In the Chinese case, Revolutions of 1989 also affected the ruling of the Chinese Communist Party, therefore, several constitutional amendments were adopted by National People's Congress, economic reform was reflected in the context of current Constitution. The third part compared the constitutional development in each state during the transform period. The last part in this chapter, the author studied the constitutional review system in each state.

In the last chapter, the author made a conclusion of this research work. In the first part, a brief review of the development of Constitution in each state during the

communist period. Why after the Revolutions of 1989, People's Republic of China and Visegrad states chose different roads to develop their country, the reasons also given by the author. In the conclusion of the research work a presentation is offered.

## Chapter Two: The Birth of Communist Party and Its Early Exercises between China and Visegrad States

When we examine the history, it is easy to note that China and the Visegrad countries shared a common history of socialist experience and social system since the very late of 1940s.<sup>28</sup> However, the socialist experiences in some regions of these states and the activities of Communist Parties have a much longer history. In China, Socialist experiences could be traced back to the October Revolution in Russia, since the Failure of Paris Peace Conference, the Chinese Scholars and young generation tried to find a new solution to help China get rid of the miserable situation of colonization, as Mao Zedong said, “With the cannon of October Revolution, the Revolution bring us Marxism–Leninism.” Marxism-Leninism was considered as a new way to solve China’s problem. Chen Duxiu and Li Dazhao, the Pioneers of Socialism in China, organized the earliest Communist group in China.<sup>29</sup> In Hungary, the Hungarian Soviet Republic was considered as the second Soviet Republic in the world, although, it just lasted for only 133 days.<sup>30</sup> In Poland, the activities of the Communist Party even can be traced back to 19th century.<sup>31</sup> In Czechoslovakia, the Communist Party established in 1921, Lenin even asked his secretary bring him more information of the Congress of the Czechoslovak Social-Democratic Party.<sup>32</sup>

In this chapter, the author will give an introduction of the birth of Communist Party and its early exercises in these countries, however, the whole picture of the Communist Party’s activities in this period among these countries are impossible to present in one

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<sup>28</sup> China, as a socialist state, starts its socialist experience since 1949, after the country suffered eight years anti-Japan war and Four years civil war. In Visegrad countries, the situations are quite similar, after the Second World War and with the “help” of Soviet Union, Visegrad countries start their socialist experiences successively in the very late of 1940s or the early of 1950s. Also, it should be pointed out that, when we talk about the socialist experiences and systems in nowadays so-called Czech Republic and Slovakia, it always means the Czechoslovakia, the unified country at that time. Also, Visegrad countries refer to Hungary, Czechoslovakia, Poland until 1<sup>st</sup> January 1993, Czechoslovakia divided into two countries, Czech Republic and Slovakia.

<sup>29</sup> John King FAIRBANK (ed.), *The Cambridge History of China*, Vol. 12 (Yang Pinquan, Zhang Yan et al. Trs. 1st edn, China Social Science Press, 1993).

<sup>30</sup> Tibor HAJDU, *The Hungarian Soviet Republic* (1st edn, Akademiai Kiado, 1979)

<sup>31</sup> Jan Alfred REGULA, *History of Communist Party of Poland* <<https://www.cia.gov/library/readingroom/docs/CIA-RDP81-01043R001600160002-1.pdf>>, accessed 18 October 2016.

<sup>32</sup> The digital archive of Lenin, see the website <<https://www.marxists.org/archive/lenin/works/1921/jul/17b.htm>>, accessed 18 October 2016.

chapter, therefore, the author will choose the most important part, in other words, the history of Communist Party which related to the constitutional practices in each country shall be mainly presented in this chapter. In detail, in the early exercises of Communist Party of China, the author will introduce the birth of Communist Party of China, the white terror period and the Constitution of Chinese Soviet Republic.<sup>33</sup> In Hungarian Communist Party's exercises, the main attention will be paid on the Constitution of Hungarian Soviet Republic<sup>34</sup> and white terror. In Poland and Czechoslovakia part, the author will give a detailed introduction of the formation of the communist party and their early exercises.

Last but not least, the author would like to emphasize here is the research material. It is always difficult to choose the materials and give narratives of the history in the Dissertation, since from different perspective, a completely opposite story may present to the public. As Wu Dayou wrote in the preface, "the biggest problem of Chinese modern history book is the biased opinions from the official narrative of Kuomintang and Communist Party"<sup>35</sup> and the similar situation also happened in the narrative of Hungarian Soviet Republic and white terror in Hungary, materials which published in the socialist period of Hungary usually showed their sympathy to the Hungarian Soviet Republic and hold a negative view of white terror. However, the newly published materials have a completely opposite position. Therefore, the author will use both sides materials and try to bring up the full picture to the readers.

## **1. The Birth of Communist Party of China and Its Early Exercises**

### **1.1 The Birth of Communist Party of China**

Since the first Opium War opened the door of China,<sup>36</sup> Chinese suffered the

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<sup>33</sup> The Constitution of Chinese Soviet Republic, Chinese version, <<http://cpc.people.com.cn/GB/64184/64186/66640/4489884.html>>, accessed 18 October 2016.

<sup>34</sup> Constitution of Hungarian Soviet Republic, Hungarian version, <[https://hu.wikisource.org/wiki/A\\_Magyarorsz%C3%A1gi\\_Szocialista\\_Sz%C3%B6vets%C3%A9ges\\_Tan%C3%A1rs%C3%B6z%C3%A9ts%C3%A9g\\_alkotm%C3%A1nya](https://hu.wikisource.org/wiki/A_Magyarorsz%C3%A1gi_Szocialista_Sz%C3%B6vets%C3%A9ges_Tan%C3%A1rs%C3%B6z%C3%A9ts%C3%A9g_alkotm%C3%A1nya)>, accessed 18 October 2016.

<sup>35</sup> Preface from Dayou WU in Yufa ZHANG, *中华民国史稿[ The History of Republic of China]* (2nd edn Linking Publishing, 2009).

<sup>36</sup> The reason of First Opium War is still in debates. However, this result of Opium War is clear, it opened China's door, the great powers came to China, and started to divide their Sphere of influence. See John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 10, Late Ch'ing, 1800-1911, Part 1*, (1st edn, Cambridge University Press, 1978). Also see Cunkuan LIU, '试论英国发动第一次鸦片战争的双

colonization and had numerous attempts to get rid of their unpleasant situation.<sup>37</sup> However, the new leadership and the new Republic did not give Chinese dignity and equality. China, as a victor in the First World War joined the Paris Peace Conference, did not reach its goal, which is became an independent country again.<sup>38</sup> Since the failure of Paris Peace Conference, May Fourth Movement broke out in Beijing, Chinese scholars and the young generation started to find a new road to leading the independence of China.<sup>39</sup>

One of the new methods which was provided to the public was socialism.<sup>40</sup> Some Chinese scholars noticed what happened in Russia since 1917, the great change of Russia and its outcomes, Marxism-Leninism was brought to China. With the help of The Communist International, Chen Duxiu and Li Dazhao and their followers consisted of the first Marxism-Leninism group in China,<sup>41</sup> the New Youth Magazine also introduced numerous articles of Marxism-Leninism and the translated books and original books full of the library and bookshop<sup>42</sup>

In the summer of 1921, the Communist Party of China established in Shanghai and South Lake in Jiaxing with the help of Communist International.<sup>43</sup> There were 12

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董动因 [Analysis the Two Reason of Great Britain Starts the Opium War]' (1998) No. 4 *Modern Chinese History Studies* <<http://jds.cass.cn/UploadFiles/zyqk/2010/12/201012091702137749.pdf>>, accessed 18 October 2016.

<sup>37</sup> Generally speaking, these following activists are considered as the fighting of Chinese, Taiping Heavenly Kingdom, Boxer uprising, the reform movement of 1898 and the Xinhai Revolution. See Victor PURCELL, 'Reviewed Work: *The Opium War through Chinese Eyes by Arthur Waley*' 1959 No. 3/4 *The Journal of the Royal Asiatic Society of Great Britain and Ireland* <[https://www.jstor.org/stable/25202257?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/25202257?seq=1#page_scan_tab_contents)>, accessed 18 October 2016.

<sup>38</sup> China requested return of sovereignty over Shandong, however, this request was refused by the Conference.

<sup>39</sup> John King FAIRBANK (ed.), Yang Pinquan, Zhang Yan et al. Trans. *The Cambridge History of China*, Vol. 12 (1st edn, China Social Science Press, 1993).

<sup>40</sup> From 1920s to 30s, many politic parties and groups were established in China, they promoted their theories around the country, and sought the support from the masses. i.e. Chinese Youth Party, The National Association of Vocational Education of China and even in the internal of Kuomintang, different factions were promoting their own theories. Yufa ZHANG, *中华民国史稿[ The History of Republic of China]* (2nd edn Linking Publishing, 2009). Also, different theories to help the country to get rid of the fate of colonization, for these political proposals and doctrines are available Xin LI, *中华民国史 第一卷 中华民国的创建与北洋政府的统治 中国迈向现代社会 (1912-1927)* [The History of Republic of China vol.1 The Establishment of Republic of China and the Governance of the Beiyang Government, Towards to the Modern Society], (1st edn Nanjing University Press 2005)

<sup>41</sup> Yigao LIU (ed.), *中华民国史 第二册, 志一, 政治卷 [The History of Republic of China, Vol.2 Political]*, (1st edn. Sichuan People's Publishing House, 2006).

<sup>42</sup> Ibid, p. 569, 570, 576.

<sup>43</sup> The original plan was the inaugurating meeting will be hold in a girl school in Shanghai with these

delegates who represent 57 members of the Communist Party of China, Delegate Mao Zedong represent the Hunan Communist cell. However, the pioneers of Communist Party of China, Chen Duxiu and Li Dazhao did not attend the meeting.<sup>44</sup>

## 1.2 The First United Front

On 26 January 1923, Sun–Joffe Manifesto published in Shanghai, it is considered as the beginning of First United Front between Kuomintang and Communist Party of China.<sup>45</sup> Since then, the First United Front or from Sun’s perspective, united the Russia and tolerated the Communist Party (联俄容共), played a very important role during the whole revolutionary history in 1920s.

Before the Manifesto, with the guiding of Communist International, the Communist Party of China made the decision to cooperate with Kuomintang during the West Lake Meeting in August 1922.<sup>46</sup> According to the decision the Party members shall join Kuomintang individually, and spread the communism.<sup>47</sup> In response, during the First National Congress of Kuomintang which was held in January 1924, made the

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young representatives in their twenties. According to the schedule, the meeting started in a school in the French concession, however, the participators noticed that meeting was monitored by the secret police, the members had to change the meeting place, a boat in South Lake. See John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983).

<sup>44</sup> Ibid and see also “The Brief Introduction of the First National Congress of the Communist Party of China”, <<http://cpc.people.com.cn/GB/64162/64168/64553/4427940.html>>, accessed 18 October 2016.

<sup>45</sup> The formation of First United Front did not go well at the beginning, this idea was a decision which made by the Communist International, not originally produced in China. In order to practice this idea, Communist International sent its member Maring came to China, and started to carry out this idea, however, at the beginning, not only Kuomintang refused this idea, but also the Communist Party of China refused it. Xiaoqiang DING, ‘中共第一次国共合作的策略演变 [The Changes of the Policy of the Communist Party of China during the First United Front]’ (1990) No. 5 *Modern Chinese History Studies*. <[http://jds.cass.cn:8080/Jwk\\_jdsyj/CN/article/downloadArticleFile.do?attachType=PDF&id=1235](http://jds.cass.cn:8080/Jwk_jdsyj/CN/article/downloadArticleFile.do?attachType=PDF&id=1235)>, accessed 19 October 2016. What’s more, there are more auguring of the beginning time of the First United Front, according to Zhang Lei’s article, the First National Congress of Kuomintang which held in 1924 Marks the beginning of the First United Front, Lei ZHANG, 孙中山与第一次国共合作研究述评 [A Review on Sun Yat-sen and First KMT–CCP Alliance], Conference Paper, (1985) *International Academic Conference on Sun Yat-Sen’s Study*.

<sup>46</sup> Communist International spent tremendous time to persuade Communist Party of China to accept the idea, cooperate with Kuomintang. In the West Lake meeting, only allow the leadership of the Party join the Kuomintang. Late in the 3rd Plenary Meeting of the Party which held in June 1923, it decided all the Party member shall join the Kuomintang. Yufa ZHANG, 中华民国史稿 [The History of Republic of China] (2nd edn Linking Publishing, 2009).

<sup>47</sup> Xiaoqiang DING, ‘中共第一次国共合作的策略演变 [The Changes of the Policy of the Communist Party of China during the First United Front]’ (1990) No. 5 *Modern Chinese History Studies*. <[http://jds.cass.cn:8080/Jwk\\_jdsyj/CN/article/downloadArticleFile.do?attachType=PDF&id=1235](http://jds.cass.cn:8080/Jwk_jdsyj/CN/article/downloadArticleFile.do?attachType=PDF&id=1235)>, accessed 19 October 2016. And according to the Communist International’s directive to Communist Party of China in May 1923, the Communist Party of China should make cooperation with Kuomintang and start a national revolution in China. John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983) p.533-534.

determination to make an alliance with the Soviet Union and Communist Party of China, the decision of accepting Communist Party of China member join the Kuomintang as individual was also made in this Congress. What's more, in the Central Committee of Kuomintang, it offered some special high-ranked positions for Communist Party of China member.<sup>48</sup> With the help of the new Communist International emissary Borodin, during the first Congress, not only the whole program of meeting was very similar with the meeting of Communist Party of the Soviet Union, but also formed a Party Constitution, which had a strong influence from Russian Communist Party's Constitution.<sup>49</sup>

During the First United Front, Communist Party of China and Kuomintang made a great progress of the Chinese revolution. At the end of the First United Front, Kuomintang almost finished its goal to unify the whole country. With the help of Soviet Union and Communist International emissary, the Front formed the National Revolutionary Army, and from 1926, the Front started its new journey, Northern Expedition.

During the decades of years of revolutionary experiences and the multiple betrayals of warlords, Sun Yat-sen realized the importance of the army.<sup>50</sup> In May 1924, the Republic of China Military Academy opened to its nearly 500 new students from the whole land.<sup>51</sup> Chiang Kai-shek, one of the leaders of the Kuomintang was appointed as the President by Sun Yat-Sen, and the principal military instructors were all graduated from the military school. Also, it should be mentioned that the member of Communist Party of China made its own contribution in the school, Zhou Enlai, after his study in Europe, joined the school as well, as a vice director of Political Department.<sup>52</sup> This military academy was considered as the most important military school in China, not

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<sup>48</sup> Kuisong YANG, 国民党的“联共”与“反共” [Kuomintang: Unity with Communists and anti-communism], (1st edn, Social Sciences Academic Press 2008) p. 29-32.

<sup>49</sup> Ibid, p. 29-30, see also John King Fairbank (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983) p. 534-535.

<sup>50</sup> Maj Wilbur W. HSU, 'Survival through Adaptation: The Chinese Red Army and the Encirclement Campaigns, 1927-1936' (Master thesis, U.S. Army Command and General Staff College 2012)

<sup>51</sup> Ibid, p. 607.

<sup>52</sup> Shaolian YANG, Yulin LUO, '中国共产党在创建黄埔军校中的作用 [The Function of Communist Party of China during the Establishment of the Republic of China Military Academy]' 1984 No. 5 *Modern Chinese History Studies*, p. 38-39.

only numerous generals of Republic of China came from this school, but also lots of Communist military leaders graduated from this school.

In the mass movement part, Communist Party of China did a lot of work with the work class and peasants.<sup>53</sup> It is said that there were around 1,241,000 members in the Labor Union in 1926. Meanwhile, the Communist Party was very focused on the young generation, the Communist Youth Corps, enlarged more than five times in less than two years.<sup>54</sup> In the countryside, the Communist Party developed the Farmers' Association a lot. Only in Guangdong, there were 626,457 members in the year of 1926.<sup>55</sup> On 30 May 1925, the foreign policeman shot Chinese people because of protest, it resulted in 8 Chinese people dead, and some protesters injured. Finally, it settled with the leading of the First United Front, it also inspired the Chinese Patriotic.<sup>56</sup>

### **1.3 The End of First United Front and “White Terror”?**

However, the ending of Frist United Front was definitely not a happy story. The discourse of “white terror” is presented in a completely opposite way from the official narrative of People’s Republic of China and the research from Republic of China or Western researchers. In this part, the author will try to provide the whole picture of the “white terror” from different perspectives. Research works and medias from People’s Republic of China have a strongly negative narrative of the “white terror” or April 12 Incident and showed the sympathies to the Party members.<sup>57</sup> In 1927, Chiang Kai-shek launched his anti-communist policy with violence.<sup>58</sup> On 12 April, the Commander in

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<sup>53</sup> For example, in an enlarged plenum of Party’s Central Committee, the solution shown its goal, “It is absolutely true that the future destiny of the Chinese revolutionary movement depends entirely upon whether or not the Chinese Communist Party will be able to organize and lead the masses.” John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983) p. 563.

<sup>54</sup> In the early of 1925, the renamed Communist Youth Corps only had 2500 members, in November of 1926, there were around 12500 members in total. Ibid, p. 563.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid, p. 547-579.

<sup>57</sup> Not only the history book for the school in People’s Republic of China, but also the official media, i.e. People’s Daily and academic articles from PRC showed their sympathies to Communist Party. For example, ‘April 12 1927, April 12 Counterrevolutionary coup’ People’s Daily (Beijing, 1 August 2003) <<http://www.people.com.cn/GB/historic/0412/1172.html>> accessed 10 July 2018.

<sup>58</sup> On 12 March 1

925, Sun Yat-sen died with his unfinished goal, unify China. Chiang Kai-shek and Wang Jingwei became the leader of Kuomintang. Before the Shanghai massacre of 1927, Chiang Kai-shek already started his limit Communist Party policy, on 20 March 1926, there was the Zhongshan Incident happened, in the same year of May, during the second Plenary Session of the Second National Congress of Kuomintang, a

Chief of Shanghai Garrison Command with the local gang<sup>59</sup> member disarmament of Workers' Inspection Corps in one day. Next day, when the General Labor Union organized the protest against Kuomintang's violence, the Commander in Chief, Bai Chongxi order his army to shoot the protesters.<sup>60</sup> The cooperation between Kuomintang and the Communist Party of China was officially finished, Kuomintang, the party which ruled by Chiang Kai-shek and started its "counter-revolution policy"<sup>61</sup> in China, the Communist Party of China realized the importance of the army, and tried to establish its own revolutionary army in the countryside. It marks the end of the First United Front and the beginning of White Terror as well.

On 15 April, two days after the 12<sup>th</sup> April "Counter-revolution Incident", Chiang Kai-shek published a Post of Purge the Party. In this Post, it mentioned the Communist Party and its members had to be inspected on suspicion of treason. What's more, Chiang ordered the army force arrest the leaders of Communist Party and even published a wanted order.<sup>62</sup>

In Guangzhou, the Communist Party and its member also suffered a brutal massacre, even Republic of China Military Academy, a military school which used to be ruled by Chiang Kai-shek had to disarm, since the government believed that there was a strong influence by the Communist Party, about 200 cadets were arrested, just because they

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regulation of limitation Communist Party of China was adopted. It seems that Chiang tried to solve the problem between Kuomintang and Chines Communist Party peacefully. Kuisong YANG, 国民党的“联共”与“反共” [*Kuomintang: Unity with Communists and anti-communism*], (1st edn, Social Sciences Academic Press 2008) p. 128, 137.

<sup>59</sup> The local gang is Green Gang, a secret society and criminal organization with a long history. The Leader of Green Gang, Du Yuesheng was Chiang's close friend, and he was also believed as one of the executors of 12<sup>th</sup> April Incident. John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983) p. 634-635.

<sup>60</sup> Kuisong YANG, 国民党的“联共”与“反共” [*Kuomintang: Unity with Communists and anti-communism*], (1st edn, Social Sciences Academic Press 2008) p.173, see also John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983) p. 625, 634-636.

<sup>61</sup> The term of "counter-revolution policy" usually used in the People's Republic of China or so-called mainland China's literature. However, from the Republic of China (Taiwan)'s perspective, it was only the process to remove the obstacles of uniting the whole country. Even Wang Jingwei, former leadership of Kuomintang decided to divide the Communist Party after he felt that the Communist Party's threat. Nevertheless, the policy which Chiang had been taken was more brutal. Yufa ZHANG, *中华民国史稿 [The History of Republic of China]* (2nd edn Linking Publishing, 2009).

<sup>62</sup> During the Northern Expedition, thanks to the experience of the president of the Republic of China Military Academy, Chiang Kai-shek became the highest leader of army in Kuomintang. Kuisong YANG, 国民党的“联共”与“反共” [*Kuomintang: Unity with Communists and anti-communism*], (1st edn, Social Sciences Academic Press 2008) p.173-174.

were considered as members of the Communist Party of China.<sup>63</sup> Until 27 April, this tragedy finally finished, according to the report, there are around 2000 suspected communists arrested, about 20 people died in this massacre, most of them were young students, even there were two female students.<sup>64</sup>

In other parts of China, the purge also happened, it weakened the Communist Party of China's Influence and its power. In response, in Wuhan and Changsha, the radical Communist Party members killed so called enemies.<sup>65</sup>

#### **1.4 The Reason of Breakup of the First United Front**

From full cooperation to brutal repression, from an independent local government to ruling the whole country, it showed how important the First United Front was. However, with the triumph of Northern Expedition, the friendship between Kuomintang and the Communist Party of China faded.

Nevertheless, if we look back to the beginning time of the cooperation and examine the whole background of the First United Front, the conflict of interest among Kuomintang, the Communist Party of China and the Communist International (or Soviet Union) had been existed from the very beginning of the cooperation.

In the early 1920s, when Communist International emissary Maring helped Chen Duxiu and Li Dazhao to organize the Communist Party of China, the Communist International already realized the Communist Party was too weak to organize the nationwide revolution in China, after the establishment of the Communist Party of China, the “guide” of the Party, Maring came along with his interpreter Zhang Tailei to Guilin, the place famous for its magnificent spectacle, visited Sun Yat-sen and discussed the cooperation between Kuomintang and Communist Party.<sup>66</sup> However, at that moment, Sun Yat-sen did not show a great interest in cooperating with Communist Party, he believed that Kuomintang will be a success with his ideology. He even talked with Zhang Tailei, Maring's interpreter, “Why the young people want to find the medicine

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<sup>63</sup> John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983) p. 637.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid, p. 638.

<sup>66</sup> Kuisong YANG, ‘孙中山与共产党——基于俄国因素的历史考察 [Sun Yat-sen and Communist Party-A Historical Research Based on Russia]’ (2001) No. 3 *Modern Chinese History Studies*, p. 3-4. <[http://jds.cass.cn:8080/Jwk\\_jdsyj/CN/Y2001/V123/I3/1](http://jds.cass.cn:8080/Jwk_jdsyj/CN/Y2001/V123/I3/1)>, accessed 21 October 2016.

(means solution to solve Chinese problem) from Marx, you can find the basic thoughts of Marxism from the ancient Chinese books, don't you?"<sup>67</sup>

However, the reality made Sun has to reconsider the offer from the Communist International. At that time, Sun faced the following problems: the financial difficulty, the military difficulty and the chaos of the Party. It is difficult to raise money from his support, and the tax incoming also less than last year; at the same time, Chen Jiongmeng betrayed Kuomintang and seems cooperated with Sun's enemy Wu Peifu. In Party's organization, since Chen betrayed the Party, Party members lost the connection with Kuomintang.<sup>68</sup>

In the summer of 1923, when Borodin, the new emissary came to Guangzhou, and had few of long term talk with Sun Yat-sen, Kuomintang started to accept the help of the Soviet Union, especially, when the Soviet Union promised financial and military support,<sup>69</sup> the relationship between Kuomintang and Soviet Union or the Communist International became more and more close.

In the Communist Party of China's side, the proposal to cooperate with Kuomintang seems to be a directive from higher position, the Communist International,<sup>70</sup> the only thing what this still young and vulnerable Party can do is perform it.<sup>71</sup>

Because of the coordination of the Communist International and the Soviet Union, finally, the First United Front was established. However, the wish of cooperation

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<sup>67</sup> Ibid, p. 5.

<sup>68</sup> Kuisong YANG, 国民党的“联共”与“反共” [Kuomintang: Unity with Communists and anti-communism], (1st edn, Social Sciences Academic Press 2008) p. 595-598.

<sup>69</sup> The Support from Soviet Union helped a lot for Kuomintang's development, in 1923, after the Sun-Joffe Manifesto, Soviet Union gave Kuomintang 2 million Mexican Silver Coins, since then, each year Kuomintang will get millions financial support from Soviet Union, in military part, Soviet Union provide a lot of weapons to Kuomintang and helped Kuomintang to establish Republic of China Military Academy in Guangzhou, what's more, the new Party Constitution are quite similar with Party Constitution of Soviet Union. Zhiwen ZHOU, ‘共产国际、国民党、共产党对第一次国共合作的认识 [The Understanding of First United Front from the view of Communist International, Kuomintang and Communist Party of China]’ (2011) No. 4 *Shanghai Party History and Party Construction*, p. 13. <[http://www.ccp-history.org.cn/images/thumbnailing/month\\_1408/201408251856451932.pdf](http://www.ccp-history.org.cn/images/thumbnailing/month_1408/201408251856451932.pdf)>, accessed 21 October 2016.

<sup>70</sup> Communist Party of China was a Party branch of Communist International. Ibid, p. 14.

<sup>71</sup> At the beginning, the Communist Party of China tried to refuse the proposal of cooperate with Kuomintang, however, with the interference of Communist International, Communist Party had to accept this proposal. Xiaoqiang DING, ‘中共第一次国共合作的策略演变 [The Changes of the Policy of the Communist Party of China during the First United Front]’ (1990) No. 5 *Modern Chinese History Studies*.

<[http://jds.cass.cn:8080/Jwk\\_jdsyj/CN/article/downloadArticleFile.do?attachType=PDF&id=1235](http://jds.cass.cn:8080/Jwk_jdsyj/CN/article/downloadArticleFile.do?attachType=PDF&id=1235)>, accessed 21 October 2016. p.175.

between two parties were not generated by themselves, it is much more like a decision made by the Communist International and Soviet Union, when the conflict of interest between Kuomintang and Communist Party of China more and more serious, it is really difficult to keep the balance in this cooperation.

At the beginning, this cooperation was full of conflicts, Kuomintang insisted on its Three Principles of the People and did not consider its cooperator, the Communist Party as an equal partner. For Kuomintang's side, accepted the Party member of the Communist Party join Kuomintang as an individual and offered more leader position for the Communist Party member were only an offer to get the support from the Soviet Union, once Kuomintang strong enough, it will be the time finish this kind of cooperation and "purify" the Party.

The Communist Party of China was unwilling to accept the "task" to cooperate with Kuomintang as well at the first beginning, for the Communist Party of China Kuomintang's policies were not the real Communism. The policy of the Communist Party should be more radical, according to one article which wrote by Chen Duxiu, the leader of the Communist Party, "The Party member of Kuomintang are mainly opportunist and bureaucrat, only Sun Yat-sen is the real revolutionist...we just join Kuomintang temporarily...to adjusting this Party's mistake of approaching Zhang Zuoling<sup>72</sup> and Japan... and the task of the Communist Party is...to split up Kuomintang."<sup>73</sup> It is very clearly with such kind of attitude to make the partnership with Kuomintang doomed the unhappy ending of the First United Front.<sup>74</sup>

Time back to 1927, the second year of Northern Expedition, Kuomintang is much stronger than the beginning time of the cooperation, the Communist Party of China had a great development not only in Party membership but also earned tremendous struggle experience from the practice. In March 1927, the National Revolutionary Army came to Shanghai and Nanjing, and tried to control these two big and very important cities. The

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<sup>72</sup> The biggest warlord in Northeast China.

<sup>73</sup> Kuisong YANG, '陈独秀与共产国际——兼谈陈独秀的“右倾”问题 [Chen Duxiu and Communist International: Also on the Rightism of Chen Duxiu]' (1999) No.2 *Modern Chinese History Studies* p. 80.

<sup>74</sup> However, this idea or thinking of Chen Duxiu did not get any critics from Communist International, *ibid.*

expedition went well, which got a strong support by the masses.<sup>75</sup> In Shanghai, the Communist Party organized a few “uprisings” with Workers’ Inspections Corps and work, these gunmen caused a big chaos in the city, at the same time, thousands of workers had a strike and came out for a demonstration.<sup>76</sup> In Nanjing, the similar events happened as well, even worse.<sup>77</sup> In Chiang’s opinion, this is the Communist Party tried to control these very important cities, and made such a chaos in cities will harm the Northern Expedition, he decided to finish this circus and punish the Communist Party.<sup>78</sup>

All in all, the main reason for the breakup between Kuomintang and Communist Party of China is there existed fundamentally conflict of interest between both party, and this whole cooperation is more likely the parents asked their kids must live together.<sup>79</sup> However, as time goes by, more and more differences appearance, the brotherhood finally will end with unhappiness.

## **1.5 Communist-controlled China and Chinese Soviet Republic**

### **1.5.1 State within a State: Communist-controlled China**

After the brutal massacre in 1927, Communist Party of China realized the importance of the army and started to establish its own controlled territory.<sup>80</sup> From the middle of 1927 to the end of 1937, the beginning of the Second United Front, the Communist Party of China had a lot of experiences on revolution and organized peasant movements.<sup>81</sup> The Party not only had its own controlled territory, but also became a

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<sup>75</sup> See John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 12, Republican China, 1912-1949, Part 1*, (1st edn, Cambridge University Press, 1983), p. 614-620.

<sup>76</sup> Ibid.

<sup>77</sup> In Nanjing, the chaos caused lots of people died or got injury. According to some Japanese report, this chaos was caused by Communist Party members.

<sup>78</sup> It should be noticed that this kind of reason is only from Kuomintang’s side, in Communist Party’s side, because Chiang became the spokesman of high bourgeoisie, he is not revolutionary anymore.

<sup>79</sup> The metaphor which the author used here is a traditional culture in ancient China. Before the ceremony of wedding, the new couple never met each other, the youngers had to follow their parents’ decision.

<sup>80</sup> In 7<sup>th</sup> August 1927, in order to response Kuomintang’s counter revolution, there was a meeting held in Wuhan, Hubei province, Mao Zedong mentioned that “Political power grows out of the barrel of a gun”, it was considered as the Communist Party started to focus on its own military construction. Shaoze SHU, ‘共产国际指导下召开的八七会议—谨以此文纪念八七会议召开 90 周年 [August 7th Meeting Was Held under the Guidance of the Communist International—In Commemoration of the 90th Anniversary of August 7th Meeting]’ (2016) No. 5 *Advances in Social Sciences*, p. 255, <[http://image.hanspub.org:8080/pdf/ASS20160200000\\_38157537.pdf](http://image.hanspub.org:8080/pdf/ASS20160200000_38157537.pdf)>, accessed 23 October 2016, see also the official website of New of Communist Party of China, <<http://cpc.people.com.cn/GB/64162/64170/4467398.html>>, accessed 23 October 2016.

<sup>81</sup> John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 13, Republican China, 1912-1949, Part 2* (1st edn, Cambridge University Press, 1986) p. 168.

mature Party.

From the failure of the First United Front to the establishment of the Chinese Soviet Republic, the Communist Party of China had different ways to resist Kuomintang's "betrayal". Qu Qiubai and other Communist leaders organized a few uprisings in different cities. However, these uprisings would end up as failures.<sup>82</sup> These failures caused the Communist Party to find another way to survive. In Hunan, the future People's Republic's leader, Mao Zedong had a very rich experiences to deal with peasants in the rural area, after the failure of the Autumn Harvest Uprising, Mao Zedong with his army came to Jinggang Mountains, and tried to establish a rural soviet here.<sup>83</sup> The rural soviet policy was confirmed as a useful method at that time and more and more rural soviet or so called communist-controlled China established. The most territory of communist-controlled China was in Southern China, and the most important territory of the Communist Party of China was Jiangxi-Fujian Soviet.<sup>84</sup>

However, at the beginning, because of the Soviet influence, the Communist Party of China still paid more attention on the city, the leadership was in the city, and it seems that the communist in the city was superior to the rural soviet.<sup>85</sup> The success of communism revolution should depend on proletariat not the peasant, just like its big brother, the Soviet Union.

Kuomintang would not let its enemy had any chance of breathing space, in 1928, Nanjing Nationalist government started to draw a new criminal code, and it is also included a criminal special law on the Communist Party issue. Tan Yankai supervised

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<sup>82</sup> The Communist Party organized a few of uprisings in Nanchang, Guangzhou and Wuhan, on 1 August of 1927, there was a uprising happened in Nanchang, although, it was failed, it is considered as the beginning of Communist Party of China started to had its own army, therefore when the People's Republic of China established, the first of August was celebrated as Army Day until now. Ibid, p. 183, 185.

<sup>83</sup> Mao Zedong had a lot of experience with peasants, he grown up in a small village in Shao Shan, Hunan province, not like his fellows during the First United Front, he spent his most time in rural area, and spread communism in rural area. The reason why chose Jinggang Mountains, according to Sun Jiang's article, this area is far away to political center between Hunan and Jiangxi, and most farming lands are controlled by the landlord. And it will be easy to perform land reform in this area. Jiang SUN, '革命,土匪与地域社会---井冈山的星星之火 [Revolution, Bandit and region community-A single spark of Jinggang Mountains]' (2003) No. 12 *Twenty-First Century*, p. 46 <<http://www.cuhk.edu.hk/ics/21c/media/articles/c080-200209069.pdf>>, accessed 25 October 2016.

<sup>84</sup> At that time, there were around 15 Communist controlled Soviet existed in China, and most of them were located in rural area. Ibid, p. 170, 175.

<sup>85</sup> Ibid, p. 188.

the drafting of this special law. The so called Provisional Counter-Revolution Penalty Regulation was published on 9 March 1928.<sup>86</sup> In this regulation, it employed an extremely harsh punishment. For example, in this regulation, it stipulated that anyone who attempt to subvert the nationalist government or Kuomintang shall be sentenced to death. Three Principles of the People were also considered as fundamental in this country, anyone who want to break this principle and had an uprising shall also be sentenced to death. Even there was an article regulated that the activists in the organization or gathering with a counter-revolution goal shall be sentenced to imprisonment, and the organization or gathering shall be disbanded.<sup>87</sup> What's more, there are a few of Decisions also made by the nationalist government, it included collective punishment.<sup>88</sup>

Because of Kuomintang's harsh punishment and predominate military power, the exercise of Communist Party in the city at a low ebb, Communist Party members had more chances to practice their theory in rural areas. In Jinggang Mountains, Mao Zedong and his army struggled to survive, Mao tried to make his own base in this area and he needed the support from the peasants. As mentioned previously, in Jinggang Mountains, most of farming lands were owned by the landlord, peasants had a miserable life here. When Mao came to this area, he started the land reform policy in Jinggang Mountains, it was very popular among the poor peasants, more and more poor people joined Mao's army, and finally, Mao and his army had their "home".<sup>89</sup> In order to make the land reform legitimate, Land law was published in different rural soviets.<sup>90</sup> It

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<sup>86</sup> It is very interesting to notice that both side claimed that other side was the "counter-revolution" part. Since Republic of China nominally united the whole country after the Northern Expedition. Therefore, there is no doubt that Kuomintang will conduct the course of encirclement campaign.

<sup>87</sup> Kuisong YANG, 国民党的“联共”与“反共” [*Kuomintang: Unity with Communists and anti-communism*], (1st edn, Social Sciences Academic Press 2008) p. 266.

<sup>88</sup> In the Decision on prevention of Communist Party, it regulated the punishment to the so-called ineffective Kuomintang Party member and branch. Ibid, p. 267.

<sup>89</sup> At the beginning of the Jinggang Mountains Soviet, Mao told his army, "We are doing the revolution... should have a home, otherwise it will be very difficult... When the enemy does not come, we can train our soldier, and mobilize the masses, when the enemy comes, we can fight with them and rely on this home..." See John King FAIRBANK (ed.), *The Cambridge History of China, Vol. 13, Republican China, 1912-1949, Part 2* (1st edn, Cambridge University Press, 1986) p. 189.

<sup>90</sup> Depends on the different social class in rural, the Communist Party regulated different policy. Generally, for the poor peasants, Party will give them amount of land, for the middle peasants (not rich, but not poor), Party will protect their interest, for rich peasants, at the beginning, Party also protect their right, however, with the develop of land reform, rich peasants' interest was violated, for the landlord,

helped the Communist Party to establish its own controlled area, and communism became popular among the peasants, more and more poor peasants sent their sons to join the Communist army.

In the very early of 1929, Mao Zedong, Zhu De and around 3600 soldiers left Jinggang Mountains, they went to Southern Jiangxi, and tried to establish new rural soviet in Gan Nan. After the hard fight with Kuomintang's army, Mao Zedong and his army had a new home in south party of Jiangxi Province. In the same year, Mao and his fellows decided to have a new rural soviet in the west party of Fujian province, since there is much rich and had a good mass basis, after nearly one year's fight with Kuomintang, Jiangxi-Fujian Soviet finally established<sup>91</sup> and it became the largest component territory of the Chinese Soviet Republic soon.

### 1.5.2 The Chinese Soviet Republic and Its Constitution

In the very beginning of 1930s, the Communist Party controlled substantial territories in rural areas,<sup>92</sup> and had 15 rural soviets, there were more than 100000 Chinese joined the Red Army, however, there was not a central government ruled of the communist controlled China.<sup>93</sup> Since the strong influence among mass and its territory, Jiangxi-Fujian Soviet had considered as the central of rural soviets in China.

In order to ensure the legality of these rural soviets and had a guideline of revolution for the future, in 1931, the Communist Party of China decided to establish Chinese Soviet Republic and published the Constitution of Chinese Soviet Republic.<sup>94</sup> Finally, from 7<sup>th</sup> November to 20<sup>th</sup> November 1931, the First National Congress of the Chinese Soviet held in Rui Jin, a small town in Jiangxi, there were 610 deputies attended this

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since it is the opposite of the land reform, so their rights were totally violated in most of time. Ibid, p. 191-193. Dehong GUO, '土地改革史若干问题论纲 [Outline of the Problems of Land Reform]' (1987) No. 3 *Modern Chinese History Studies*, p. 64-73. <[http://103.247.176.145:8080/Jwk\\_jdsyj/CN/abstract/abstract738.shtml](http://103.247.176.145:8080/Jwk_jdsyj/CN/abstract/abstract738.shtml)>, accessed 25 October 2016.

<sup>91</sup> The official website of News of Communist Party of China, Nine Open up Jiangxi-Fujian Soviet, <<http://cpc.people.com.cn/GB/69112/70190/70192/70270/4764000.html>>, accessed 26 October 2016.

<sup>92</sup> The rural soviet existed among more than 10 provinces and around 300 counties. Yishan CHEN, '中国人民当家作主的第一部根本大法——试析《中华苏维埃共和国宪法大纲》 [The First Fundamental Law of Chinese People in Charge-Analysis Constitution of Chinese Soviet Republic]' (1982) No. 2 *Journal of Xin Jiang Normal University (Social Science Edition)* p. 11.

<sup>93</sup> Ibid.

<sup>94</sup> In 1930, the Central Committee of the Communist Party of China had the decision to establish a central government in rural soviet, however, because of the interference of Kuomintang and the inconvenient transportation, the date of establish of soviet public had changed for several times. Ibid.

meeting, and passed the Constitution of Chinese Soviet Republic, Land Law and Labor Law.<sup>95</sup> After the election, Mao Zedong was elected as the leader in the new government.<sup>96</sup>

The Constitution of Chinese Soviet Republic was considered as the first Communist Constitution in China. However, it had a strong influence from Constitution of Soviet Union in 1918.<sup>97</sup> Although the Constitution had an amendment after the Second National Congress of the Chinese Soviet, however the main idea was not changed.<sup>98</sup>

The Constitution was consisted of a preamble and 17 Articles, it stipulated the form of state, basic political system, the task of government and the right and duty of people.<sup>99</sup> In the following paper, the author will introduce the Constitution of Chinese Soviet Republic according the four parts which mentioned above.

#### 1.5.2.1 *The Form of State*

The form of state is the basic question in each country, because of the strong influence of Soviet Union and the characteristics of communist state, the Constitution of Chinese Soviet Republic stated its form of state in Article 2, “What the Chinese Soviet Republic set up is a state which based on the democratic dictatorship of the workers and peasants. All power of the Soviet regime shall belong to

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<sup>95</sup> These are the most important laws at that time, Land Law will legality the land reform in rural soviets, Labor Law was designed to protect the worker’s right.

<sup>96</sup> Yishan CHEN, ‘中国人民当家作主的第一部根本大法——试析《中华苏维埃共和国宪法大纲》’ [The First Fundamental Law of Chinese People in Charge-Analysis Constitution of Chinese Soviet Republic] (1982) No. 2 *Journal of Xin Jiang Normal University (Social Science Edition)* p. 12.

<sup>97</sup> Ibid, p. 10, see also Yangbo SUN, Donglei TIAN, ‘试论 1918 年苏俄宪法对中国苏区法律的影响’ [On the Influence of Constitution of Soviet Union in 1918 to the Law in Chinese Soviet] (2007) No.1 *Journal of Inner Mongolia Agriculture University (Social Science Edition)* p. 318, see CHUNPING LIU, ‘苏联宪法学说对中国宪法学说影响的历时性审视’ [Diachronic Analysis of the Influence of the Theory of Constitution in Soviet Union on the Theory of Constitution of China] (2011) No. 4 *Academic Journal of Russian Studies* p. 46-47.

<sup>98</sup> There were several places changed, and the most important change was “the consolidated alliance with middle peasants” in the first Article. Yishan CHEN, ‘中国人民当家作主的第一部根本大法——试析《中华苏维埃共和国宪法大纲》’ [The First Fundamental Law of Chinese People in Charge-Analysis Constitution of Chinese Soviet Republic] (1982) No. 2 *Journal of Xin Jiang Normal University (Social Science Edition)* p. 12. The full version of Constitution of Chinese Soviet Republic is published in the official website of News of Communist Party of China, <<http://cpc.people.com.cn/GB/64184/64186/66640/4489884.html>>, accessed 27 October 2016.

<sup>99</sup> Ibid. however, it should be noticed that not everyone who lived in Soviet Republic will have the people’s right and duty, for example, landlord and sometimes rich peasant will be considered as the enemy of Soviet Republic, therefore they will not have these right and duty which stated in the Constitution.

the workers, peasants, Red Army soldiers and the entire toiling population...”<sup>100</sup>

It declared Chinese Soviet Republic is a democratic dictatorship country, workers and peasants were the leader in this new country. It should be noticed that in the Constitution of Soviet Union in 1918, the Article 1 stated that “Russia is declared to be a republic of the Soviets of Workers', Soldiers', and Peasants' Deputies. All the central and local power belongs to these soviets.”<sup>101</sup> Both of Constitutions ensured the leadership of workers, peasants and soldiers in the country.

#### *1.5.2.2 Basic Political System*

Generally speaking, the system of basic political system in Chinese Soviet Union copied the political system which stated in the Soviet Union’s Constitution. <sup>102</sup>

In Article 3, it stipulated that “The highest organ in Chinese Soviet Republic is National Congress of Chinese Soviet, when the National Congress is not in session, the highest organ shall be the Provisional Central Executive Committee of National Soviet, the Central Executive Committee shall appoint a Council of People’s Commissars, which shall conduct all governmental affairs, and promulgate orders and resolutions.”<sup>103</sup> In this Article, it regulated how the new state works in the political field, and from National Congress of Chinese Soviet to National People’s Congress of People’s Republic of China, it also showed the historical influence of the Constitution of Chinese Soviet Republic.<sup>104</sup>

#### *1.5.2.3 The Task of Government*

Since the Chinese Soviet Republic is only a regional regime, the Constitution not only included ensured power of government and people’s rights and duties, but also declared the task of the government. It is a guideline for this new state.

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<sup>100</sup> Constitution of Chinese Soviet Republic, passed by the Second National Congress of Chinese Soviet. See the official website of News of Communist Party of China, <<http://cpc.people.com.cn/GB/64184/64186/66640/4489884.html>>, accessed 27 October 2016.

<sup>101</sup> Constitution of Soviet Union in 1918, full version is available at <<https://www.marxists.org/history/ussr/government/constitution/1918/article1.htm>>, accessed 28 October 2016. See also see Chungping LIU, ‘苏联宪法学说对中国宪法学说影响的历时性审视 [Diachronic Analysis of the Influence of the Theory of Constitution in Soviet Union on the Theory of Constitution of China]’ (2011) No. 4 *Academic Journal of Russian Studies* p. 47.

<sup>102</sup> Ibid. Not only the Constitution of Soviet Union in 1918 had the similar regulation, but also the similar regulated was stated in Constitution of Soviet Union in 1924.

<sup>103</sup> Ibid 64.

<sup>104</sup> Jing XU, ‘论《中华苏维埃共和国宪法大纲》的历史影响 [On the Historical Influence of Constitution of Chinese Soviet Republic]’ (2005) No. 6 *Social Sciences in Guizhou* p. 151.

Article 1 of Constitution of Chinese Soviet Republic set up the task of government, “The task of the Constitution of the Chinese Soviet Republic is to guarantee the democratic dictatorship of the proletariat and peasantry in the Soviet districts, and to secure the triumph of the dictatorship throughout the whole of China. It shall be the aim of this dictatorship to destroy all feudal remnants, eliminate the influence of the imperialist powers in China, to unite China, to limit systematically the development of capitalism, to carry out economic reconstruction of the state, to promote the class-consciousness and solidarity of the proletariat, and to rally to its banner the broad masses of poor peasants and the consolidated alliance with middle peasants in order to effect the transition to the dictatorship of the proletariat.”<sup>105</sup>

This Article implies the real situation of China in 1930s, the whole country was not unified, imperialist power still had a great influence in China and this country was not independent in its foreign policy and economics, the majority population, peasants still lived in a very bad condition. The democratic dictatorship indicated the form of state in this new regime. This task is realistic, and the Communist Party of China followed this road, realized the triumph of communism in whole of China.

#### *1.5.2.4 The Right and Duty of People*

The Constitution of Chinese Soviet Republic also stipulated the rights and duties of people. However, according to the Article 2 that following groups were not included in the concept of “people”, even though they lived in Chinese Soviet Republic.

These groups were deprived the political rights. “Militarists, bureaucrats, landlords, the gentry, capitalist and monks—all exploiting and counter-revolutionary elements—shall be deprived of the right to elect deputies to participate in the government and to enjoy political freedom”.<sup>106</sup> It is clearly that the new regime still not mature enough, the deprivation of political rights violated these fundamental rights.

Not only Article 2, but also Article 4, 5, 6, 9, 10, 11, 12, 13 and 14 declared people’s rights and duties. According to these regulations, people lived in the Chinese Soviet Republic without distinction of sex, religion, or nationality shall enjoy the freedom of

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<sup>105</sup> Ibid 64.

<sup>106</sup> Ibid 64.

speech, publishing, assembly and association, people who older than 16 years old shall enjoy the suffrage, everyone shall enjoy the free education and freedom of marriage and religions, also people have the right and duty of working and military service.<sup>107</sup>

It should be noticed that in Article 14, it mentioned that “The Soviet government of China recognizes the right of self-determination of the national minorities in China”, it was not fit the situation of China, because of the strong influence of the Soviet Union’s Constitution, the most regulation of People’s rights and duties was a copy of the Constitution of Soviet Union, included Article 14.<sup>108</sup>

From the birth of the Communist Party of China in 1921 to the establishment of Chinese Soviet Republic in 1931, the Communist Party spent 10 years exploring its own path, the rich experiences of rural soviet helped the Communist Party of China from weak to strong, from a regional regime to the ruler of whole of China. The Communist Party faced the several fatal attacks from Kuomintang and during the Sino-China war. Finally, the Communist Party managed to survive and even increased the number of the Red Army and enlarged the Communist controlled-territory in China. Thanks to sacrifice of proletariats and peasants and the bad administrative organization of the Kuomintang. The Communist Party of China established the People’s Republic of China in 1949.

## **2. The Birth of Communist Party in the Visegrad states and their Early Exercises**

### **2.1 The Spread of Communist Ideology in the Visegrad states**

Before we start to examine the formation of the Communist Party in each state in Visegrad region, it is worth to discover how the communist ideology spread in Visegrad states, or more specifically in the Habsburg Empire<sup>109</sup> and later the Austro-Hungarian

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<sup>107</sup> Ibid 64, see also Yishan CHEN, ‘中国人民当家作主的第一部根本大法——试析《中华苏维埃共和国宪法大纲》’ [The First Fundamental Law of Chinese People in Charge-Analysis Constitution of Chinese Soviet Republic]’ (1982) No. 2 *Journal of Xin Jiang Normal University (Social Science Edition)* p. 13

<sup>108</sup> Ibid, see Chunping LIU, ‘苏联宪法学说对中国宪法学说影响的历时性审视 [Diachronic Analysis of the Influence of the Theory of Constitution in Soviet Union on the Theory of Constitution of China]’ (2011) No. 4 *Academic Journal of Russian Studies* p. 47-48.

<sup>109</sup> From 1790 to 1867, because of the *Pragmatica Sanctio*, Hungary was linked with the Habsburg

Monarchy, after the Compromise in 1867.

The increased worker population in the Monarchy was attributed to the land reform in the Habsburg Empire. In Hungarian case, for example, in 1830s to 1840s, a series of laws were published by the rulers in the state, in order to “rectify certain imperfections and unnecessary omissions.”<sup>110</sup> However, it turned out that these series land reforms did not successful as it expected. It made the life in the countryside was not easy. Meanwhile, with the development of industrialization in the Habsburg Empire, included Hungary, more and more job position were offered by the factory in the city or the mineral industries, such as in the Bohemia, Silesia.<sup>111</sup> With the huge number workers existed in the industrial sector, the trade union and other political group were significantly expanded. The Hungarian Social Democratic Party was formed in 1890, and it published its Declaration of Principle which already received the ideology of Marxism. And the revolution in Russia, and the Lenin’s theory reached to Hungary in the late 1918.<sup>112</sup>

## **2.2 The Birth of Hungarian Communist Party and Its Early Exercises**

In Hungary, the Communist Party of Hungary was established after the First World War, and the Party had the chance to exercise its methodology soon, even the Party just was established in four months.<sup>113</sup>

In this part, the author will mainly deal with three questions: the first one is the formation or birth of the Communist Party of Hungary, the second one is the establishment of Hungarian Soviet Republic and its Constitution. Especially, how

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Empire, the Emperor also regarded as the nominally King of the Kingdom of Hungary after he or she take oath to abide by the Hungarian laws. The independence of Hungary was only lost after the surrender at Vilagos in August 1849. See Andras GERGELY, ‘*Rise of the Modern Hungarian Sate 1790-1867*’ in Andras GERGELY, Gabor MATHE (eds.), Trans. by Daniel Szekely, *The Hungarian State: Thousand Years in Europe* (1st edn, Korona Publishing House, 2000), p. 168-214.

<sup>110</sup> Robert William Benjamin GRAY, *Land Reform and the Hungarian Peasantry c. 1700-1848*, PhD thesis, University College London, 2009, p. 46.

<sup>111</sup> Francis H. E. PALMER, *Austro-Hungarian Life in Town and Country*, (1st edn, Newnes, 1903), p. 240-241.

<sup>112</sup> Ferenc POLOSKEI, ‘*The Crisis Period of the Dual Monarchy (1890-1918)*’ in Andras GERGELY, Gabor MATHE (eds.), Trans. by Daniel Szekely, *The Hungarian State: Thousand Years in Europe* (1st edn, Korona Publishing House, 2000), p. 239-240.

<sup>113</sup> The Communist Party of Hungary established in November of 1918, the leader of the Party Bela Kun and his former prisoned friends accepted the Marxism-Leninism in Russia war prison camps. Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) Preface, vii and p. 49.

Soviet Union's Constitution's influence on this Constitution, the last question will be the failure of Hungarian Soviet Union.

### 2.2.1 The Socialism in Hungary before First World War

The History of socialism in Hungary is much longer than the history of the Communist Party of Hungary. In 1860s, when Karl Marx dedicated to spreading his Socialism or so called Marxism in Europe, as one part of Austro-Hungarian Monarchy, Hungary received numerous thoughts and books of Socialism and founded its first political group which mainly consisted of Budapest proletariat, the General Workers' Association on 23 February 1868.<sup>114</sup> Since 1867, Austria and Hungary enacted the Compromise along with other ethnic nationalities in both countries, so called Austro-Hungarian Monarchy had established. The establishment of Monarchy helped a lot to develop the economics in Hungarian part. The industrialization happened in Hungary, more and more factories were built after the Compromise, especially in the big city, such as Budapest. A lot of poor peasants left their hometown and came to big cities to make a living as well. According to the Hungarian statistics, there were only 28000 workers who worked in a factory. However, during 40 years, the number of factory workers rose 10 times.<sup>115</sup>

Receiving the ideas of social-democratic theorists from Germany, such as Eduard Bernstein and Ferdinand Lassalle, the Socialist group leading the working class mainly in Budapest had five failed attempts to forming a socialist Party in Hungary from 1869 to 1890. During the early exercises of these socialist activists tried to achieve such goals: had a general suffrage to each person in Hungary, and elected the working class representative in the parliament. However, the crucial reality broke these socialists dream.<sup>116</sup>

In the end of the 19th century, there was a new trend of socialist activities. With the industrialization in Hungary, there were more and more educated scholars and

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<sup>114</sup> Ibid, p. 1. See also Martin MEVIUS, *Agents of Moscow: The Hungarian Communist Party and the Origins of Socialist Patriotism 1941-1953* (1st edn, Clarendon Press 2005) p. 11.

<sup>115</sup> Rezler GYULA, 'The Formation of the Industrial Working Class in Hungary: A lesson in Social Dynamics' (2001) Vol. 7 *Review of Sociology*, p. 103-104. <<http://www.akademiai.com/doi/pdf/10.1556/RevSoc.7.2001.1.8>>, accessed 18 November 2016.

<sup>116</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 2.

middle-class existed in the big cities in Hungary, they asked more and more legal recognition from the Monarchy to ensure their rights.<sup>117</sup>

Just like there was a socialist journal which was called New Youth in China,<sup>118</sup> there was also a journal in Hungary which spread socialism among young students and scholars. With the help of his rich friends, social-democrat and Hungarian who born in the old Hungarian Kingdom (current in Romania), Oszkar Jaszi launched a monthly journal, *Huszadik Szazad* (Twentieth Century) in Hungary on 1 January 1900. And after a few years running, this journal became one of the most important academic publications in Hungary, since its prestigious subscribers.<sup>119</sup> Later, O. Jaszi came up with the idea of establishing an “eastern Switzerland” in Hungarian Kingdom. However, this idea couldn’t win the support from other ethnic nationalities in the old Hungarian Kingdom.<sup>120</sup>

During the wartime, since the war request many weapons and supplements in the whole Monarchy, much more workers were needed at that time, however, the workers’ condition was much worse than it used to be, according to the War Requirement Acts, almost all the industrial enterprises were controlled by the government in the spring of 1915.<sup>121</sup> With the prolong of the war, the living standard of working class in cities was getting worse, the daily needs shortage was more and more severe. Numerous people, especially working class became dissatisfied with the government, counter-government activists and antiwar programs were organized by the socialist group.<sup>122</sup>

### 2.2.2 The Birth of Communist Party of Hungary

On 16 November 1918, Karolyi government released the Declaration, Hungary

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<sup>117</sup> Ibid, p. 16.

<sup>118</sup> New Youth or so called La Jeunesse was the most important journal in the early of 20 Century, it spread socialism among the scholars and young students, the chief editor, Chen Duxiu was one of the leaders of Communist Party of China during its early period.

<sup>119</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 17.

<sup>120</sup> Jorg K HOENSCH, *A History of Modern Hungary: 1867-1986* (2nd impression, Longman Group, 1989) p. 85-86.

<sup>121</sup> Ibid, p. 26-27, see also <[http://encyclopedia.1914-1918-online.net/article/labour\\_labour\\_movements\\_trade\\_unions\\_and\\_strikes\\_austria-hungary](http://encyclopedia.1914-1918-online.net/article/labour_labour_movements_trade_unions_and_strikes_austria-hungary)>, accessed 17 November 2016.

<sup>122</sup> Ibid.

turned into a Republic. It marked the collapse of the Austro-Hungarian Monarchy.<sup>123</sup>

Bela Kun was the leader in the early period of Communist Party of Hungary. He and his comrades, such as Jozsef Kelen, and his brother Otto Korvin established the Communist Party in Hungary in 1918. In the next year, the Party had the chance to build a Soviet Republic and exercised some socialist policies, even though this Soviet Republic had only lasted for 133 days.

Bela Kun was born in a small village in Transylvania (now one part of Romania) in 1886. In his early years worked as a journalist in Romania and joined the socialist party, Hungarian Social Democratic Party when he was 16 years old.<sup>124</sup> During the WWI, Bela Kun was captured by the Russian army, and sent to a war prison camp in Tomsk. In the camp, Bela Kun not only was forced to work, but also tried to form a communist group with his communist comrades as well.<sup>125</sup>

In the prisoned period, Bela Kun and his comrades accepted the new trend of Russian Revolution. They became Bolshevik Party members in 1917, and even had the privilege to live outside of prison camp.<sup>126</sup>

Before Bela Kun and his Bolshevik fellows came back to Hungary and established the Communist Party of Hungary in 1918. In the same year of March, Bela Kun organized Hungarian Group of the Communist Party of Russia in Moscow.<sup>127</sup>

Almost at the same time, the socialist war prisoner joined the Bolshevik happened in other parts of war prison camp in Russia.<sup>128</sup> More and more former Hungarian soldiers accepted the new Socialism trend, Bolshevism or Leninism and got the inspiration from

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<sup>123</sup> Jorg K HOENSCH, *A History of Modern Hungary: 1867-1986* (2nd impression, Longman Group, 1989) p.82-83.

<sup>124</sup> Hungarian Social Democratic Party was the established in 1889, and the mainly socialist party at that time as well. See Janusz BUGAJSKI, *Political Parties of Eastern Europe: A Guide to Politics in the Post-communist Era* (1st edn, M. E. Sharpe, Inc. 2002) p. 351. See also Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 6, 53-54.

<sup>125</sup> In this study group, these socialist war prisoners not only translated some German origin Marxism books, but also had Russian language learning class. Ibid, p. 54-55, see also <[http://encyclopedia.1914-1918-online.net/article/kun\\_bela](http://encyclopedia.1914-1918-online.net/article/kun_bela)>, accessed 18 November 2016.

<sup>126</sup> Ibid

<sup>127</sup> Sijing GAN, Kunyu GONG and Hongchen LI Translated, *匈牙利史 [The History of Hungary]*, Original Version is Unger MATYAS, Szabolcs OTTO, Magyarorszag Tortenete (1st edn, Heilongjiang People's Publishing, 1982) p. 284.

<sup>128</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 56-57.

Russian Revolution, even took part in the Revolution. <sup>129</sup>

At that time, in Russian's so called "Prisoner of war graduates of the October Revolution" program, there were around 25 % "graduates" were Hungarian, owing to this reason, the reputable Kun was named as the first president of Federation of Foreign Groups.<sup>130</sup>

After the Brest-Litovsk agreement, Russia, the new socialist country finally had a time to have a breath, and even think about spreading the revolution in other countries. Hungary was one of the most possible countries to have a socialist revolution at that time. In Richard Lowenthal's article, because of the relatively lower develop level of economy and political structure of Hungary, even though Germany lost the First World War as well, Hungary was still the most possible place to outbreak a socialist revolution.<sup>131</sup>

Under this situation, Bela Kun and his Bolshevik Comrades were sent back to Hungary by the Communist Party of Russia and started to practice socialism revolution in Hungary.<sup>132</sup> When they came back to Budapest in 1918, the most important task was to operate the activities of Hungarian Communist Party.

At that time, in Hungary, since the failure of the First World War, the Austro-Hungarian Monarchy became a much weaker state, more and more former nationalities in this country started to establish their own states, because of the failure of the war, Hungary lost lots of its territory, and it was not the great power in Europe even the world any more, these pessimistic Hungarians had to lives with depression and anxiety.<sup>133</sup> On 1 November, the king for the Monarchy had to appoint Mihaly Karolyi to form the new cabinet. Soon, the Monarchy had to split and Hungary established its

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<sup>129</sup> Ibid, p. 60.

<sup>130</sup> Ibid, p. 71.

<sup>131</sup> Richard LOWENTHAL, 'The Hungary Soviet and International Communism' in Andrew C. JANOS, William B. SLOTTMAN (eds.), *Revolution in Perspective: Essays on the Hungarian Soviet Republic of 1919 (Russian & East European Study)* (1st edn, University of California Press, 1971) p. 174-175.

<sup>132</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 72-73.

<sup>133</sup> Alfred D. LOW, *The Soviet Hungarian Republic and The Paris Peace Conference* (1st edn, American Philosophical Society, 1963) p. 6-17.

Republic after the publishing of Declaration on 16 November 1918.<sup>134</sup> However, the Karolyi cabinet could not control the whole situation in Hungary. This new Republic retained in a chaotic situation.

In November 1918, Communist Party of Hungary established under such kind of condition in Budapest. Bela Kun was definitely the leader of the Party. After the establishment, the new Party started to perform its own revolutionary program which was guided by the experienced Bolshevik Bela Kun.<sup>135</sup>

### 2.2.3 The First Hungarian Soviet Republic

The Hungarian Soviet Republic only lasted for 133 days. It is a short period in the history of Hungary. However, it is also a very important chapter not only in Hungarian history but also in the history of Communist development. It was widely considered as the second earliest soviet republic in the world.<sup>136</sup>

Since Austro-Hungarian Monarchy lost the First World War, it deeply damaged the sovereignty of this great power, the old political order obviously failed to control its territory and the nationalities which lived in that territory.

Hungary established its own Republic in 1918. Mihaly Karolyi became the first Prime Minister of Hungarian Republic. During his governing, the leading position of Hungary could be divided into three parts: Karolyi's political group, Jaszi's Radical Bourgeois Party and the socialist party, Hungarian Social Democratic Party.<sup>137</sup> Even though, the supporting group of Karolyi in the government was stronger than the Social Democratic Party. However, the left-wing Social Democrats and the Communist Party (not in the government) apparently had much more experiences on the term of connecting with common people, especially in the rural area.

In November of 1918, only a few days later Karolyi was appointed as Prime Minister in Hungary by King Karl IV, Hungary decided to finish the Compromise relation with Austria, also got rid of their Austro-Hungarian King as well, under such kind of

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<sup>134</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 83.

<sup>135</sup> Ibid, p. 93.

<sup>136</sup> <<https://theorangefiles.hu/the-hungarian-soviet-republic/>>, accessed 20 November 2016.

<sup>137</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 85-86.

condition, there was the Aster Revolution breakout in Hungary in October 1918. After the Revolution, King Karl IV had to make a statement and separate the Monarchy, therefore the First Hungarian Republic appeared. Karolyi, the widely-respected Politician was elected as the first President in the First Hungarian Republic. Dénes Berinkey was appointed as the Prime Minister in this youth Republic.<sup>138</sup>

Nevertheless, the First Hungarian Republic was existed only four and half months. After Berinkey's two-month service for this new Republic, the Social Democratic Party gained the power in the government.<sup>139</sup> In early March of 1919, the left wing in the socialist Party seized the power. However, it would not make any change for Hungary's international relationship, soon the Vix-memorandum caused a dramatic change in Hungary.<sup>140</sup>

### *2.2.3.1 The Birth of Hungarian Soviet Republic*

After the First World War, Hungary, as part of the Central Powers which lost the war, conversely, China, as one part of the Allied Powers which won the war. However, during the Paris Peace Conference both countries lose it, and it made a dramatic change both in China and Hungary as well.

In Hungary, because of the Paris Peace Conference, Hungary should give quite a lot of its territory to the Allied Powers, on 20 March 1919, when Lieutenant Fernand Vix send his famous Vix-memorandum to President Karolyi, and request First Hungarian Republic to give away its territory of West Transylvania and one part of the Great Hungarian Plain,<sup>141</sup> when the memorandum published, the national pride was seriously hurt among Hungarians, most of them hoped their government would do something to change this situation, some of them even wanted to change this government.

The leadership of First Hungarian Republic government also felt the pressure from people, they asked the mainly political Groups in Hungary, and wondering whether any Party could take the responsibility to deal with Vix-memorandum or not. The right wing in the government refused to take the responsibility, and after a long-time discussion in

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<sup>138</sup> <<https://theorangefiles.hu/the-first-hungarian-republic/>>, accessed 20 November 2016.

<sup>139</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 11.

<sup>140</sup> *Ibid*, p. 9.

<sup>141</sup> *Ibid*. See also <<https://theorangefiles.hu/the-first-hungarian-republic/>>, accessed 20 November 2016.

the leaderships of Social Democratic Party, the Social Democratic Party announced their decision, they are willing to form a new government and take the responsibility to the whole country, meanwhile, they addressed their coming plan, to have cooperation with the Communist Party.<sup>142</sup>

Nevertheless, the Communist Party of Hungary was under the suppression by First Hungarian Republic, as we know, when Bela Kun and his comrades found Communist Party of Hungary, this new Party started its political plan, to spread Communism and socialist revolution in this country. However during a march on 20 February 1919, the angry working class had a big conflict with the policemen, soon it became a riot, four policemen even died in the riot, the government decided to show their strong against the public and the organizers of this march, Communist Party of Hungary obviously in the list, policemen came to the headquarter of Communist Party of Hungary and researched its documents, the party's propaganda leaflets and the official newspaper of Communist Party, *Vörös Ujság* (the Red Newspaper), were the evidence of their violent counter-government position. There were 68 Communist Party member arrested by policeman and had a trial, it included the leader of the Communist Party, Bela Kun.<sup>143</sup>

Although, the Social Democratic Party had some unhappy experiences with Communist Party,<sup>144</sup> this socialist Party realized that the bourgeois governing of the present government was unfavorable among the masses, the idea of forming a proletariat dictatorship government came to the leaders of Social Democratic Party, the cooperation between Social Democratic Party and Communist Party of Hungary sooner realized. After the discussion between the leadership in two Party in the same day night, the most important decision was made by both, Hungary will follow Russian's form of government,<sup>145</sup> a new Soviet Republic born in Hungary.

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<sup>142</sup> Ibid, p. 15-16.

<sup>143</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 122.

<sup>144</sup> For example, the riot on 20 February was happened in front of the office of *Nepszava*, the official newspaper of Social Democratic Party, because of the fear of violence, socialists called the policemen and asked for protecting. Then the riot happened. Ibid, p. 122.

<sup>145</sup> Take an example, there will no Minister in the new government, commissar will in charge, also the new government had a new name "the Revolutionary Governing Council". Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 17.

Therefore, on 21 March 1919 the government had to hand over its power and Social Democratic Party shared its power with Communist Party of Hungary.<sup>146</sup> Also the First Hungarian Republic changed its Form of State to Soviet Republic.<sup>147</sup> For Communist Party, it was also an almost unbelievable experience, just one month ago, this Party was suffered by the suppression by the government, Bela Kun and other leaders in the Party had to stay in the prison. Nevertheless, the political victim became the ruler in the state and the former prisoner became the leadership in the Soviet type government.<sup>148</sup>

This bloodless dramatic change in Hungry offered a ruling position to the Communist Party of Hungary, the Party had a chance to practice its communist policy in a very short period.

### *2.2.3.2 The Legal Exercises of Hungarian Soviet Republic and Its Constitution*

Even though the Hungarian Soviet Republic was considered as the second Soviet Republic in the world, there were not too much Soviet Legal tradition or system could use for reference. In Peter Apor's Article, he cited the saying from Laszlo Reti, the director of the Institute for Party History<sup>149</sup>, "The Hungarian Soviet Republic 'created what our people's democracy, which also has the function of the dictatorship of the proletariat...',"<sup>150</sup> Soviet Russia, as the only successful Soviet Republic in the world, therefore became the only model to follow. The leadership of Hungarian Soviet Republic also had the same consideration, in Laszlo's following argument, he stated, "The Soviet Republic, which was the Third Hungarian Republic, held the Russian Soviet State up as its model."<sup>151</sup> When the new government established, they sent a report to Lenin, the leader of Soviet Russia and Communist Party of Russia, in the report, these Hungarian rulers showed their respects to Russia and expressed their

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<sup>146</sup> Two parties signed a "Unity" document in March 1919, and a new Party came out, the Hungarian Socialist Party. Ibid, p. 146. See also Miklos MOLNAR, *A Short History of the Hungarian Communist Party*, Boulder, Colorado, Westview Press, 1978, p. 10.

<sup>147</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 11-22.

<sup>148</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p. 123.

<sup>149</sup> It abolished in 1990s.

<sup>150</sup> Peter APOR, 'Praefiguratio: Exemplary History and Temporal Order in the Thirtieth Anniversary of the First Hungarian Soviet Republic of 1919' (2011) Vol. 12 *Politics, Religion & Ideology*, p. 129.

<sup>151</sup> Ibid.

willing, follow Russian Soviet model.<sup>152</sup>

The Hungarian Soviet Republic only existed in 133 days, there was not too many peaceful times for the new Soviet Republic to practice its governing in legal field. Like the Chinese Soviet Republic, the Hungarian Soviet Republic did not pass too many new laws in that period. Most of the time, the new Soviet Republic was busying to fight with its enemies, not only from abroad, but also in the country.<sup>153</sup>

Under such condition, the legal exercises in Hungarian Soviet Republic had a strong influence by the Soviet Russia. The most of administrative policies were published as decree. Lenin's State and Revolution was considered as the directives or ruling principles in Hungary, not only the economic side, but also in the legal practice.<sup>154</sup> The short ruling period along with the obstacles and hostility from neighboring countries and Szeged<sup>155</sup> deemed that only a few of chances left to exercise Soviet legal practices in Hungary.<sup>156</sup> Therefore, the most legal documents which published by the government were related to improve the living standards and working conditions among the city working class and poor peasants in the rural area.

During the ruling period of the Hungarian Soviet Republic, the Revolutionary Governing Council passed some basic rules which related to the agrarian policy and nationalization of the private estates.<sup>157</sup> In rural areas, like later in Chinese Soviet Republic, wide land reform took place. Before Hungary became a Soviet Republic, the Land Reform Law had passed in February 1919,<sup>158</sup> during the land reform period, the

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<sup>152</sup> Alfred D. LOW, *The Soviet Hungarian Republic and The Paris Peace Conference* (1st edn, American Philosophical Society, 1963) p. 39, see also PETER APOR, 'Praefiguratio: Exemplary History and Temporal Order in the Thirtieth Anniversary of the First Hungarian Soviet Republic of 1919' (2011) Vol. 12 *Politics, Religion & Ideology*.

<sup>153</sup> The new Soviet Republic caused a widely anxiety among the great powers, they organized army tried to collapse the new Republic, inside of this country, Asmiral Horthy and his counter-revolution friends attempted to destroy the new Republic as well.

<sup>154</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 67.

<sup>155</sup> Szeged, a city in south Hungary and at that moment was the center of anti-Hungarian Soviet Republic.

<sup>156</sup> The newly independent neighboring countries used to be one part of Austro-Hungarian Monarchy or gained lots of territory from Hungary after Paris Peace Conference. Also, there were not enough time to issue new regulations to cover everything. Ibid, p. 68.

<sup>157</sup> Ibid, p. 55.

<sup>158</sup> Marida HOLLOS, *A Scandal in Tiszadomb: Understanding Modern Hungary Through the History of Three Families: Understanding Modern Hungary Through the History of Three Families* (1st edn, Routledge, 2001) no page showing in the google book's version, in the Chapter of World War I: Sandor.

landlord lost their lands and poor peasants had their own land.<sup>159</sup> The land reform in Hungary commenced much earlier, Maria Theresa conducted the land reform in order to ease the conflicts and in the end of 1840s, land reform became one part of the liberal reforms.<sup>160</sup> However, the insufficient land reform led the poor agricultural growth and finally it caused the dissatisfying atmosphere in the rural area.<sup>161</sup> In the city area, the working class also had the chance to improve their working conditions. The eight-hour-day policy was introduced by decree.<sup>162</sup> The workers also enjoyed their higher payment, on 17 April 1919, the government published a regulation on general wages, workers had a better paying.<sup>163</sup>

After the First Congress of the Hungarian Socialist Party in June, the First Congress of Hungarian Soviets held in 16 June. In this Congress, the representatives not only discussed the economic situation, foreign policy and military situation, but also formed and passed the Constitution of Hungarian Soviet Republic,<sup>164</sup> it was the first Soviet Constitution in Hungary, and had a strong influence by Soviet Russia as well.

Before the adoption of the Constitution of Hungarian Soviet Republic, a so-called provisional Constitution was introduced to solve the confusion of the local soviet's operation. Since no specific provision existed to regulate the operation of the local soviet, to define the competencies of the local soviet and its representatives. Under such conditions, the Revolutionary Governing Council adopted the Decree XXVI, as the provision Constitution.<sup>165</sup>

The preparatory work of the Constitution of “the Federal Hungarian Socialist Soviet Republic” (Constitution of Hungarian Soviet Republic) conducted by a five-member committee after the Communist Party ruling the state. It mainly based on the 1918

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<sup>159</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 47-48.

<sup>160</sup> Gray, R.W.B., *Land reform and the Hungarian peasantry c. 1700-1848* (Doctoral thesis, University College London 2010).

<sup>161</sup> Michael KOPSIDIS, *Agricultural development and impeded growth: the case of Hungary 1870–1970* in Pedro LAINS, Vicente PINILLA (eds.) *Agriculture and Economic Development in Europe since 1870*. < <http://www.helsinki.fi/iehc2006/papers2/Kopsidis.pdf> > accessed 28 July 2018.

<sup>162</sup> Ibid, p. 63.

<sup>163</sup> Ibid, p. 62.

<sup>164</sup> Ibid, p. 64.

<sup>165</sup> Gabor MATHE, *The Federal Hungarian Socialist Soviet Republic of 1919* in Andras GERGELY, Gabor MATHE (eds.), Trans. by Daniel Szekely, *The Hungarian State: Thousand Years in Europe* (1st edn, Korona Publishing House, 2000) p. 252-256.

Constitution of Soviet Russia. The draft Constitution was adopted on 23 June 1919.<sup>166</sup>

The Constitution of Hungarian Soviet Republic was consisted of seven Chapters and 89 Articles in total. According to the regulation, the Constitution had following Chapters: 1. Principles of the constitution of the Hungarian Soviet Republic; 2. The rights and duties of workers in Hungarian Soviet Republic; 3. The organization of central soviet; 4. The organization of local soviets; 5. The suffrage; 6. The budgetary law and the last one; 7. The rights of nationalities in Hungarian Soviet Republic.<sup>167</sup>

The Constitution stipulated the most important principles in the first Chapter, it stated that the proletariat dictatorship in the country, and make a new socialist order and ensured the ruling position of worker, soldier and peasant. What's more it also declared its foreign policy.<sup>168</sup>

Also, the Constitution ensured the suffrage among the masses, most people had the right to vote, however, there were several groups whose suffrage were deprived.<sup>169</sup> Since the proletariat dictatorship, the Constitution also had some special protection on workers, for instance, the Constitution stipulated that "The State will maintain those unable to work, and such as want to work but for whom no work can be provided."<sup>170</sup> In the Constitution, it also regulated the supreme organ of the state power of the Soviet Republic in Hungary, National Convention of the Federal Councils, and the Federal Central Executive Committees was designed as the Executive in the Central Government. Besides, The Council of People's Economy was dedicated economic organ in the central level. However, in this Constitution, it didn't include the judicial part. Even though, several laws regarding to judicial issue were passed by the ruling government in the period of Hungarian Soviet Republic.<sup>171</sup>

The new Constitution was modeled after the 1918 Soviet Union's Constitution, it

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<sup>166</sup> Ibid.

<sup>167</sup> The Hungarian version of Constitution of Hungarian Soviet Republic was available at the <[https://hu.wikisource.org/wiki/A\\_Magyarorsz%C3%A1gi\\_Szocialista\\_Sz%C3%B6vets%C3%A9ges\\_Tan%C3%A1rs%C3%B6zt%C3%A1rsas%C3%A1g\\_alkotm%C3%A1nya](https://hu.wikisource.org/wiki/A_Magyarorsz%C3%A1gi_Szocialista_Sz%C3%B6vets%C3%A9ges_Tan%C3%A1rs%C3%B6zt%C3%A1rsas%C3%A1g_alkotm%C3%A1nya)>, accessed 28 November 2016.

<sup>168</sup> Article 1-3, Chapter 1, Ibid.

<sup>169</sup> Article 68, Ibid.

<sup>170</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 64.

<sup>171</sup> Gabor MATHE, 'The Federal Hungarian Socialist Soviet Republic of 1919' in Andras GERGELY, Gabor MATHE (eds.), Trans. by Daniel Szekely, *The Hungarian State: Thousand Years in Europe* (1st edn, Korona Publishing House, 2000) p. 252-256.

broke the Hungarian Constitution tradition, however since the Soviet Republic's "life" was too short, its Constitution did not put into enforced.<sup>172</sup>

## 2.2.4 The Counter-Revolution and White Terror

### 2.2.4.1 Worries Behind the Triumph—the Hostile Neighboring Countries

When Proletariat celebrated their victory of new Hungarian Soviet Republic, the new Republic faced two groups of enemies, the army of its neighboring countries surrounded this new Soviet Republic hostilely, inside the country, the remaining democratic powers gathered in south Hungary.<sup>173</sup>

The attack from Romanian army was started on 16 April 1919, to protect the new Soviet Republic became the most important thing in the country. Vilmos Bohm, the Commander-in-Chief of Hungarian Red Army had around 55000 mostly untrained young men under his arms.<sup>174</sup> With the support of Allied Powers, the attack progressed. On the Hungary side, the attack raised the proletariats enthusiasm for the new Soviet Republic, soon, in the end of the April, there were a Red Army which including some 70000 soldiers gathered and fought for Hungarian Soviet Republic.<sup>175</sup> However, the superiority of the Romanian army destroyed the Communist exercises in Hungary, and in a few days after the attack, Hungary lost Nagyvarad (Oradea), Arad and Debrecen. On 26 April 1919, the Czechoslovak army started to attack the north of Hungary, the Soviet Republic was endangered.<sup>176</sup> Nevertheless, the working class voluntarily joined the Red Army, and the action of Ukrainian Soviet army attacked Romania, somehow, changed the situation of the attack. In the second half of May, Salgotarjan was saved, and Miskolc was controlled by Red Army, the threat from north was relieved, even

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<sup>172</sup> Marta DEZSO and Bernadette SOMODY, *Constitutional Law in Hungary*, (1st edn, Kluwer Law International, 2010) p. 28.

<sup>173</sup> After the Paris Peace Conference, Hungary was forced to give away its amount of territory to its neighboring countries, the new Soviet Republic was trying to take back its territory from its neighboring states. It caused a panic among these countries. Andrew L. SIMON, *Admiral Nicholas Horthy: Memoirs*, (1st edn, Simon Publications, 2000) p. 114. Also, during the forming of Hungarian Soviet Republic, the counter-revolution was always existed, and this group of people was suffered a brutal suppression by Soviet Republic. Baron Albert KAAS, Fedor De LAZAROVICS, *Bolshevism in Hungary: The Bela Kun Period*, (1st edn, Grant Richards, Fronto Limited, 1931) p. 241-245.

<sup>174</sup> Peter F. SUGAR, Peter HANAK, Tibor FRANK (ed.), *A History of Hungary*, (1st edn, Indiana University Press, 1990) p. 304.

<sup>175</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p.96.

<sup>176</sup> Peter F. SUGAR, Peter HANAK, Tibor FRANK (ed.), *A History of Hungary*, (1st edn, Indiana University Press, 1990) p. 306.

Hungarian Red Army occupied part territory of Czechoslovak. The danger from neighboring states seemed gone.<sup>177</sup> However, the Allied Powers also noticed the military activities in Slovak, Hungarian Red Army had already occupied Bratislava, and it threat the safety of Vienna seriously. Clemenceau sent a note to Hungarian Soviet government and ask the Red Army to stop their military activities in Slovak.<sup>178</sup>The Soviet government took a consideration of Clemenceau's note and tried to reach an agreement with these Great Powers.<sup>179</sup>

After a short peaceful period in July, the Red Army decided to break the "silence" and tried to cross the Tisza, this military movement failed at last, on 30 July, the Romanian army broke the defense and headed to Budapest. On 1 August, the government had the last meeting and the leadership decided to resign and hand over their power to a trade union (provisional) government.<sup>180</sup>

#### 2.2.4.2 *The Counter-Revolution and "white Terror"*

When Romanian and Czechoslovakia warriors attacked the Soviet Republic, inside of Hungary, the counter-revolutionaries also tried to collapse the Soviet Republic. The counter-revolutionary based on the South Hungary city, Szeged, at that time occupied by French. On 6 July, the very late period of Hungarian Soviet Republic, the future ruler Miklos Horthy became one member in the counter-revolution army. Soon, he was appointed as the Commander-in-Chief of the counter-revolutionary army.<sup>181</sup> When the Romanian army conquered Hungarian Soviet Republic and entered in Budapest, the counter-revolutionary army got the support from the Allied Powers (mainly France, Great Britain and Russia). On 1 August 1919, the Hungarian Soviet Republic collapsed. Romanian army occupied most of the territory of Hungary, even the capital. The occupation lasted three and a half months, until the Romanian army got the order from the Allied Powers, which was requested the Romanian army to fight against Soviet

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<sup>177</sup> Ibid, p. 307.

<sup>178</sup> Tibor HAJDU, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 133.

<sup>179</sup> Ibid, p. 150-151.

<sup>180</sup> Rudolf L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967) p.203.

<sup>181</sup> Miklos SZINAI, Laszlo SZUCS (ed.), *The Confidential Papers of Admiral Horthy*, (1st edn, Corvina Press, 1965) p. xii.

Russia. Therefore, on 14 November, Romanian army left Budapest and other parts of Hungary as well, then heading to west. On 16 November 1919, the counter-revolutionary army entered Budapest, and soon controlled the whole country.<sup>182</sup>

With the ruling of a counter-revolutionary government, or so-called Kingdom of Hungary, Miklos Horthy became the *de facto* ruler in the country. And in order to suppress the Hungarian revolutionary spirit, the new government had a series of brutal policies to control the whole country, under such policies, labor activists, Jews and communists became the victims of White Terror,<sup>183</sup> the Communist Party of Hungary remained an illegal status, and most Communist Party member had to move to other countries, mostly went to Soviet Russia, included Bela Kun. The Communist activities became a secret movement.<sup>184</sup>

### **2.3 The Birth of Communist Party and Its Early Exercises in Czechoslovakia and Poland**

Although Czechoslovakia and Poland gained their independence after the First World War,<sup>185</sup> the history of communist movement in Poland and Czechoslovakia were definitely longer. In Czechoslovakia, although the whole country was ruled by the Austro-Hungarian Monarchy, the radical Czech-Slav socialist parties already existed as one part of the sections of the socialist parties in the Monarchy.<sup>186</sup> In Poland, the communist party, Polish Socialist Party was founded in Paris in 1892.<sup>187</sup> In this part, the author will give an introduction of the birth of Communist Party in Czechoslovakia and Poland, the important exercises of these two Parties will be presented as well.

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<sup>182</sup> Ibid, p. xiii.

<sup>183</sup> Bela BODO, 'Hungarian Aristocracy and White Terror' (2010) Vol. 45, No. 4 *Journal of Contemporary History* p. 718-719.

<sup>184</sup> Regarding to the "White Terror", currently, the academia holds a relatively positive view of the Horthy Regime and its suppression of communists.

<sup>185</sup> After the First World War, Czechoslovakia established from the Austria-Hungarian Monarchy, Poland reestablished after the long-term partition. However, during the Second World War period, both countries lost their sovereignty and reestablished after 1945.

<sup>186</sup> Take an example, The Social Democratic Czechoslavonic party in Austria was the socialist party which mainly exercised in Austria, and it was also considered as the fatherhood of the later Czechoslovak social democratic workers party. Zdenek L. SUDA, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia* (1st edn, Hoover Institution Press, 1980) p. 2.

<sup>187</sup> Robert BLOBAUM, *Feliks Dzierzynski and the SDKPiL: A Study of the Origins of Polish Communism* (1st edn, East European Monographs, 1984) p. 16. See also the PPS (Polska Partia Socjalistyczna), <<https://www.jewishvirtuallibrary.org/pps-polska-partia-socjalistyczna>>, accessed 1 February 2017.

### 2.3.1 The Birth of Communist Party of Czechoslovakia

Like the formation of Communist Party of Poland, the establishment of Communist Party of Czechoslovakia was a result of the split of the socialist democrat party. The more radical party members in the socialist party want to build a Soviet Republic and then formed a Communist Party.<sup>188</sup>

The Social Democratic Party of Czechoslovakia was considered as the predecessor of the Communist Party of Czechoslovakia, and the history of this Socialist Party could trace from the Czech group of Austrian Social Democrats in 1878.<sup>189</sup>

Before regaining the independence of the country, Czechoslovakia was under the control of Austro-Hungarian Monarchy, however, Czech part had a much closer relation with Austria, and the main part territory in Slovakia had an old name “Upper Hungary” for a long time. The Czech part enjoyed the industrialization and had near 40 percent population in the industrial field. Also, the legalization of the socialist party in Austria and its controlled Czech areas made the development of Socialist movement more rapid.<sup>190</sup> Nevertheless, in Slovakia, there was only 19 percent population worked in the industrial field.<sup>191</sup> Therefore the socialist movement was more advanced in Czech part. Also the Communist Party of Soviet Russia helped a lot before the establishment of Czechoslovakia. Also, there were numerous Czech and Slovakia Communist activists who lived in Soviet Russia. In 1918, before the Paris Peace Conference, the independence of Czechoslovakia was supported by the Allied countries in First World War.<sup>192</sup>

However, the independence of Czechoslovakia did not bring a new Communist Party of Czechoslovakia, since the Social democrats in Czechoslovakia were more focused on

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<sup>188</sup> Paul E. ZINNER, *Communist strategy and tactics in Czechoslovakia, 1918-48* (1st edn, Pall Mall Press, 1963) p. 25.

<sup>189</sup> Ibid.

<sup>190</sup> Zdenek L. SUDA, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 2.

<sup>191</sup> Paul E. ZINNER, *Communist strategy and tactics in Czechoslovakia, 1918-48* (1st edn, Pall Mall Press, 1963) p. 11.

<sup>192</sup> There was a Czechoslovakia National Councils in Moscow and it was considered as the legitimacy leadership for the independence of Czechoslovakia and there was a Czechoslovakia Legion in Russia during the First World War and fight for Allied states, therefore after the War, the Allied States recognized the independence of Czechoslovakia. Zdenek L. SUDA, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 6-7.

the issue of independence not the dictatorship of the proletariat. In 1920, the Czechoslovak Social Democratic Party won the first election in the country, meanwhile, in the same year, the second congress of Communist International was held in Moscow and it had the decision that all the communist party in the world should focus on the dictatorship of the proletariat and “adopt the name ‘Communist’ and to revise its program”.<sup>193</sup> It caused the conflicts between the left wing and right wing in the Czechoslovakia Social Democrats. After one year’s delay, the Communist Party of Czechoslovakia was finally found in Prague, Sturc, Smeral and Kreibich were considered as the leader in this new party.

Therefore, after three years of the independence of Czechoslovakia, the Communist Party of Czechoslovakia was founded in 1921.<sup>194</sup>

### 2.3.2 Early Exercises of Communist Party of Czechoslovakia

From the year which the Party established to 1945 which was the ending of Second World War, the Communist Party of Czechoslovakia never ruled the country by itself, however, before the Party was formed, there was an experimental communist exercise happened in Slovakia region- the Slovak Soviet Republic.

The Slovak Soviet Republic was strongly supported by Bela Kun and his Hungarian Soviet Republic. Since the failure in the Paris Peace Conference and loss of territory, many Hungarians shared the disappointment atmosphere at that time, and it also caused the collapse of Károlyi's government and Communist Kun was selected as the new leader in the country, in March 1919, the Hungarian Soviet Republic was founded.<sup>195</sup> However, the new Soviet Republic was not popular by its neighbors. Also most Hungarians considered the territory of Slovakia should be one part of the Hungary, since it used to be called Upper Hungary. In May 1919, the Hungarian troop came to west Slovakia, and on 16 June 1919, the Slovak Soviet Republic was established in Presov, a city in northeast Slovakia. It was also “pursuant to the Clause 88 of Hungarian Soviet

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<sup>193</sup> H. Gordon SKILLING, ‘*The Formation of a Communist Party in Czechoslovakia*’ (1955) Vol. 14, No. 3 *The American Slavic and East European Review* p. 348-349, <[https://www.jstor.org/stable/3000944?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/3000944?seq=1#page_scan_tab_contents)>, accessed 10 February 2017.

<sup>194</sup> Ibid, p. 248.

<sup>195</sup> Peter PASTOR, “*Major Trends in Hungarian Foreign Policy from the Collapse of the Monarchy to the Peace Treaty of Trianon*” (2003) Vol. 17, No. 1 *Hungarian Studies* p. 7, <<http://epa.oszk.hu/01400/01462/00029/pdf/003-012.pdf>>, accessed 13 February 2017.

Constitution”<sup>196</sup>

Nevertheless, the Slovak Soviet Republic only existed for three weeks and it was considered as a puppet regime. Czechs and Slovaks played a very important role in the Slovak Soviet Republic. Janousek, the leader of the government of the Republic was a Czech Communist, promote a communist revolution in Czechoslovakia and establish a Soviet Republic peacefully.<sup>197</sup> What’s more, the failure of Slovak Soviet Republic was considered as a symbol of Communist movement in Czechoslovakia. It encouraged the solidarity of Czechs and Slovaks during the Communist movement after 1945.<sup>198</sup>

### 2.3.3 The Birth of Communist Party in Poland

Before 1918 the Poles gained its independence from Russia, Austria and Prussia, the majority territory of Poland was one part of Russian Empire.<sup>199</sup> However, with the spread of Socialism in the middle of the 19th Century and later with the Marxism<sup>200</sup> in the late of 19th Century in Poland, and the development of the economic and industry in Poland,<sup>201</sup> there were some radical Socialist Parties practiced in Poland.

Among these Socialist Parties, there were two Parties were considered as the parents of the Communist Party of Poland. That is the Social Democracy of the Kingdom of Poland and Lithuania (SDKPIL) and the left wing of the Polish Socialist Party (the PPS-Leftist).<sup>202</sup>

During the late period of 19th Century, the whole of Europe experienced the revolutions, not only some independent countries, but also the new ideology. Socialism and later the Marxism spread in the whole Europe.

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<sup>196</sup> Zdenek L. SUDA, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 30.

<sup>197</sup> Peter A. TOMA, “*The Slovak Soviet Republic of 1919*” (1958) Vol. 17, No. 2 *The American Slavic and East European Review* p. 203-204, 209, <[https://www.jstor.org/stable/3004167?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/3004167?seq=1#page_scan_tab_contents)>, accessed 14 February 2017.

<sup>198</sup> Zdenek L. SUDA, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 30-31.

<sup>199</sup> After the collapse of Polish–Lithuanian Commonwealth, Poland soon divided by Russia, Germany and Austro-Hungarian Monarchy, however, the majority territory of Poland in nowadays was occupied by Russian Empire.

<sup>200</sup> Marx had a speech on Poland in 1848, “Communism, Revolution, and a Free Poland”, <<https://www.marxists.org/archive/marx/works/1848/02/22a.htm>>, accessed 2 February 2017.

<sup>201</sup> Jan Alfred REGULA, *History of The Communist Party of Poland*, (1st edn, CIA, Warsaw, 1934) p.a. <<https://www.cia.gov/library/readingroom/docs/CIA-RDP81-01043R001600160002-1.pdf>>, accessed 2 February 2017.

<sup>202</sup> *Ibid*, p.b. see also <<http://encyclopedia2.thefreedictionary.com/Communist+Party+of+Poland>>, accessed 2 February 2017.

In the “Russian” part Poland, the Poles had the similar experience, the working class or so-called proletariat organized its own political parties, fighting for their own rights and the freedom of the country. In 1892, the Polish Socialist Party was founded, one year later, another important Party was founded, the Social Democracy of the Kingdom of Poland. In the very early of the 20 Centaury, since the participation of socialists from Lithuania, the Party renamed as Social Democracy of the Kingdom of Poland and Lithuania.<sup>203</sup> Both Parties lead the communist movement in Poland in the early period.

In the Party of Social Democracy of the Kingdom of Poland and Lithuania, Rosa Luxemburg and Feliks Dzierzynski were considered as the leader of the Party. Rosa Luxemburg was well known for her socialist theory and her fighting story in Germany. However, Feliks Dzierzynski was considered as the soul of the Party.<sup>204</sup> Under the leadership of Dzierzynski and Luxemburg, the Party had the fighting exercises with the ruler in Poland at that time, Russia.<sup>205</sup> Meanwhile, the Polish Socialist Party divided into two parts since the different program and ideology, the leftist part (also known as youth faction) was planning to lead a socialist revolution and made Poland as a socialist country.

Finally in 1906, the Polish Socialist Party divided and the left part had a close cooperation with the Social Democracy of the Kingdom of Poland and Lithuania.<sup>206</sup> After the First World War, the Poland reestablished its own country, and Russia had the first Communist Party in charge the whole country, it finally merged with the Polish Socialist Party leftist and founded the Communist Workers’ Party of Poland in 1918.<sup>207</sup>

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<sup>203</sup> Donald F. BUSKY, *Communism in History and Theory: the European Experience* (1st edn, Praeger, 2002) p. 2. Also, in the historical perspective, the Poland and Lithuania had a very long history as a one country in the world, i.e. Polish–Lithuanian Commonwealth, a great power which existed in 16 and 17 Centaury.

<sup>204</sup> Robert BLOBAUM, *Feliks Dzierzynski and the SDKPiL: A Study of the Origins of Polish Communism* (1st edn, East European Monographs, 1984) p.1.

<sup>205</sup> Ibid, p. 148.

<sup>206</sup> Marcel SERAFIN, *Honours Dissertation: Socialist Opposition in the Polish People’s Republic, 1964-1989*, (1st edn, Department of Humanities, Northumbria University, 2015) p. 18, <<https://www.northumbria.ac.uk/media/7245201/marcel-serafin-social-opposition-to-the-polish-peoples-republuic-1964-1989.pdf>>, accessed 4 February 2017.

<sup>207</sup> Social Democracy of the Kingdom of Poland and Lithuania, is available at website of Virtual Shtetl, <<http://www.szetel.org.pl/en/term/520,social-democracy-of-the-kingdom-of-poland-and-lithuania/>>, accessed 4 February 2017. See also The Communist Workers’ Party of Poland, <<https://libcom.org/history/brief-history-communist-workers%E2%80%99-party-poland>>, accessed 4 February 2017.

And one year later, the Communist Party joined the Communist International.<sup>208</sup> Because of the change of situation in Poland and the guide of the Soviet Communist Party, the Communist Workers' Party of Poland changed its name to Communist Party of Poland in 1925.<sup>209</sup>

#### 2.3.4 Early exercises of Communist Party of Poland (KPP)

During the early history of Communist Party of Poland, the Russian Communist had a very strong influence not only among the Party members, but also the program of the Communist Party of Poland. It was emphasized in the Report on the Third KPP Congress that "But let us remember that we must implant the Bolshevik ungrafted tree upon the trunk of contemporary Polish communism."<sup>210</sup>

In the early period of the history of Communist Party of Poland, the most impressive exercise happened during the Russia-Poland War. After the First World War, the Poland reestablished. However, there was a border dispute between Poland and Soviet Russia, and this conflict later resulted in a war between Poland and Soviet Russia, that is Russia-Poland War. In 1919, the Soviet Red Army invaded Poland and soon occupied the northeast part of Poland. On 28 July 1920, the Red Army occupied Bialystok and two days later, Bialystok as a Jewish city witnessed the establishment of Provisional Polish Revolutionary Committee.<sup>211</sup> It was supported by the Soviet Russia (10 million Rouble was collected by the Orgburo<sup>212</sup>), however the Provisional Committee was not supported by most Poles and was considered as an outsider invader.<sup>213</sup> Therefore the Committee only existed 23 days, and it is not possible to adopt a Constitution<sup>214</sup>. However, there was a Manifesto of this socialist revolution which was prepared by the

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<sup>208</sup> Ibid.

<sup>209</sup> Donald F. BUSKY, *Communism in History and Theory: the European Experience* (1st edn, Praeger, 2002) p. 3.

<sup>210</sup> Jan Alfred REGULA, *History of The Communist Party of Poland*, (1st edn, CIA, Warsaw, 1934) p. 25, <<https://www.cia.gov/library/readingroom/docs/CIA-RDP81-01043R001600160002-1.pdf>>, accessed 2 February 2017.

<sup>211</sup> Croll, Kirsteen DAVINA, *Soviet-Polish relations, 1919-1921*, (PhD thesis, University of Glasgow, 2008), p. 137, <<http://theses.gla.ac.uk/663/1/2009crollphd.pdf>>, accessed 8 February 2017. See also Ronald Grigor SUNY, *The Soviet Experiment: Russia, the USSR, and the Successor States*, (1st edn, Oxford University Press, 1998) p. 106.

<sup>212</sup> Orgburo, the Central Committee of the Communist Party of the Soviet Union, existed from 1919 to 1952.

<sup>213</sup> Croll, Kirsteen DAVINA, *Soviet-Polish relations, 1919-1921*, PhD thesis, University of Glasgow, 2008, p. 139, <<http://theses.gla.ac.uk/663/1/2009crollphd.pdf>>, accessed 8 February 2017.

<sup>214</sup> Ibid, p, 148.

Committee. And the issue of economic, agriculture and the rule of working class were presented.<sup>215</sup> With the failure of Red Army and the Soviet-Polish peace treaty was signed in Riga in 1921<sup>216</sup>, it was not possible to perform communist exercisers in the whole Poland.

After the experimental Soviet Revolution in Poland, since the Communist Party of Poland shared a common ideology with the Soviet Union, and wanted to establish a Soviet Republic in Poland, it was not welcomed by the Second Polish Republic. In 1925, the Marshal Pilsudski engaged in a military coup in Poland, and at that time Communist Party of Poland supported Marshal Pilsudski's military coup. However, with the triumph of the coup, the Soviet Union considered the Marshal's regime as a fascist and against with it. The conflict between Soviet Union and Poland put the communist Party of Poland in a very awkward position. Because of the position of Communist Party of Poland, the government treated the Communist Party of Poland as an illegal Party.<sup>217</sup>

There is also a special phenomenon in Communist Party of Poland, the Jewish had a significant contribution in the Polish communist movement.<sup>218</sup> During the Provisional Polish Revolutionary Committee in Bialystok, it was also obtained a great support by the Jewish.<sup>219</sup>

### **3. Conclusion**

Communist party is not out of thin air. The birth of communist party in China and Visegrad states was the result of the successful revolution in Russia in 1917. After the triumph of October Revolution in Russia, the communist party was finally established in each state. The Communist Party of Hungary was the earliest one among these countries. The Hungarian Group of the Communist Party of Russia was organized in March of 1918. In the same year, Bela Kun, the former prisoner of war, learned his communist ideology and gained his fames in the campus and his Hungarian comrades

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<sup>215</sup> Ibid, p. 140-141.

<sup>216</sup> Donald F. BUSKY, *Communism in History and Theory: the European Experience* (1st edn, Praeger, 2002) p. 3

<sup>217</sup> Ibid.

<sup>218</sup> Jaff SCHATZ, *The Generation: The Rise and Fall of the Jewish Communists of Poland*, (1st edn, University of California Press, 1991) p. 95.

<sup>219</sup> Croll, Kirsteen DAVINA, *Soviet-Polish relations, 1919-1921*, PhD thesis, University of Glasgow, 2008, p. 162, <<http://theses.gla.ac.uk/663/1/2009crollphd.pdf>>, accessed 8 February 2017.

were sent back to Hungary in November. The Communist Party of Hungary was also established in the same month.<sup>220</sup> The communist activities in Poland could be traced in December of 1918, which was the birth of Communist Workers' Party of Poland. Later the communist party changed its name to Communist Party of Poland in 1925.<sup>221</sup> The rest two countries established their communist party in the beginning of 1920s. Czechoslovakia found its Communist Party in 1921,<sup>222</sup> in the same year. Chinese communists established their communist organization in the July of 1921.<sup>223</sup> All of these communist parties were the member of Third International, which was based in Moscow and received the guidance from Moscow. Among the early exercises of communist party, Hungary and China both had the chance to practice the soviet system in their state entirely or partially. Therefore, in this part, the author gave a specific attention on Hungarian Soviet Republic and its provisional Constitution and Soviet Republic of China and its constitutional outline. Both the constitutional documents were never entered into force.

By examining the early exercises of communist party in each state, it is easy to conclude the leading position of Soviet Russia among the international communist community. Although, most of the early practices of communist party in each state failed during the interwar period, the lessons and experiences which communists learned from those activities finally made it come true, namely, the establishment of communist regime in Visegrad region and China.

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<sup>220</sup> Regarding to the birth date and place of Communist Party of Hungary, there are two versions. One is the Party established on 4 November 1918 in Moscow, the second version stated that Communist Party of Hungary is established on 24 November 1918 in Hungary. Since session for transforming the Hungarian Group of the Communist Party of Russia was firstly held in Hotel Dresden in Moscow and complete of the session was held in Budapest. MIKLOS MOLNAR, *A Short History of the Hungarian Communist Party* (1st edn, Westview Press 1978). See also, RUDOLF L. TOKES, *Bela Kun and the Hungarian Soviet Republic: The Origins and Role of the Communist Party of Hungary in the Revolutions of 1918-1919* (1st edn, Frederick A. Praeger, 1967).

<sup>221</sup> Jan B. De WEYDENTHAL, *The Communists of Poland: an historical outline* (1st edn, Hoover Institution Press, 1986).

<sup>222</sup> Bernard WHEATON, *Radical socialism in Czechoslovakia: Bohumir Smeral, the Czech road to socialism and the origins of the Czechoslovak Communist Party (1917-1921)* (1st edn, Eastern European Monographs, 1986).

<sup>223</sup> Stephen UHALLEY, JR., *A history of the Chinese Communist Party* (1st edn, Hoover Institution Press, 1988).

## Chapter Three: The First Communist Constitution Between China and the Visegrad states

In the last Chapter, the author described a general picture of the birth of the Communist Party between China and the Visegrad countries. Although it is not the whole picture of the early exercises stories of Communist Party, it gives a chance to the reader to observe that the Communist party was born with a “red” spoon in its mouth.<sup>224</sup> It is doomed to fight with capitalist and even sacrifice in most time. From the early of 20<sup>th</sup> Century to the Second World War, there was only one successful socialist country in the world, the Soviet Union. After the Second World War, since the weakness of capitalism in Europe, and the loss of the war in the Visegrad states,<sup>225</sup> the Soviet Union had the chance to develop its sphere of influence in Central and Eastern Europe.<sup>226</sup> In Asia, Japan lost its control in East Asia, and Chinese Communist Party defeat its main counter, Kuomintang (Chinese Nationalist Party), with the help of Soviet Union, China established its own communist regime in 1949. Since then, People’s Republic of China and Visegrad countries witnessed a communist tide in 1940s.

People’s Republic of China established in 1949, after five years ruling, the most part territory of China was controlled by People’s Republic of China. Chinese government published Electoral Law of People’s Republic of China in 1953 in order to adopt the Constitution of People’s Republic of China.<sup>227</sup> After the nationwide election, the first National People’s Congress was formed. After a long-term discussion on the

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<sup>224</sup> “Red”, in Chinese context, it means the blood, to sacrifice one’s life, it implies the revolution. Therefore, the National Flag of People’s Republic of China is red.

<sup>225</sup> In the official narrative, Czechoslovakia and Poland were invaded by the Nazi Germany during the WWII. Hungary, as a member of the Axis powers, joined the Germany line, restored the territory which it lost in the WWI. In the late of the war, the Allied powers held the conference in Yalta, hosted by the Soviet Union, and the participated countries agreed to recognized the Visegrad region as the sphere of influence of Soviet Union. In some opinion, the Yalta Conference also is the origin of the Cold War. See Vito V. MANNINO, *Cold War: When Did It Start? Why Did It Start*, (Bachelor thesis, Air University, 1999) p. 8.

<sup>226</sup> Here, Prof. Halasz emphasized the importance of the role of the Soviet legal patterns during the legal transplants process in Visegrad states in the early 1950s. Ivan HALASZ, ‘*The Institutional Framework and Methods of the Implementation of Soviet Legal Ideas in the Czechoslovakia and Hungary During Stalinism*’ (2015) Vol. 6, No. 2, *Journal on European History of Law*.

<sup>227</sup> An CHEN, *Restructuring Political Power in China: Alliances and Opposition, 1978-1998*. (1st edn, Lynne Rienner Publishers, 1999) p. 65.

Constitution, the first Constitution of People's Republic of China was adopted by the first National People's Congress. And this Constitution validated until 1975.

In Hungary, Czechoslovakia and Poland, these countries also adopted their own Constitution. In Hungarian People's Republic, the first Constitution of Hungarian People's Republic was adopted in 1949, after the successful parliamentary election of Hungarian Working People's Party, this Hungarian Communist Party won 285 seats.<sup>228</sup> Therefore, there is no doubt that this Parliament adopted a Communist Constitution. In Czechoslovakia, the Communist Constitution was adopted in 1948, which followed a Soviet Union Constitution, after the Czechoslovakia Communist Party seized the power in the whole country.<sup>229</sup> In Polish People's Republic, after a nationwide discussion, the Constitution of 1952 was adopted by Sejm.<sup>230</sup>

In this Chapter, the author will firstly introduce how the socialist states adopted the Constitution and give a detailed examination of the text of the Constitution separately, then a comparative work will present the major similarities and differences of the Constitution, also a Constitutional Institute, Parliament (although, in different states, the name of this organ was different) will be paid more attention and a comparative research of this Institute will be shown in this Chapter.

## 1. The First Communist Constitution in China

In this part, the main focus will be paid on how Chinese abolished the old legal system and how the Chinese Communist Party established a new country in China. Meanwhile, the author will examine the Chinese Communist Party set up a communist regime in this land and tried to introduce a new Constitution which mainly followed on

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<sup>228</sup> The Results of Hungarian Parliamentary Election, 1949. <[http://www.gutenberg.us/articles/hungarian\\_parliamentary\\_election,\\_1949](http://www.gutenberg.us/articles/hungarian_parliamentary_election,_1949)>, accessed 1 April 2017.

<sup>229</sup> H. Gordon SKILLING, "The Czechoslovak Constitutional System: The Soviet Impact" (1952) Vol. 67, No. 2 *Political Science Quarterly*, p. 198-224, <<https://www.jstor.org/stable/pdf/2145722.pdf>>, accessed 2 April 2017.

<sup>230</sup> Sejm, is a very important organ in Polish political life. The Polish legislative organ consists of Sejm and Senate. <<http://opis.sejm.gov.pl/en/historiasejmu.php>>, accessed 2 April 2017. The information of Constitution of 1952 of Polish People's Republic, Dominik LASOK, *The Polish Constitution of 1947 and 1952: A Historical Study in Constitutional Law*, (doctoral degree thesis, LSE) <[http://etheses.lse.ac.uk/112/1/Lasok\\_The\\_Polish\\_Constitutions\\_of\\_1947\\_and\\_1952.pdf](http://etheses.lse.ac.uk/112/1/Lasok_The_Polish_Constitutions_of_1947_and_1952.pdf)>, accessed 3 April 2017.

Soviet Union 1936 Constitution. What's more, how the Chinese legislative organ which is considered as the supreme organ of the State operated will also be presented here. Besides, in this Chapter, the author will give an introduction of the first election of National People's Congress.

## **1.1 Adoption of the Constitution of People's Republic of China**

People's Republic of China was established on 1<sup>st</sup> October 1949, before the new China was founded, the Chinese Communist Party abolished the legal system of the Republic of China and tried to set up its own legal system. In the following part, the author will introduce how the Chinese Communist Party abolished the "old" legal system in mainland of China and how to establish its Constitution.

### **1.1.1 Abolishment of Republic of China's Legal System**

After the second Sino-Japan War and four years Chinese Civil War, the Chinese Communist Party won the leadership over the mainland of China in 1949, Kuomintang lost its sovereign power in China. According to the "Abrogation of the Six Codes" which was published by the Chinese Communist Party on 22 February 1949, the so called "fake legal system" which guided by Six Codes should be abolished in liberated area. In the system of Six Codes, it was also included the Constitution of the Republic of China.<sup>231</sup> However, after the publishing of "Abrogation of the Six Codes", the Chinese Communist Party and Kuomintang government had a series of brutal battles. Before the establishment of the People's Republic of China, the Chinese Communist Party had occupied the majority part of China, only the south and west part of China were not controlled by the Communist Party.<sup>232</sup>

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<sup>231</sup> The Instruction on Abrogation of Six Codes and Ensuring the Legal Principles in Liberated Area was published by Chinese Communist Party in 1949, it was considered the most important legal Instruction in the early period of Communist ruling, Six Codes include Constitutional Law, Civil Law, Criminal Law, Commercial Law, Civil Procedure Law and Criminal Procedure Law. The Chinese version is available in <<http://cpc.people.com.cn/GB/64184/64186/66650/4491574.html>>, accessed on 4 April 2017. More information of Chinese Communist Party abrogated Six Codes is see at Pomin JI, '废除《六法全书》的历史公案[The Historical Koan of Abrogation of Six Codes]' (2007) No. 4 *Hong Kong Fax* <[http://www.strongwindhk.com/pdfs/HKFax/No\\_HK2007-4.pdf](http://www.strongwindhk.com/pdfs/HKFax/No_HK2007-4.pdf)>, accessed 4 April 2017.

<sup>232</sup> Suzanne PEPPER, 'The KMT-CCP Conflict, 1945-1949' in John K. FAIRBANK and Albert FEUERWERKER (ed.), *The Cambridge History of China, Volume 13, Republican China 1912-1949, Part*

Although the People's Republic of China was established, there were still had some military conflicts in mainland of China. The Communist Party believed that it was not a proper situation to launch new China legal system and People's Congress, Chinese People's Political Consultative Conference (hereinafter CPPCC) was considered as the best form for Chinese political life at that time.<sup>233</sup> Therefore, as a provisional Constitution, Common Program of the CPPCC (hereinafter Common Program) was introduced in September of 1949, the prior month of the establishment of the People's Republic of China.

The drafting of the Common Program commenced in the late of 1948, and it was planned to be adopted in the CPPCC which initiated by the Communist Party.<sup>234</sup>

Before the CPPCC meeting was held in Beijing, Chinese Communist Party and other democratic parties held the preparatory meeting of the CPPCC in Beijing from 15 June to 19 June in 1949, Three months later, on 17 September, the second preparatory meeting was took place in Beijing.<sup>235</sup> On 21 September, the first plenary meeting of CPPCC was held in Beijing, 622 representatives attended this meeting.<sup>236</sup> After 8 days discussion, the CPPCC passed the Common Program of CPPCC. It is the most important constitutional document in the formative period of People's Republic of China. In this document, it regulated the fundamental principles or policies of the government.<sup>237</sup> Before the Constitution of People's Republic of China in 1954 was adopted, the Common Program enjoyed the highest power in the legal system and political field. Even the Electoral Law of the People's Republic of China for the National People's Congress and Local People's Congresses at All Levels of 1953

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2, (1st edn, Cambridge University Press, 1986) p. 783.

<sup>233</sup> Chongde XU, *中华人民共和国宪法史[Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 57-58.

<sup>234</sup> The old version of Political Consultative Conference (PCC) was initiated by Kuomintang and Communist Party. However, the Resolution of the PCC didn't be respected, the civil war in China broke out. Chongde XU, *中华人民共和国宪法史[Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 21-22.

<sup>235</sup> Ibid, p. 26-27. See also Jinfan ZHANG, Xianyi ZENG, *中国宪法史略 [History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 239-240

<sup>236</sup> Official representatives were 510, alternate representatives were 77, also invited 75 persons attend the meeting. Chongde XU, *中华人民共和国宪法史[Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 60-61.

<sup>237</sup> Ibid, p. 66.

(hereinafter Electoral Law) and the first Constitution Law in China declared its inheritance of Common Program in the Preamble.<sup>238</sup>

The new government ruled the whole country with the guidance of Common Program. It should be noted that from the establishment of People's Republic of China to the prior of the adoption of the Constitution of People's Republic of China in 1954. In this period, China was a new democratic country. According to the Common Program, the people's democratic dictatorship of China not only included the worker class and peasant class, but also bourgeoisie.<sup>239</sup>

The Common Program included a Preamble and seven Chapters, it had sixty Articles in total. In the Preamble, a discourse on the revolutionary history and the characters of the New state. The second Chapter was the general principles, it even ensured the freedom of speech, publishing and association. In the third Chapter, the mandates of the organs of the state power roughly. The rest Chapters in the Common Program introduced the military, economic, cultural and education, ethnic policy and the Foreign Policy. Even in the Common Program, it emphasized the harm of Six Codes, in Article 17 of Common Program. It stated "All laws, decrees and judicial systems of the Kuomintang reactionary government which oppress the people shall be abolished. Laws and decrees protecting the people shall be enacted and the people's judicial system shall be established."<sup>240</sup>

### 1.1.2 Establishment of People's Republic of China

On 1 October 1949, after the eight-year anti-Japanese war and four-year civil war between the Chinese Communist Party and Chinese Nationalist Party (Kuomintang), the

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<sup>238</sup> Ibid, p. 72. See also Jinfan ZHANG, Xianyi ZENG, *中国宪法史略 [History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 247.

<sup>239</sup> Chongde XU, *中华人民共和国宪法史 [Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 79-80.

<sup>240</sup> The English version of The Common Program of the Chinese People's Political Consultative Conference is available <<http://www.e-chaupak.net/database/chicon/1949/1949e.pdf>>, 5 April 2017.

Chinese Communist Party had the chance to exercise their Communist theory in the whole country.<sup>241</sup>

From 1949 to 1954, the Communist Party started a socialist transformation in China. It mainly included the agriculture, handicraft industry and capitalist industry and commerce. In the countryside, land reform lasted more than two years, the government entitled 300 million peasants to enjoy right of their own land. At the same time, a nationwide campaign to suppress counter revolutionaries was held in the state. In the foreign relation, China joined the Korean War and made a diplomatic relationship with other countries (mainly socialist states).<sup>242</sup> In the legal field, the new government abolished the legal system of Republic of China, adopted the Constitutional Act, Common Program and tried to build a socialist legal system in China.<sup>243</sup>

During the four years socialist transformation, the country became more and more stable, and the government made a good progress in the economy and political fields.<sup>244</sup>

### 1.1.3 The First Election of National People's Congress in China

According to the Organic Law of the CPPCC, the CPPCC shall hold the plenary meeting in every three years. However, since the development of socialist transformation was much higher than it planned, the government was planned to hold the first election of people's congress in China and made the first Socialist Constitution of People's Republic of China.<sup>245</sup>

In February 1953, the Central People's Government Committee adopted the Electoral Law of People's Republic of China. Soon after, a nationwide census and voter

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<sup>241</sup> Hong ZHOU, *中华人民共和国国史通鉴 [The History of People's Republic of China]*, vol. 1, no.1, (1st edn, Contemporary China Publishing House, 1999) p. 3-7.

<sup>242</sup> Ibid, p. 163. See also See also Jinfan ZHANG, Xianyi ZENG, *中国宪法史略 [History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 247.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid, p. 165-166.

<sup>245</sup> Ibid, p. 167. See also Hong ZHOU, *中华人民共和国国史通鉴 [The History of People's Republic of China]*, vol. 1, no.1, (1st edn, Contemporary China Publishing House, 1999) p. 102-103.

registration took place in China.<sup>246</sup> The census showed that there were 601,912,371 people who lived in China, and more than half Chinese people had the elective right.

According to the Electoral Law of 1953, most people who are older than 18 years old shall enjoy the elective right, in Paragraph 1, Article 4 it stipulated that “Every citizen of People’s Republic of China who has reached the age of 18, irrespective of race, gender, occupation, family background, religious belief, education, property, the length of residence, has the rights to vote and stand for election.”<sup>247</sup> In 1953, with the guidance of Electoral Law and people’s enthusiasm, a nationwide grassroots election was held in China. In this election, nearly 278 million people participated in the election procedure, it took up 85.88 % of the total voter,<sup>248</sup> and 5,669,144 deputies of county level People’s Congress were elected.<sup>249</sup>

Since Electoral Law regulated that the higher level’s People’s Congress were elected indirectly.<sup>250</sup> The deputy of National People’s Congress was elected by the provincial People’s Congress. From July to August of 1954, the deputies of provincial level elected 1,136 deputies of National People’s Congress, what’s more, 60 deputies were elected by the military, and 30 deputies were elected by the overseas Chinese.<sup>251</sup>

The first election of National People’s Congress was elected with 1,226 deputies in total, 668 deputies were Party member, while 558 deputies were not. It showed that

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<sup>246</sup> Ibid, p. 103. See also Jinfan ZHANG, Xianyi ZENG, *中国宪法史略 [History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 249.

<sup>247</sup> Paragraph 1, Article 4, Chapter 1, Electoral Law of the National People's Congress and Local People's Congresses of the People's Republic of China of 1953 (expired), <<http://cpc.people.com.cn/GB/64184/64186/66658/4492928.html>>, accessed 7 April 2017.

<sup>248</sup> Jinfan ZHANG, Xianyi ZENG, *中国宪法史略[History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 249.

<sup>249</sup> Chongde XU, *中华人民共和国宪法史[Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 247-248. See also Hong ZHOU, *中华人民共和国国史通鉴 [The History of People's Republic of China]*, vol. 1, no.1, (1st edn, Contemporary China Publishing House, 1999) p. 103.

<sup>250</sup> Article 3, Electoral Law of the National People's Congress and Local People's Congresses of the People's Republic of China of 1953 (expired), <<http://cpc.people.com.cn/GB/64184/64186/66658/4492928.html>>, accessed 7 April 2017.

<sup>251</sup> Chongde XU, *中华人民共和国宪法史[Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 248.

during the first election of National People's Congress, the Communist Party had an open mind in this election. It ensured the diversity of a united front.<sup>252</sup>

Therefore, the legislature organ was formed when the first National People's Congress of People's Republic of China was held in September 1954, and during the first session of the meeting of National People's Congress, a Communist Constitution was adopted by these deputies.

#### 1.1.4 The Formation of the Constitution of People's Republic of China

Even though, when the Chinese Communist Party took the highest power in mainland of China and passed the Common Program as a fundamental law in China, the leaderships in the Party realized a Constitution should be adopted soon.<sup>253</sup> After the unification of mainland of China and successful socialist transformation, the leadership of the government agreed it is time to adopt a communist Constitution in People's Republic of China.

However, two years before the Constitution was adopted, Chinese leadership had a different idea of the Communist Constitution in China. In the very late of 1952, before the finishing of the First CPPCC, the Chinese delegation visited Soviet Union for the 19th Congress of the Communist Party of the Soviet Union, and a letter from Chinese highest leadership was sent to Stalin. In this letter it mentioned that China was planned to have a Socialist Constitution when the country would become a Socialist Society.<sup>254</sup> Obviously Stalin had a very different view of this letter, he had a suggestion on adoption a Chinese Constitution even before the establishment of People's Republic of

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<sup>252</sup> Hong ZHOU, *中华人民共和国国史通鉴 [The History of People's Republic of China]*, vol. 1, no.1, (1st edn, Contemporary China Publishing House, 1999) p. 103.

<sup>253</sup> Before the People's Republic of China was established, Mao Zedong had a speech on the Constitutionalism of New Democracy in 1940, in this speech, Mao said: "after the victory of Revolution and realized democracy, (The Government) publishing a fundamental law and admit it, this is Constitution." Jinfan ZHANG, *中国宪法史 [The History of Chinese Constitution]*, (1st edn, Jilin People's Publishing House, People's Publishing House, 2011) p. 281. The whole speech of Constitutionalism of New Democracy is available on <<https://www.marxists.org/chinese/maozedong/marxist.org-chinese-mao-19400220.htm>>, accessed 8 April 2017.

<sup>254</sup> Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]*, (1st edn, Hunan People's Publishing House, 2004) p. 54-55.

China, and this time he gave his advice to the second most powerful person in Chinese Communist Party, Liu Shaoqi. His suggestion was China should adopt a Constitution soon, since a Constitution was the fundamental law in each country, and the adoption of Constitution will legalize the leadership of Chinese Communist Party in People's Republic of China, the experiences from Hungary, Czechoslovakia and Poland had been learnt, through a nationwide election, the Chinese Communist Party would win this election and dominated in the Government. With the consideration of Stalin's suggestion, Chinese Communist Party decided to operate a nationwide election and prepared a new Constitution.<sup>255</sup>

In January of 1953, Constitution Drafting Committee was formed, not only members of Chinese Communist Party were included in the Committee, but also other Democratic Parties' members had the chance to join the Committee.<sup>256</sup> Also inside of the Chinese Communist Party, a Constitution Drafting Group was formed in January of 1954, immediately Mao Zedong and this Group left Beijing and went to Hangzhou. After two months, a draft version Constitution was accomplished.<sup>257</sup>

From 23 March of 1954 to 11 June 1954, there were seven meetings held by the Constitution Drafting Committee. At the same time, a more wide discussion on the first Constitution was held by the Committee. The Constitution Drafting Committee organized 17 discussion groups, there were nearly 8000 persons that participated in the discussion and over 5900 pieces of advice came out. After a well-discussion, the draft version Constitution was published by the Central People's Government Committee. A nationwide discussion was soon organized in China, it was reported that more than 150

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<sup>255</sup> Ibid, p. 55-56.

<sup>256</sup> There were 33 persons participated in the Constitution Drafting Committee. Chongde XU, *中华人民共和国宪法史[Constitution History of People's Republic of China]*, (1st edn, Fujian People's Publishing House, 2003) p. 172.

<sup>257</sup> Although the Constitution Drafting Committee was established earlier than the Constitution Drafting Group, the first meeting of the Committee was held on 23 March of 1954, and the draft version of Constitution was finished by the Group. Ibid, p. 172-173.

million Chinese participated in this unprecedented discussion. There were even organized Constitution propaganda teams by the local government.<sup>258</sup>

The eighth meeting of Constitution Drafting Committee was held on 8 September 1954, in order to adopt the Constitution, this draft Constitution should be passed by the Central People's Government Committee, this meeting lasted over 7 hours, and finally in the end of the meeting, this draft Constitution was well examined and handed it in to the Central People's Government Committee. The next day, the draft Constitution was passed by the Central People's Government Committee and submitted to the National People's Congress.<sup>259</sup>

However, on the day before the meeting of People's National Congress, there were still two revisions of the draft Constitution brought by the Central People's Government Committee and it was considered as "must revise" regulation. The first one was in the Preamble, the third paragraph, it mainly changed the expression of this Constitution, in the original version, it from the "our first Constitution" to "The Constitution of People's Republic of China", since before this Constitution, there were 8 Constitutions published in China already, however, this Constitution was only the first Constitution of People's Republic of China. The second revision was stated in Article 3, Paragraph 3, it mentioned "All the nationalities have the freedom to preserve or reform their own customs and ways and religious belief." Deputies from Tibet had a different view of "reform their religious belief", and the result of the revision was these four words were deleted.<sup>260</sup>

The first National People's Congress was held in 15 September of 1954. In the fifth day afternoon of the Congress meeting, the Deputies of the National People's Congress decided to vote for the Constitution of People's Republic of China, the secret ballot was employed in the voting period. There were 1197 Deputies presented in the voting, only

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<sup>258</sup>At the beginning time of People's Republic of China, the education level of Chinese was quite low, a propaganda team will be useful to help people familiar with Constitution. Ibid, p. 233-234.

<sup>259</sup> Ibid, p. 236-237.

<sup>260</sup> Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]*, (1st edn, Hunan People's Publishing House, 2004) p. 389-392.

15 Deputies absented. The voting started in 16:45 in the afternoon, and after 10 minutes voting procedure, the voting finished. After one hour counting, the result of voting was announced, there were 1197 affirmative votes that also means 100% Deputies agreed to adopted the Constitution.<sup>261</sup>

After the adoption of the Constitution, the Deputies also passed Organic Law of the National People's Congress of the People's Republic of China, and it ensured the highest level of the Constitution in the legal system of the People's Republic of China.

In the next day, the People's Daily published the Constitution of People's Republic of China, and people from south to north, from city to countryside celebrated this very meaningful event. The adoption of the Constitution of People's Republic of China established the most important part of the legal system also as the fundamental law in the country, the regulations which published by the government and the People's Congress should follow the guide of the Constitution.

## **1.2 Analysis of the Text and Structure of the Constitution of People's Republic of China**

It is very interesting to analyze the text and structure of the Chinese Constitution, since the Chinese Constitution followed the model of 1936 Soviet Union and before the draft Constitution version was completed, Mao Zedong sent a telegraph to the rest of the leadership who stayed in Beijing. In this telegraph, Mao mentioned:

“In order to have a better discussion (on the draft Constitution) among the politburo, it is advised to read such references...:

1. 1936 Soviet Union Constitution ...;
2. Russian Constitution of 1918...;

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<sup>261</sup> Ibid, p. 393-394.

3. The Constitution of Romania, Poland, Germany (German Democratic Republic) and Czechoslovakia, etc...”<sup>262</sup>

Liu Shaoqi and the rest of the leaderships who stayed in Beijing replied to this telegraph and studied the Constitution not only the Soviet Union one, but also the Constitution from the Eastern Bloc. Therefore, the Constitution of People’s Republic of China had a strong influence from the earlier Constitution from Soviet Union and Eastern Bloc countries.

As a comparative work, to analyze the connection between each legislative text and find the similarity and difference are also very important.<sup>263</sup> Therefore in the following part, a very detailed examining of the text of the Constitution of People’s Republic of China and Constitutions in Visegrad states will be presented. The similarity and differences of the first Communist Constitution in each state will be also compared in this Chapter.

### 1.2.1 Analysis of the Text of the Constitution of People’s Republic of China

This is the first Socialist Constitution in China, it consisted of five parts, namely a Preamble and four Chapters, there were 106 Articles in total. Also just like the communist countries in East European, Constitution of People’s Republic of China had a very strong influence by the Stalin Constitution of 1936. Each level of People’s Congress and the relationship between People’s Congress and Administrative organs in each lever, which followed the Soviet Union’s pattern.<sup>264</sup>

It is not practical to analyze each Article in this work, the most important text in each part of the Constitution will be examined. The Preamble part did not exist in every Communist Constitution, in 1936 Soviet Union Constitution and Hungarian

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<sup>262</sup> Ibid, p. 68-70.

<sup>263</sup> As introduced in the Chapter One, the methodology part, contextualism is a very important method in comparative research.

<sup>264</sup> Teiwes C. FREDERICK, ‘Establishment and Consolidation of the New Regime’ in Roderick MACFARQUHAR and John K. FAIRBANK (eds.), *The Cambridge History of China, Vol. 14, The People's Republic, Part 1: The Emergence of Revolutionary China 1949-1965* (1st edn, Cambridge University Press, 2008) p. 104.

Constitution of 1949, there were no Preambles, however in Czechoslovakia Constitution of 1948<sup>265</sup> and Constitution of the Polish People's Republic in 1952, like Chinese Constitution, the Preamble was put in the first part of the Constitution. Mao Zedong participated in the drafting period of each Article in the Constitution, even the Preamble part was the inspiration of Lenin's Declaration of Rights of The Working and Exploited People, when Mao read the Soviet Russian's Constitution documents.<sup>266</sup>

#### *1.2.1.1 The Preamble of the Constitution of People's Republic of China*

The Preamble had six paragraphs. The first paragraph mainly reviewed the Chinese revolutionary history and ensured the democratic system in China is people's democracy or new democracy. The second paragraph pointed out the current situation, it was transition period, and the main task in this period is "...Bring about the socialist industrialization of the country and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce." The third paragraph addressed the Constitution was adopted by the First National People's Congress also mentioned the connection between the Common Program and the Constitution. The fourth paragraph emphasized the importance of people's democratic united front. The fifth paragraph mainly dealt with the all the nationalities in the territory of China, all the nationalities in China should be united in one great family with freedom and equality. The last paragraph focuses on the foreign affairs, People's Republic of China "...has already built an indestructible friendship with the great Union of Soviet Socialist Republics and the People's Democracies." Also China would like to develop an equal, mutual benefit relationship with each country in the world.<sup>267</sup>

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<sup>265</sup> There is no English version of Czechoslovakia Constitution of 1948, or so called Ninth of May Constitution, the first part in the Constitution was "Prohlášení" (Declaration), Czech version is available <<http://www.upn.gov.sk/data/pdf/ustava150-48.pdf>>, accessed 13 April 2017. In Constitution of the Polish People's Republic in 1952, the first part was the Preamble as well, English version of the Polish Constitution is available <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-spis.html>>, accessed 13 April 2017.

<sup>266</sup> Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]*, (1st edn, Hunan People's Publishing House, 2004) p. 74-75. And Declaration of Rights of The Working and Exploited People is available <<https://www.marxists.org/archive/lenin/works/1918/jan/03.htm>>, accessed 13 April 2017.

<sup>267</sup> Ibid, p. 85-86. The English version of Constitution of People's Republic of China in 1954 is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 13 April 2017.

### 1.2.1.2 *The General Principles of the Constitution of People's Republic of China*

The General Principles was the first Chapter in the Constitution. It consisted of 20 Articles and mainly dealt with the very basic regulation in the country.

It could be concluded as the following six parts.

The first part was mainly defined the country's form, and it clearly stated that People's Republic of China is a people's democratic state, and "All power in the People's Republic of China belongs to the people."<sup>268</sup> The second part was Article 3, and in this Article, it mainly regulated the relationship of each nationality in China, also it stated China is a unitary multinational state. The third part was Article 4 and it mainly dealt with the realizing the socialism. "The Constitution of People's Republic of China in 1954 is not a complete socialist Constitution, it is a Constitution in the transition period".<sup>269</sup> Therefore in this Constitution, it was not only ensured the fruits of victory during the war, but also given the guideline for the future. During the time of adoption of Constitution in 1954, socialism had not been realized in China, and the next main task was to realize socialism through socialist industrialization and socialist transformation. The fourth part was mainly stipulated the economy system in China, and there are 10 Articles, i.e. half Articles of the first Chapter formed the economy system in China, at that time, the main task in economy system was transforming it from capitalism to socialism economy system. The fifth part was Article 16, and it emphasized the importance of work (or labor). The last part was mainly dealt with the importance of the masses of the people, the country should reply on the people, public servants should strive to serve the people and the armed forces of the People's Republic of China belong to the people and protect the fruits of the Revolution.<sup>270</sup>

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<sup>268</sup> Article 1 and 2, Constitution of People's Republic of China in 1954 is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 23 April 2017.

<sup>269</sup> Jinfan ZHANG, Xianyi ZENG, *中国宪法史略 [History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 252.

<sup>270</sup> The first Chapter of Constitution of People's Republic of China is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 23 April 2017.

### *1.2.1.3 The State Structure of the Constitution of the People's Republic of China*

The second Chapter in the Constitution was the state structure of China, there were six sections in this Chapter. The first three parts of this Chapter regulated the powers and responsibilities of central governing in People's Republic of China, that was the National People's Congress, the President of the People's Republic of China and State Council. The fourth part was mainly dealt with the local level governing organ, i.e. the local People's Congresses and the local People's Councils. The fifth part was the organs of self-government of national autonomous areas and the last one was the judicial system in China, the People's Courts and the People's Procuratorates.

On 19 May of 1954, the Constitution Drafting Group discussed the first section of the Chapter 2, the regulations on National People's Congress, which was the supreme organ of the state power. Each Article was very detailed and was discussed by the members of the Group, and it should be noted that almost each Article under the discussion had to be compared with the similar Articles in the Soviet Union Constitution, what's more, some Articles had the influences from the Common Program as well.<sup>271</sup> National People's Congress was the "sole organ exercising the legislative power of the state". It was formed by the election. However, it was not direct-election. The deputies of the National People's Congress were elected by the provincial level People's Congress, and the term for the Congress was four years. Also, as the highest organ in the state, the National People's Congress enjoyed some privileges. Since each year the National People's Congress only held once, the Standing Committee of the National People's Congress exercised some powers of the National People's Congress.

The second Section was the regulation of Chairman of People's Republic of China, there was not the position of Chairman in the Soviet Union Constitution, there was only Presidium of the Supreme Soviet. However, in the Constitution of Czechoslovakia and German Democratic Republic, there was the position of President, and in China this

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<sup>271</sup> Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]*, (1st edn, Hunan People's Publishing House, 2004) p.149-171.

position was Chairman.<sup>272</sup> And according to the speech of Zhou Enlai, the leader of central government, “China is too big, for the sake of security of the state, it is necessary to design the position of Chairman.”<sup>273</sup> Also the Chairman in China was entitled to governing the state with other central organs. Especially, in Article 42, it stated that the Chairman “commands the armed forces of the state, and is Chairman of the Council of National Defense.”<sup>274</sup>

The third Section regulated the rules of State Council. On 28 May 1954, the third plenary session of Drafting Constitution Committee held by Liu Shaoqi, the second powerful person in the Party, there was discussion of the name of the central administration organ, in the Common Program, this organ was called as “政务院” (Zhengwu Yuan), and it was only one branch of the Central People’s Government, in the drafting constitution, there were three options for the named of the central government organ, the first one is Central People’s Government, the second one is the Government of People’s Republic of China, and the last one is “国务院” (Guowu Yuan). However it should be noticed that the State Council entitled more power than the regulation in the Common Program.<sup>275</sup>

The fourth Section was the local level People’s Congress and People’s Council, according to the Constitution, there were three level administrative divisions in People’s Republic of China, the central government level, the province level and county level, and in province level, it included provinces, autonomous regions and direct-controlled

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<sup>272</sup> Ibid, p. 227. However, in the current Constitution of People’s Republic of China, in the official English version Constitution, the same word in Chinese 主席(Zhu Xi) is translated to President. The official English version of Constitution of People’s Republic of China in 1982, <[http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm)>, accessed 25 April 2017.

<sup>273</sup> Ibid, p. 229.

<sup>274</sup> Article 42, the Constitution of People’s Republic of China is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 23 April 2017.

<sup>275</sup> The Central People’s Government in Common Program is more combination of the Standing Committee of National People’s Congress and State Council, and the State Council is only the executive branch in the Central People’s Government. Nevertheless, in the Constitution, the State Council or so-called Central People’s Government means the central administration organ. The Common Program in Chinese version is available <<http://www.cppcc.gov.cn/2011/09/06/ARTI1315304517625199.shtml>>, accessed 27 April 2017, Article 47, the Constitution of People’s Republic of China is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 27 April 2017, Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]*, (1st edn, Hunan People’s Publishing House, 2004) p. 236-238.

municipality. In county level, there were autonomous zhou,<sup>276</sup> counties, autonomous counties, and cities.<sup>277</sup>

The fifth Section in the Chapter was the organs of self-government of national autonomous areas. On 29 May 1954, the fourth plenary session of Drafting Constitution Committee was held, and in this session, it mainly discussed the organs of self-government of national autonomous areas, the judicial system and the fundamental rights and duties of citizens. In the Common Program, the Chapter six regulated the nationality policy. In the Constitution, there were seven Articles regulated the privileges of the organs in the national autonomous areas. However, these privileges should follow the rule of Constitution and other laws which published by the central legislature. In the first Article in this Section, it stated "...Local people's councils throughout the country are local organs of state administration under the co-ordinating leadership of the State Council and are subordinate to it..." in the next Article, it mentioned "The organization of the organs of self-government of autonomous regions... should conform to the basic principles governing the organization of local organs of state as specified in Chapter Two, Section IV of the Constitution...", Article 69 regulated the administration organ also should followed the regulations in the "Chapter Two, Section IV of the Constitution."<sup>278</sup> Although, the organs in the national autonomous areas enjoyed the privileges since most of national autonomous areas were in the remote area, the economy and education in these areas were less developed area, these privileges would helped the other nationalities in China had a better development.

The Sixth Section of Chapter 2 dealt with the judicial system of People's Republic of China. There were two parts in this Section, the first one, the people's court, which was designed as the judicial authority of the People's Republic of China, the second one was the people's procuratorate, which was considered as the procuratorial authority. The

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<sup>276</sup> Autonomous zhou in Chinese 自治州, it is an autonomous prefecture in China. In Chinese administrative system, zhou is a city level prefecture.

<sup>277</sup> Article 53, the Constitution of People's Republic of China is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 27 April 2017.

<sup>278</sup> Ibid, Article 66, 67, and Chapter Six of Common Program, The Common Program in Chinese version is available <<http://www.cppcc.gov.cn/2011/09/06/ART11315304517625199.shtml>>, accessed 27 April 2017.

term of office of the president of the Supreme People's Court and chief procurator of the Supreme People's Procuratorate was four years, it was in accord with the term of National People's Congress of People's Republic of China. In the regulation of people's court, it emphasized "the people's courts administer justice independently and are subject only to the law."<sup>279</sup> The people's court only responded and accounted to the People's Congress on its level. However, there was not rule of the justice of Supreme People's Procuratorate, on the local level, the "local people's procuratorates at various levels exercise their functions and powers independently and are not subject to interference by local organs of state."<sup>280</sup> Also the local level people's procuratorate under the leadership of two organs, the same level's People's Congress and the higher level's people's procuratorate.

#### *1.2.1.4 The Fundamental Rights and Duties of Citizens of the Constitution of People's Republic of China*

Chapter Three stipulated the fundamental rights and duties of citizens in China. There were 19 Articles in this Chapter and the first part, from Article 85 to Article 99 mainly regulated the rights of citizens of People's Republic of China, the second part, Article 100, 101, 102 and 103 stipulated the duties of citizens of People's Republic of China, and in the rights part not only stated the right of masses, but also emphasized the right of elder men, women, minors and overseas Chinese.<sup>281</sup>

In the Constitution of People's Republic of China, there were three different words related to the masses, however between the following three words, "people", "citizen" and "voter", there were some differences. "People" is more like a political concept, and according to the Chairman Mao's article "Who are the people? At the present stage in China, they are the working class, the peasantry, the urban petty bourgeoisie and the national bourgeoisie. These classes, led by the working class and the Communist Party, unite to form their own state and elect their own government..."<sup>282</sup> "Citizen" is more

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<sup>279</sup> Ibid. Article 78, Constitution of People's Republic of China.

<sup>280</sup> Ibid, Article 83.

<sup>281</sup> Ibid, Article 85-102.

<sup>282</sup> Mao Zedong, On the People's Democratic Dictatorship, a speech which given on 30 June 1949, is

like a legal concept, it refers the person who has Chinese citizenship, also in Mao's same article "...Landlord class and bureaucrat-bourgeoisie, as well as the representatives of those classes, the Kuomintang reactionaries and their accomplices..." these groups apparently not belong to the "people", however even those persons are Chinese citizens. And the concept of "voter" is also different, according to the Article 86, the citizens who reached the age of 18 enjoyed the right of voting, what's more, "insane persons and persons deprived by law of the right to vote and stand for election" also didn't have the right of voting.<sup>283</sup>

#### *1.2.1.5 The National Flag, National Emblem, Capital of Constitution of People's Republic of China*

This is the last Chapter of Constitution, there were three Articles in this Chapter, and the first Article in this Chapter stated that "red flag with five stars" is the national flag of People's Republic of China, red means the revolution and sacrifice, five stars symbolized the unite of the Chinese nationalities, the big star is the Chinese Communist Party. The second Article declared the national emblem of People's Republic of China, and the last Article of the Constitution regulated the capital city of People's Republic of China, Beijing. However, there was not a national anthem which regulated in the Constitution.<sup>284</sup>

#### *1.2.2 Analysis of the Structure of the Constitution of People's Republic of China*

In this part, the author will give a brief examining of the structure of the Constitution of the People's Republic of China, also it will present to the reader that the main idea of each structure of the Constitution. In the comparative part of this Chapter, a comparative

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available <[https://www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4\\_65.htm](https://www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4_65.htm)>, accessed 2 May 2017.

<sup>283</sup> Article 86, the Constitution of People's Republic of China is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 2 May 2017. The differences of "people", "citizen" and "voter" is available in Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]*, (1st edn, Hunan People's Publishing House, 2004) p. 250-251.

<sup>284</sup> Ibid, Article 104, 105 and 106.

work of the similarities and differences of the structure of the Constitution between China and Visegrad States will be addressed.

The structure of the Constitution of People's Republic of China in 1954 was much simpler than Visegrad states' Communist Constitution. The Constitution consisted of one Preamble and four Chapters. The Preamble mainly focus on three topics. The first one was review the revolutionary history; the second topic is the main task of present; the last one was mainly addressed the nation issue and the relationship with the so-called People's Democratic States. Chapter one was the General Principles, it mainly stipulated the most basic and important principles in the Constitution. Chapter Two focused on the state structure. Next Chapter addressed the fundamental rights and duties of the citizens. The last Chapter like other Communist Constitutions in the world, regulated the capital city of the People's Republic, the National Flag, and the National Emblem. It should be noticed that the National Anthem was not regulated in the 1954 Constitution.<sup>285</sup>

## **2. The First Communist Constitution in the Visegrad States**

As mentioned before, there were only 3 countries in the Visegrad Gourp, Hungary, Poland and Czechoslovakia. The author will introduce the first Communist Constitution individually, then a comparative analysis between China and Visegrad countries will be presented in the next part.

### **2.1 Hungarian People's Republic**

#### **2.1.1 Adoption of the Constitution of Hungarian People's Republic in 1949**

Hungary, a great power located in Central-Eastern Europe in history, especially after the Austro-Hungarian Compromise of 1867, the Monarchy was generally considered as a great power in the World.<sup>286</sup> However, Hungary never had its own "Magna Carta"

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<sup>285</sup> Constitution of People's Republic of China in 1954 is available <<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 11 August 2017.

<sup>286</sup> Samuel R. WILLIAMSON JR, *Austria-Hungary and the Origins of the First World War* (1st edn, Palgrave Macmillan, 1991) p. 4.

Constitution<sup>287</sup> until the National Assembly of Hungary adopted the Constitution of Hungarian People's Republic in 1949.<sup>288</sup>

There is a very famous ancient saying in China that “Take history as a mirror and you will understand why dynasties rise and fall.”<sup>289</sup> It could also apply the history of Hungary. Hungary had a very short experience of Soviet Republic, after the First World War, with the “help” of the Soviet Russia, the Hungarian Communist Party founded the Hungarian Soviet Republic in Hungary. However, the Soviet Republic only lasted 133 days.<sup>290</sup>

History always presents the similar plot to the audience. After the Second World War, Hungary was “liberated” by the Red Army in 1945.<sup>291</sup> Although Hungary was independent, this country was mainly controlled by the Allied Control Council. In Hungary, the Communist Party was one of the most active Parties even though the Communist Party was not big. In November of 1945, the parliamentary election was held, however, the Smallholders Party won this election, it took 245 seats, account for 57% in total.<sup>292</sup> Nevertheless, with the national wide propaganda, the Communist Party of Hungary gradually won the support from masses. In the Parliamentary election of 1947, in favor of the amended Electoral Law (Act 12 of 1947) and the financial support, Communist Party distributed over 4 million election posters and 10 million electoral leaflets and brochures among the country. On the voting day, the “certified lists of names” also “helped” the Communist Party to win the election. On 5 September 1947,

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<sup>287</sup> In 1919, the Hungarian Soviet Republic adopted a so-called temporary Constitution. However, this written Constitution never came into force. RETT R. LUDWIKOWSKI, *Constitution-making in the Region of Former Soviet Dominance* (1st edn, Duke University Press, 1996) p. 30.

<sup>288</sup> William SÓLYOM-FEKETE, ‘Hungary’ in William B. SIMONS (ed.) *The Constitutions of the Communist World* (1st edn, Springer, 1980) p. 192.

<sup>289</sup> “Take history as a mirror and you will understand why dynasties rise and fall.” [以史为鉴，可以知兴替]，Xu LIU, *An Old Book of Tang, Wei Zheng Zhuan*, is available at <[http://www.guoxue.com/shibu/24shi/oldtangsu/jts\\_075.htm](http://www.guoxue.com/shibu/24shi/oldtangsu/jts_075.htm)>, accessed 21 June 2017.

<sup>290</sup> Peter APOR, *Fabricating Authenticity 1919 and the Hungarian Communists between 1949 and 1959*. (Doctoral dissertation, Debrecen University, Debrecen, 2009) p. 1 <[https://dea.lib.unideb.hu/dea/bitstream/handle/2437/89593/tezis\\_angol.pdf;jsessionid=47AC29698439DD6C0B4795CC7024B186?sequence=6](https://dea.lib.unideb.hu/dea/bitstream/handle/2437/89593/tezis_angol.pdf;jsessionid=47AC29698439DD6C0B4795CC7024B186?sequence=6)> accessed 21 June 2017.

<sup>291</sup> Bela ZHELITSKI, ‘Postwar Hungary, 1944-1946’ in Norman NAIMARK, Leonid GIBIANSKII (eds.), *The Establishment of Communist Regimes in Eastern Europe, 1944-1949*, (1st edn, Westview Press, 1997) p. 73-74.

<sup>292</sup> *Ibid.*, P. 76-78.

the election result was released by the central electoral committee, the Communist Party took 100 seats and became the largest Party in the Parliament.<sup>293</sup> Later, Parliamentary election in 1949, the Hungarian Working People's Party gained 285 seats.<sup>294</sup>

By controlling the Parliament, Hungarian Working Party started its socialist transformation in the whole country. In 1947, like many academic literatures mentioned, in order to lead this country from a capitalist country to a socialist country, the Communist Party controlled Council of Ministers organized a Drafting Constitution Committee. Soon, the Committee brought up a socialist Constitution to the Hungarian National Assembly, without any delays in the national legislature organ, the National Assembly adopted the Constitution of Hungarian People's Republic of 1949. Also, like other socialist countries in Central-Eastern Europe, even the world, the Hungarian 1949 Constitution had a very strong influence from the 1936 Soviet Constitution.<sup>295</sup> Like William Sólyom-Fekete wrote in his article, "the 1949 Constitution was a slavish imitation of the Soviet-type constitutions, with some variations resulting from the historical and political differences between the Soviet Union and Hungary."<sup>296</sup>

Constitution of Hungarian People's Republic in 1949 employed numerous regulations from the 1936 Soviet Constitution. It ensured the socialist system applied in the whole society. Even though, the 1949 Constitution had some very important amendments after its adoption, for example, the 1972 and 1989 Constitutional Amendments, the Constitution invalidated until 2012.<sup>297</sup>

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<sup>293</sup> Lajos IZSAK, *A Political History of Hungary, 1944-1990* (Andrew T. Gane tr, 1st edn, Eotvos University Press 2002) p. 106-117.

<sup>294</sup> The Hungarian Working People's Party was formed in 1948 through a merge of the Hungarian Communist Party and the Social Democratic Party. The date of the number of seats of each party in the election was available: <[http://www.gutenberg.us/articles/hungarian\\_parliamentary\\_election,\\_1949](http://www.gutenberg.us/articles/hungarian_parliamentary_election,_1949)>, accessed 21 June 2017.

<sup>295</sup> IBP USA, *Hungary Country Study Guide, Volume 1 Strategic Information and Developments*, (2013 edition, International Business Publications, 2013) p. 65-66.

<sup>296</sup> William SÓLYOM-FEKETE, 'Hungary' in William B. SIMONS (ed.) *The Constitutions of the Communist World* (1st edn, Springer, 1980) p. 192.

<sup>297</sup> Even after the Revolutions of 1989, the Hungarian Constitution had a serious of crucial amendments. The socialist system had been abandoned, from some scholars' opinion that the new *de facto* Constitution was adopted after the Revolutions of 1989. Since in the content, a western standard Constitution had been adopted. However, from a legal perspective, the new version Constitution was officially adopted in 2011.

### 2.1.2 Analysis of the Text and Structure of the Constitution of Hungarian People's Republic in 1949

The Constitution of Hungarian People's Republic in 1949 consisted of one Preamble and 11 Chapters. However, we still could divide into seven parts in order to make it easier to analyze. The first part was the Preamble, like most Communist Constitution at that time; the second part included Chapter One and Chapter Two, the Hungarian People's Republic and the Social Structure, it mainly presented the essential principles; the third part could be considered as the state structure, from Chapter Three to Chapter Seven mainly regulated the provisions of state structure from central government to local authorities. The next part of the Constitution was fundamental rights and duties of citizens which was stipulated in Chapter Eight; Chapter Nine, Fundamental Electoral Principles could form the fifth part of the Constitution. The sixth part was Chapter Ten, the Emblem, Flag and Capital of the Hungarian People's Republic; the last part, also the seventh part was Chapter Eleven, Final Provision. As the author divided into the 1949 Hungarian Constitution seven parts, the following introduction of the text of the Constitution also will be presented in six parts not 11 parts (the 1949 Hungarian Constitution consisted of 11 Chapters).

The first part of the Constitution was the Preamble. It could also be found in the Communist Constitution of the rest Visegrad Countries and People's Republic of China as well. Even the Preamble was quite short (compared with the other four States' Preamble in the Constitution). It reviewed how the Soviet "helped" Hungarians defeat German fascists and the so-called "great landowners and capitalists". It also clearly declared the leadership of work class and peasants in the new People's Republic. In the end of the Preamble, it also pointed out since the change of economic and social structure, Hungarian People's Republic adopted the new Constitution and the indicated the future development of this country.<sup>298</sup>

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<sup>298</sup> The Preamble of Constitution of the Hungarian People's Republic, published in Budapest 1953, supplied by Ministry of Foreign Affair, in Amos, J. PEASLEE, *Constitutions of Nations, Volume 2, Hungary* (2nd ed. Springer, 1956) p. 185. Hungarian Version of Constitution of Hungarian People's Republic was published in Magyar Kozlony (Hungary Gazette) in 20 August 1949, Budapest.

The second part was the general principle of the Constitution. It included the first two Chapters in the Constitution. Chapter One in the 1949 Constitution was the definition of Hungarian People's Republic. It was not only pointed out that Hungary was a People's Republic, but also pointed out the all power of the State was belonged to the working people. It was a State of dictatorship of the proletariat. In the Chapter Two, which was named as The Social Structure, there were 6 Articles in this Chapter, it mainly focuses on the economy structure in the "new" society, capitalist economic system was gradually eliminated by the government, a socialist economic system would instead. In detail, the Article Four stipulated the owner of the bulk of means of the production, most of cases were owned by the public, however, it also allowed the private owner of means of production. In the next paragraph of Article Four, it stated that the power of force directing of national economy was belonged to the working people, and pointed out the task, it was built socialist economic system instead of capitalist economic system. In the Article Five, showed the importance of the state national-economic plan. In the next Article, it regulated that all the natural and public resources belonged to the working people, however run by the State (government), Article Seven was related to the agrarian problem. The last two Articles in this Chapter mainly dealt with the labor issue.<sup>299</sup>

The third part in 1949 Hungarian Constitution included Chapter Three to Chapter Seven, it mainly dealt with the State structure. It could be divided into three sections, the first section was central power, the second section was local power and the last section was judiciary power.

The first section in third part is central power which includes Chapter Three and Chapter Four. The Chapter Three stated that the highest organ of state authority is Parliament. The Parliament enjoyed variety state power, like legislature, determining the state budget, electing Presidential Council of People's Republic and the Council of Ministers and so on. Each term of Parliament shall be four years. However, in reality, it didn't always follow the four-year term. Along with the Parliament, Presidential

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<sup>299</sup> Ibid, p.185-186.

Council of People's Republic, which elected by the Parliament at its first sitting, was another important organ in the State authority, since the position of President was not available in the 1949 Hungarian Constitution. The Presidential Council of People's Republic partially enjoyed the power of President or Head of State, such as appoint diplomatic representatives and receiving the letters of credence of foreign diplomatic representatives, ratifying international treaties. The term of Presidential Council of People's Republic expired when the Parliament elected the new one. The member of Council of Ministers should not be elected as a member of Presidential Council of People's Republic. The other part of the central power was the highest organ of state administration, i.e. the Central Government or Council of Ministers of the Hungarian People's Republic. It was an executive organ in the highest organ system. Council of Ministers consisted of Chairman, Deputy Chairman, Minister of State and Minister of various of Ministry, and the member of the Council of Ministers was elected by the Presidential Council of People's Republic. There were 26 Ministries in the whole central government. In order to develop the socialist economy system, some Ministries were created, such as Ministry of State Farms and Forests, Ministry of Home Trade. The Council of Ministers empowered to issue decrees and decisions which did not infringe the laws of People's Republic, or decrees of Presidential Council of People's Republic. As a centralized State, the central authority and administration was empowered to annul or modify the regulations which made by the lower state power.<sup>300</sup>

The provisions of Local organs of State power were regulated in the Chapter Five. The main administration in the local level government was local council, different level councils governed its own administrative area. The local council was empowered to publish rules, regulations in its own area, which should not infringe the law or decrees from higher authorities, also it was possible to annual or modify the regulations which made by the lower level council in its own administrative area. The member of the local council was elected by voters with nomination by the Patriotic People's Front. The term of the council was four years. Executive Committee was the executive organ of the local

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<sup>300</sup> Ibid, p. 187-191.

council and had to responsible to the same-level council which elected it and to the executive committee of the superior council body as well.<sup>301</sup>

Related to the judiciary section, it mainly presented in Chapter Six and Chapter Seven. Chapter Six was mainly focus on the court. Supreme Court was the highest court in the People's Republic. All the judges were appointed. In according with communist system, the court of Hungarian People's Republic bore the task of "punish the enemies of the working people".<sup>302</sup> The Public prosecutor was another important part of the judiciary system in Hungary. The main task of public prosecutor was observance of the law. Except the Chief Public Prosecutor was elected by the Parliament and responsible and accountable to the Parliament, other public prosecutors were appointed by the Chief Public Prosecutor.

The fourth part of the Constitution was the rights and duties of citizens. It was most like other Communist States, the citizens enjoyed the rights of the education, labor and rest and freedom of religious worship. However, it should be noticed that most of the rights were limited in order to in according with the communist system, and the working class enjoyed more rights than others. In paragraph 1, Article 48, it stipulated that "The Hungarian People's Republic ensures the rights to education for every worker. In the previous Article, it stated "The Hungarian People's Republic protects the health of the workers and assists them in the event of sickness or disability". Even the freedom of speech, press and assembly should be "in accord with the interests of the workers".<sup>303</sup>

Electoral system was also important in the practice of communist political system in Hungarian People's Republic. Therefore, Chapter Nine mainly focuses on the election issue. The electoral provisions which regulated in the 1949 Hungarian Constitution almost contained the principles of election, excepted the "excluding provision" which

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<sup>301</sup> Tamas ANTAL, 'Local soviets and councils in the Ex-socialist European States with special regard to Hungary (1950-1990)' (2010) 24, *Hungarian Studies*, 135.

<sup>302</sup> Ibid. p. 191-193.

<sup>303</sup> Paragraph 1, Article 55 of the Constitution of Hungarian People's Republic in 1949, *ibid*, p. 194-195.

regulated in the Paragraph 2, Article 63, so called “Enemies of the working people ...are excluded from the suffrage by law”.<sup>304</sup>

Chapter Ten regulated the coat of arms, the flag and the capital of the Hungarian People's Republic, the designation of the coat of arms and the flag were full of the characteristics of communist aesthetic.

The last Chapter was the final provisions. It included two Articles, mainly dealt with the time of enter into force, the enforcement subject and emphasized the most importance of the Constitution to the state power and the citizens.<sup>305</sup>

## **2.2 Czechoslovak Republic**

### **2.2.1 Adoption of the Ninth of May Constitution of Czechoslovak Republic**

The two World Wars brought significant changes to Czechoslovakia. After the First World War, Czechoslovakia established in 1918 with the support of the Great Powers.<sup>306</sup> During the Second World War, Czech part became the Bohemia-Moravia Protectorate and Slovakia part somehow independent, and established Slovak Republic, however, both parts in Czechoslovakia were considered as a “puppet” of Nazi Germany. During the war, Benes and other Czechoslovakia politicians organized Czechoslovak government in-exile in London. In the end of the War, the Red Army, the military force of Soviet Union crossed the eastern border of the Slovakia. Later, in May of 1945, with the help of masses in Prague, the Red Army liberated the city of Prague. Czechoslovakia officially sunk into Soviet Union’s sphere of influence, despite that United States forces entered the western border of Bohemia earlier than Soviet Union forces.<sup>307</sup>

The liberated Czechoslovakia did not completely or voluntary join the Soviet orbit at the very beginning. Benes and most Ministers in the government were not a big fan of

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<sup>304</sup> Paragraph 2. Article 63 of the Constitution of Hungarian People’s Republic in 1949, *ibid*, p. 196.

<sup>305</sup> *Ibid*, p. 196.

<sup>306</sup> How Masaryk, Benes and other Czechoslovakia elites created Czechoslovak Republic could refer to Kurt Glaser’s book, Kurt GLASER, *Czechoslovakia: A Critical History* (1st edn, The Caxton Printers, Ltd., 1961) p. 19-26.

<sup>307</sup> *Ibid*, p.101-109.

communism, on the contrary, they much preferred the Western orbit,<sup>308</sup> however, the propaganda from the communist politicians soon drawn people's attention. It became more and more popular, especially in Czech regime.

With the support from the Soviet Union, the leader of Communist Party of Czechoslovakia, Premier Gottwald and his comrades initiated the so called "coup d'état", the non-communist Ministers were exiled. Communist Party enjoyed great power in the government. In order to ensure the legitimacy of the government, Communists drafted a new Constitution and brought it to the parliament. On 9 May of 1948, with a 100 percentage affirmative votes,<sup>309</sup> Benes refused to sign it and resigned on June 7, Gottwald, the Premier and the chairman of the Communist Party signed it and in the same month, precisely, one week later, Gottwald became the new President of the Czechoslovakia.

Since the new Constitution was adopted in 9 May 1948, the Constitution was known as "Ninth of May Constitution", however, this Constitution was not an exact copy of the 1936 Soviet Union Constitution. It was "an elaborate hybrid, a combination of Western parliamentarism with sovietism".<sup>310</sup> Even the Communists explained the 1948 Constitution included two component parts, first one from history, precisely, the 1920 Constitution, since some of the provisions in the old Constitution still meet present conditions (in 1948), the other parts based on the "achievement of national and democratic revolution of 1944 and 1945".<sup>311</sup> Even though in this official commentary, the influence from Soviet Union wasn't mentioned, we could easily find some elements from the 1936 Soviet Union Constitution by examining the text and structure of the Ninth of May Constitution.

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<sup>308</sup> In July 7, 1947, the government of Czechoslovak Republic even sent a delegation to Paris, since the Marshall Plan conference was held here. However, the pressure from Kremlin forced Czechoslovakia withdrew from the Marshall Plan. Ibid, p. 146-147.

<sup>309</sup> There were 246 representatives attended the Parliament meeting, 54 representatives were absence. Ibid, p. 154.

<sup>310</sup> Edward TABORSKY, *Communism in Czechoslovakia, 1948-1960* (Princeton University Press, 1961) p. 167.

<sup>311</sup> Ibid, p. 167.

## 2.2.2 Analysis of the Text and Structure of the Ninth of May Constitution in Czechoslovak Republic

In this part, the author will mainly examine the text and structure of the Czechoslovakia Ninth of May Constitution. Like other Constitution in Visegrad States and China, Czechoslovakia Constitution had its own characteristics, even though all of these Constitutions had a strong influence by the 1936 Soviet Union Constitution.

The Ninth of May Constitution consisted of three parts, the first one is the Declaration or the Preamble (depends on the translation, in Czech language, it is Prohlášení), the second part was fundamental articles of the Constitution, and the last part also the major part was detailed provisions of the Constitution. In the last part, it included ten sections. Compared with the structure of other Constitution in the area, Czechoslovakia Constitution put the section of rights and duties of citizens in front of the State structure, also since Czechoslovakia was mainly consisted of two nations as the name of the State implied, Czechs and Slovaks.<sup>312</sup> At the very beginning of the Czechoslovakia, the leaders of the State “invent” the nation-Czechoslovakia, and ensured it in the 1920 Constitution,<sup>313</sup> and in the Ninth of May Constitution, in the Declaration it stated “The Czechs and Slovaks, two brotherly nations...”, therefore in the Ninth of May Constitution there was a section of Slovak National Organs.<sup>314</sup>

The first part in the Ninth of May Constitution was Declaration, it also can be divided into four sections. The first section declared that the Czechoslovakia will build a socialism State, in order to defend the achievement of the national and democratic revolution, people’s democratic order, “we” initiated the action in February of 1948. In

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<sup>312</sup> In the beginning period of the country, Czechoslovakia’s second nation should be German, in the census of 1926, it showed the whole country had 6.5 million Czechs, 3.3 million Germans and 2.5 million Slovaks, since the anti-German policy, especially after the second world war, more and more German left the country, Kurt GLASER, *Czechoslovakia: A Critical History* (1st edn, The Caxton Printers, Ltd., 1961) p.6. However, according to the census of Czechoslovakia in 1950, there were only 165,000 German still stay in this country. Stefan WOLFF (ed.), *German Minorities in Europe: Ethnic Identity and Cultural Belonging* (1st edn, Berghahn Books, 2000) p. 103.

<sup>313</sup> In the Preamble of the Constitution of Czechoslovak Republic in 1920, it declared “We, the Czechoslovak nation...” Constitution of Czechoslovak Republic in 1920, the English version was available in the Cornell University library, <<https://archive.org/details/cu31924014118222>>, accessed 24 August 2017.

<sup>314</sup> Constitution of the Czechoslovak Republic in 1948 (Czechoslovak Ministry of Information, 1948)

the next section, “we” reviewed the history of Czechoslovakia, it started a thousand years ago. Then it reviewed how the Czechs and Slovaks fought with German Hapsburg Dynasty and established the State. How Czechs and Slovaks against Nazi Germany with the help from Allies, especially how Soviet Union liberated the Prague in 9<sup>th</sup> of May in 1945, which was exactly three years before the Ninth of May Constitution was adopted in the Parliament. In this Section, there was another statement we should note, which the author mentioned previous, Czechs and Slovaks were officially recognized as two nations, not like the first Constitution in Czechoslovak Republic in 1920 “invented” that Czechoslovakia as a unitary nation, Glaser in his book *Czechoslovakia, a Critical History* plainly pointed out that “the following propositions, none of which is true: That there is a “Czechoslovak nation...”<sup>315</sup> In the third section of the Declaration it ensured “our” goal, to build a people’s democratic State, and realized the socialism. The last section introduced how the following structure of the Constitution will be presented. What’s more, in the Declaration, it emphasized this State was a Slav State, so called Slav family and Slav Power. Pan-Slavism was deeply rooted in this Constitution, and this kind of political ideology also played a very important role in the minority policies in Czechoslovakia, numerous minorities had to leave Czechoslovakia.

As the last section of the Declaration indicated, the second part of the Constitution was Fundamental Articles of the Constitution. This part consisted of 12 Articles, it included the most important and principled provisions, basic political issue, citizen’s rights and duties, Slovakia issue, judiciary and economic issue, and basically covered all the basic issues in the society. Since the Ninth of May Constitution was a hybrid of 1920 Constitution and Soviet-style Constitution, there was no doubt some bourgeois thoughts and communist ideologies co-existed in the same article.

The last part of the Ninth of May Constitution was the detailed provisions of the Constitution, as the last section in the Declaration stated that “we have expounded them (the Fundamental Article, i.e. the second part in the Constitution) in detail...”. The

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<sup>315</sup> Kurt GLASER, *Czechoslovakia: A Critical History* (1st edn, The Caxton Printers, Ltd., 1961) p. 2.

detailed part consisted of 10 sections and 178 Articles in total. It regulated the principle rules in the society, from political field, judiciary to economic field.

Here, the author divided it into five parts. The first part was the rights and duties of citizens. The second part was the political part. The third one was judiciary. The fourth one was economic field and the last one was general, with concluding and transitional provisions.

Not like other Constitutions presented in this work at that time, the Ninth of May Constitution arranged the Chapter of rights and duties of citizens in front of the State structure, which was an “invention” since neither the 1920 Constitution of Czechoslovak Republic, nor 1936 Soviet Union Constitution had such arrangement.<sup>316</sup> It has to admit that even we examine these provisions of rights and duties of citizens with a current standard, the regulations which presented in this Chapter were well-organized and it almost covered the most important rights of human beings. However, as a strong combination of 1920 Constitution of Czechoslovak Republic and 1936 Soviet Union Constitution, Constitution-makers in Czechoslovakia added some socialist ingredients into the rights and duties of citizens. Such as in the Article 20, citizens enjoyed the freedom to present their mental work to the public, and in the following Paragraph it stipulated that “This right may be restricted by law only with a view to the public interest and to the cultural needs of the people.” When we study the Chapter of rights and duties of Citizens, a phrase “People’s Democratic Order” may draw people’s attention. This phrase appeared in the Constitution 17 times in total, and we could find it 7 times in this Chapter. “People’s Democratic Order”, this vague phrase largely restricted citizens to realize their rights. What’s more, in order to ensure citizens realization of their rights in a “right” way, Article 37, Paragraph 1 regulated the following provision, “Statements and acts that constitute a threat to the independence,

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<sup>316</sup> In 1920 Constitution of Czechoslovak Republic, Section Five, Rights, Liberties and Duties of the Citizens was followed the Judicial Powers, English version of 1920 Constitution of Czechoslovak Republic, is available <<https://archive.org/stream/cu31924014118222#page/n43/mode/2up>>, accessed 28 August 2017, in the 1936 Soviet Union Constitution, The Fundamental Rights and Duties of Citizens was in Chapter 10, the English version of Constitution of the Union of Soviet Socialist Republics (the official name of 1936 Soviet Union Constitution) is available <<https://constitutii.files.wordpress.com/2013/01/1936-en.pdf>>, accessed 28 August 2017.

entirely and unity of the State, the Constitution, the Republican form of government and the People's Democratic Order, are punishable according to law”<sup>317</sup>

In the following part, the Ninth of May Constitution mainly introduced how the function of State, in the central or highest level, the State had three major organs: National Assembly, President of the Republic and the Government. National Assembly was the legislative organ, it had two sessions, Spring Session and Autumn Session which were summoned by the President of the Republic. Presidium of the National Assembly was its standing committee. The position of President of the Republic was unique in this area at that time, since Hungarian People’s Republic and Polish People’s Republic abandoned the position of President in the Constitution.<sup>318</sup> The Government of the Republic was led by the Prime Minister, it was an executive organ in the State. Even though, Czechoslovakia was a unitary State in 1948. Slovaks, as the second nation in the State, “brother” of Czechs, enjoyed some special rights which were empowered by the Ninth of May Constitution, two main organs, Slovak National Council and the Board of Commissioners governed the territory of Slovakia. However, the performance of those powers should not be against the Constitution or other laws.<sup>319</sup> In the local level, the governing organ was National Committee, lower level National Committee shall be subordinate to a higher one.<sup>320</sup>

The next part was Judiciary, the Ninth of May Constitution employed the democratic words to describe the clauses in this Chapter, however, as I mentioned previously, when

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<sup>317</sup> English version of 1920 Constitution of Czechoslovak Republic, is available <<https://archive.org/stream/cu31924014118222#page/n43/mode/2up>>, accessed 28 August 2017, more detailed analysis of the rights and duties of citizens in the Ninth of May Constitution is available in Edward TABORSKY, *Communism in Czechoslovakia, 1948-1960* (Princeton University Press, 1961) p.174-176.

<sup>318</sup> Constitution in most Socialist Republic followed the 1936 Soviet Union Constitution at that time, there wasn’t President position in the 1936 Constitution, therefore most Socialist Republic Constitutions were not included the position of President. In Czechoslovakia case, when the Ninth of May Constitution was drafted, Benes was the President, he and his successor Gottwald enjoyed a great power and reputation in the State. Also, the Ninth of May Constitution was a hybrid of 1920 Constitution of Czechoslovak Republic and 1936 Soviet Union Constitution, it was not doubt, some political traditions was reserved in the Ninth of May Constitution.

<sup>319</sup> Article 109, Constitution of Czechoslovak Republic in 1948, published by Czechoslovak Ministry of Information, 1948.

<sup>320</sup> Paragraph 2, Article 131, *ibid.*

judges exercise their power, shall not only abide by the law, but also so called “People’s Democratic Order”.<sup>321</sup>

Economic system also is regulated in the Constitution. Nationalization of main economic enterprise was started in 1945, and finished before the adoption of the Constitution, therefore, there was no wonder that State-run enterprises played a main role in the economic system. Uniform Economic Plan was penetrated people’s daily life. However, the Ninth of May Constitution failed to regulate the land as national property.<sup>322</sup>

The last part was general, concluding and transitional provisions. It regulated the capital city, the coat of arms in the Republic and how to operate the Constitution, since some of the former Constitutional Acts may not in vigour any more.

## **2.3 Polish People’s Republic**

### **2.3.1 Adoption of the Constitution of Polish People’s Republic in 1952**

Polish people are very proud of their long and rich Constitutional history, the first Constitution in Poland, also the first modern concept of Constitution in Europe, was published in 3 of May 1791. In some scholar’s opinion, 1791 Constitution should be compared with the United States Constitution and French Constitution which was adopted four month later than Polish Constitution.<sup>323</sup>

After the First World War, Poland gained its sovereignty in 1918, and considered as an independent state and the country was ruled as an authoritarian regime. In 1935, in favor of the *de facto* leader, Polish statesman Pilsudski, Poland adopted a new Constitution. The presidential system was introduced in the Polish political life. It limited the competencies of the Parliament in Poland. However, one month after the Constitution was adopted, statesman Pilsudski passed away. The rest of the leaderships

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<sup>321</sup> Article 143, *ibid*.

<sup>322</sup> More detailed analysis is available in Edward TABORSKY, *Communism in Czechoslovakia, 1948-1960* (Princeton University Press, 1961) p.173.

<sup>323</sup> Ryszard CHOLEWINSKI, ‘*The Protection of Human Rights in the New Polish Constitution*’ (1998) Volume 22, Issue 2, *Fordham International Law Journal*, p. 238-239. See also Boguslaw BANASZAK et al., *Constitutional Law in Poland* (1st edn, Wolters Kluwer, 2012) p. 19.

were pursued the highest position in Poland eagerly. However, since there was no such charismatic politician in the Poland, the 1935 Constitution in Poland was not performed very well.<sup>324</sup> Four years after the 1935 Constitution in Poland was adopted, the Second World War broke out. Soon, Poland was controlled by Nazi Germany, and the Polish government went into exile in the France firstly and finally it operated in the Great Britain.<sup>325</sup>

Finally, with the help of the Allies, Poland was liberated. Like other countries in this area, Soviet Union's military force, Red Army was the main force to liberate these lost sovereign States. In the late summer of 1944, at Lublin, a city which is located in the east of Poland, a Soviet Union sponsored organization was formed, Polish Committee of National Liberation (Polska Komitet Wyzwolenia Narodowego — PKWN) and announced its manifesto. It refused the legitimacy of the 1935 Constitution in Poland and based on the 1936 Constitution operated Government in exile therefore was not recognized by the PKWN. Other political or military organizations at that time were brutally attacked by the Soviet Union's puppet in Poland. For instance, Polish Home Army was the one of the biggest military forces in Poland, with the attacking of Communist in Poland, it disbanded in the beginning of 1945 by its Commander.<sup>326</sup>

Soon, PKWN enjoyed a major power in the liberated territory of Poland, even though some parts of the State were still controlled by Nazi German. On the last day of 1944, PKWN changed its name to Provisional Government of the Polish Republic, Lublin became the center of the liberated Poland. In the next year, Polish People with other nations in the world witnessed the failure of Axis Power, Poland gained its independence again. Even though at that time, Poles could not fully determine their fate of State by themselves. With the victory of Second World War, Great powers in the

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<sup>324</sup> Mark BRZEZINSKI, *The struggle for constitutionalism in Poland* (1st edn, St. Martin's Press, 1998) p. 56-57.

<sup>325</sup> Ibid.

<sup>326</sup> In the spring of 1944, Home Army had more than 350,000 soldiers, Communist's military force only counted 10,000 to 20,000 soldiers. John MICGIEL, 'Bandits and Reactionaries: The Suppression of the Opposition in Poland, 1944-1946' in Norman NAIMARK, Leonid GIBIANSKII (eds.), *The Establishment of Communist Regimes in Eastern Europe, 1944-1949* (1st edn, Westview Press, 1997) p. 93-104.

Allies held several meetings and divided the sphere of influence, Visegrad States had no independent choice. Potsdam and Yalta Agreements “regulated” the area doomed to choose the way of Socialist.

Polish Worker’s Party, a political coalition which mainly led by the Polish Communist Party won the election of Sejm (Polish Parliament) in 1947, in the same year, so called “Small Constitution” was adopted by the Sejm, and declared this Constitution was a successor of 1921 Constitution. Small Constitution did not last for a long time, before the next election of Sejm was held in 1952, Sejm payed lots of attention on the drafting a new Constitution, like the process of drafting Constitution in People’s Republic of China, a nationwide discussion was organized. 11 million Poles were involved in this process, 2822 suggestions were sent by the masses, the more Communist styles Constitution finally adopted in the summer of 1952.<sup>327</sup>

### 2.3.2 Analysis of the Text and Structure of the Constitution of Polish People’s Republic in 1952

The Constitution of Polish People’s Republic in 1952 widely inherited the 1936 Soviet Union Constitution, in Brzezinski’s opinion, “The 1952 Constitution... retaining much of the original language of that document and reflecting of major inputs by Soviet constitutional theorists.”<sup>328</sup>

In this part, the author will give a very detailed review of the text and structure of Constitution of the Polish People’s Republic in 1952. Since the 1952 Constitution in Poland also had a strong influence by 1936 Soviet Union Constitution, just like other socialist States in this area, the structure of the 1952 Constitution in Poland therefore had no obvious difference compared with the 1949 Constitution in Hungarian People’s Republic and Ninth of May Constitution in Czechoslovak Republic. The 1952 Constitution in Poland consisted of one Preamble and ten Chapters. The Preamble is the

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<sup>327</sup> Mark BRZEZINSKI, *The struggle for constitutionalism in Poland* (1st edn, St. Martin's Press, 1998) p. 58-63. More details could be found in Dominik LASOK (1954) *The Polish Constitutions Of 1947 And 1952: A Historical Study in Constitutional Law*, (PhD thesis, The London School of Economics and Political Science), p. 257-258 < <http://etheses.lse.ac.uk/112/>>, accessed 12 September 2017.

<sup>328</sup> Ibid, p. 63.

foreword of the book which we called Constitution. Ten Chapters could be divided into six parts, the first two Chapters were mainly addressed the principles of structure in Polish People's Republic, Chapter One was political structure and Chapter Two was social and economic structure. The second part was the regulations of State power, followed the Soviet style of State power organization, the 1952 Constitution in Poland handed out State power with central level and local level. Chapter Three was State authority in central level, Chapter Four was State administration in central level and Chapter Five was State authority in local level. The third part regulated the judiciary provisions in Poland. The next part was the fundamental rights and duties of citizens. Part five was principles of electoral law. The last part was other provisions which we could divide into two parts also. The first one was regulations of a coat of arms, colors and capital of the Polish People's Republic. The second one was provisions of procedure for amending the Constitution.

In the following part, the author will analyze the text of Constitution of Polish People's Republic of Poland in 1952.

The first part was the Preamble, it was a declaration part. It ensured the leadership of Polish working people. The first sentence in the Preamble of the 1952 Constitution in Poland stated that Polish People's Republic was a Republic of the working people. It declared this State was a socialist State. Like the Preamble of Constitution in other Visegrad States, the Polish Preamble of Constitution also followed the rule of "review the fighting history of Communist Party in the Revolution period". In the 1952 Constitution in Poland, the Preamble part also spent nearly half space to introduce how the working people and peasants in Poland under the leadership of Communist Party and the help of Soviet Union to establish the People's Republic in Poland. It reviewed the interwar period history, in particular, the Preamble used one paragraph to introduce the Manifesto of Polish Committee of National Liberation in 1944 which played an important role on the way of State of People's Democracy in Poland. Besides reviewing the revolutionary history of Polish working people and peasants, the Preamble also addressed four purposes of adopting the new Constitution. The first purpose was "To

consolidate the People's State..." People's State or People's Republic was the most common name in the Socialist States. The 1952 Constitution in Poland was adopted implied the official establishment of socialist system in Poland; the second purpose was "To accelerate the political, economic and cultural development of the Fatherland..."; the third purpose was "To strengthen the patriotic feelings, the unity and solidarity of the Polish Nation...", a united Poles with patriotism will benefit the leadership and governing of Polish working class; the last purpose was "To strengthen friendship and co-operation between nations...", it stipulated the foreign policy of new sovereignty.<sup>329</sup>

The next part of the 1952 Constitution consisted of Chapter One and Two. In this part it mainly regulated the principles of political, social and economic structures. There were six Articles regulated the political structure in Polish People's Republic, the first and also the most important rule was "Polish People's Republic is a State of People's Democracy." People's Democracy was a very important ideology in the Communist Party ruling-state, it was the first stage toward the fully communist Regime.<sup>330</sup> Working people was the nominally leaders or owner of the Polish People's Republic, therefore in the provisions of the political structure were ensured the leadership of the working people in Poland.

Chapter Two included the regulations of social and economic structure. To establish socialist system was the goal of the 1952 Constitution in Poland. In social and economic field, the Constitution deprived of the dominating position of capitalism in social and economic area and built socialist social and economic system. Planned economic policy was the main character of socialist economic system, therefore in Article 7, such words like "national economic plan", "planned economic policy" were regulated in the Constitutional Provisions. What's more, the State controlled the foreign trade, "The State has the monopoly of foreign trade." In agrarian policy, Constitution recognized the legitimacy of individual farms of working peasants, and helped them against the

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<sup>329</sup> Constitution of Polish People's Republic in 1952, the English version is available in the official website of the library of Sejm in Poland, <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-spis.html>>, accessed 12 September 2017.

<sup>330</sup> Mark BRZEZINSKI, *The struggle for constitutionalism in Poland* (1st edn, St. Martin's Press, 1998) p. 63.

“capitalist exploitation”, while set up of cooperative farms gained the all-around and special support from the State. What’s more, Polish People’s Republic recognized and protected the legal private property. In the end of this Chapter, it emphasized the importance of labor.

The third part of the Constitution was regulations of State powers, Chapter Three and Four regulated the provision on central level, Chapter Five regulated the local level State power. Sejm was the supreme organ of State authority, Chapter Three stipulated the power of Sejm (English translation version was Sejm) and its standing organization, Council of State. There were 14 Articles in this Chapter, it ensured the highest position of Sejm, Sejm was entitled to pass law, adopt the national economic plan and annual State budget. Each Sejm served four years as one term, at least two sessions will be held in Sejm, during the adjournment, standing organ of Sejm, Council of State will exercise the State power.<sup>331</sup>

Chapter Four regulated the supreme organs of State administration, the central Government. Council of Ministers was supreme executive and administrative organ of State Authority, Sejm was entitled to appoint and recall any members of the Government, Council of Ministers. Chairman, vice chairman and other leadership of Committee formed the core of executive organ. The President of Republic was abolished in the 1952 Constitution in Poland, it was common in communist Constitution, since the Soviet Union promoted “democratic centralism”, which prefer a group of people to lead the State, not a single charismatic leadership.

Chapter Five provided how the local level State authority exercised State power. People’s Council was the organ which performed the State power in local level. One term of People’s Council was three years. However, one term of Sejm was four years. In practice, there were 49 People’s Councils in People’s Republic, it in charge of the all-around governing in each territory of People’s Council, notwithstanding, the decree

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<sup>331</sup> Plenary Session of Sejm in Poland only took a few days, from 1952 to 1976, each Sejm term (four years) only met for 42 days. Ibid, p. 67.

of People's Council should in accordance with the higher-level People's Council and the Central authority, Sejm.

Part four related to the judiciary system in Poland. Two systems were introduced in the Constitution, Court and Public Prosecutor's office. There were four different courts, Supreme Court, Voivodeship (provincial level) Courts, District Courts and Special Courts. Article 52 declared "Judges are independent and subject only to the law". However, the courts burdened the task of "...protect the achievements of the Polish working people, safeguard the people's rule..." Public prosecutor was the supervision role of the law, Public Prosecutor General was the highest organ and appointed recalled by the Council of State.<sup>332</sup>

Fundamental rights and duties of citizens were regulated in Chapter Seven. Citizens in Polish People's Republic enjoyed widely rights in the Constitution (on paper), freedom of speech, press and association, such western typically democracy were regulated in the Constitution, nevertheless such individual rights were usually followed with some conditions, for example, Article 72 the freedom of association was stipulated with such condition "The setting up of, and participation in, associations the aims or activities of which are directed against the political or social system or against the legal order of the Polish People's Republic are forbidden."<sup>333</sup>

Chapter Eight provided the principles of electoral law, election of State authorities from local level to central level should be "universal, equal, direct and carried out by secret ballot." Citizens reached 18 years old were entitled to vote. Insane persons and the persons who were deprived by Court decision of public rights lost their suffrage rights.

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<sup>332</sup> Constitution of Polish People's Republic in 1952, the English version is available in the official website of the library of Sejm in Poland, <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-spis.html>>, accessed 12 September 2017. See Mark BRZEZINSKI, *The struggle for constitutionalism in Poland* (1st edn, St. Martin's Press, 1998) p. 69-70. See also Dominik LASOK (1954) *The Polish Constitutions Of 1947 And 1952: A Historical Study in Constitutional Law*, (PhD thesis, The London School of Economics and Political Science), p. 272-273 <<http://etheses.lse.ac.uk/112/>>, accessed 19 September 2017.

<sup>333</sup> Paragraph 3, Article 72, Constitution of Polish People's Republic in 1952, the English version is available in the official website of the library of Sejm in Poland, <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-spis.html>>, accessed 19 September 2017.

The last part of the Constitution mainly regulated two things: the coat of arms, colors and capital of the Polish People's Republic; and procedure for amending the Constitution. The coat of arms, colors were followed the Polish tradition. The procedure of amending the Constitution was more strictly than other laws, in order to pass the amendment of Constitution, least half of the Deputies should be presented in the Sejm and over two thirds presented Deputies should agree with the amendment.<sup>334</sup>

### **3. Comparative Analysis of the Structure and Text of the First Communist Constitution Between China and the Visegrad States**

In the middle of 20 Century, after the Second World War, People's Republic of China and Visegrad States established socialist system and started to adopt their first communist Constitution, even all of these Constitutions had a strong influence of 1936 Soviet Union Constitution, there were still some individuality in each Constitution. In this part, the author will employ a comparative analysis approach on the text and structure of the first Communist constitution between China and Visegrad States. By examining the differences and similarities of each State how they arrange the structure of the Constitution and employ the provisions in the Constitution, we could deduce the history background of constitution-making process and it also implied the development of the Constitution in the whole communist period in each State.

#### **3.1 Comparative Analysis of Structure of the First Communist Constitution Between China and the Visegrad States**

After the destructive Second World War, newly independent States found there were two types of roads to follow, capitalist road and socialist road, Soviet Union was the first and biggest Socialist State in the world at that time. With the Communist Party's propaganda, coalition of socialist group gradually won the leading position in each State, socialist road was nationwide spread in the State, meanwhile a communist Constitution was adopted by the legislature. Almost at the same time, in East Asia, Chinese

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<sup>334</sup> Ibid, Article 89, 90, 91.

Communist Party with Chinese people just finished two wars, Anti-Japan War and Civil War. Chinese Communist Party won these wars and established its Socialist Regime. In order to legitimate the leadership of Communist Party, first Communist Constitution of People's Republic of China was adopted in 1954.

Even though China and Visegrad States established the Socialist Regime and adopted the Communist Constitution in their lands and all of these Constitutions patterned themselves on 1936 Soviet Union Constitution, different social condition and history made such differences in these Constitutions.

In the structure part, Constitution in the Visegrad States seemed more “willing” to follow the 1936 Constitution's pattern, except the Union Republic part.<sup>335</sup> There were 13 Chapters in the 1936 Soviet Union Constitution, the first two Chapters introduced the principles of the Republic; then introduced the central level State power; provisions of local level State power were stated in the following Chapter; the next Chapter stipulated the rules of Judiciary system in Soviet Union; Chapter Ten was fundamental rights and duties of citizens; Chapter Eleven provided the principles of electoral system; the last two Chapter were arms, flag, capital and procedure for amending the Constitution.<sup>336</sup>

The Constitution in Visegrad States almost followed this structure. Taking an example, the Constitution of Polish People's Republic in 1952 honestly “copied” this pattern, except the Chapters which related to the Union Republic. The structure of the Constitution of People's Republic in 1954 was much simpler than his brother States in Visegrad area. There were only four Chapters and one Preamble in the 1954 Chinese Constitution, however if we examine the Chinese Constitution, it was not more simple or crude than the Constitution in Visegrad States, Chapter Two, State Structure in the Chinese Constitution included the structure of central and local level State power,

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<sup>335</sup> When the first Communist Constitution was adopted in Czechoslovakia in 1948, the Republic was still a unitary State, until the 1960 Constitution of Czechoslovakia was adopted, Czechoslovakia became a Federal State.

<sup>336</sup> Constitution of the Union of Soviet Socialist Republics 1936, English version is available <<https://constitutii.files.wordpress.com/2013/01/1936-en.pdf>>, accessed 16 September 2017.

judiciary system, even one Section which dealt with the organs of self-government of national autonomous areas.<sup>337</sup> However, the Constitution of People's Republic of China missed two parts compared with 1936 Soviet Union Constitution and the Constitution in Visegrad States, electoral system part and process of amending of Constitution part. Notwithstanding, the 1954 Chinese Constitution regulated some principles of electoral system in the National People's Congress and fundamental rights and duties of citizens parts.

Since the popularity of "democratic centralism" in Socialist States, the leadership of the States prefers a group of leadership. Therefore in the 1936 Soviet Union Constitution and most socialist Constitutions, there wasn't the position of President of Republic, however, in the Ninth of May Constitution of Czechoslovak Republic and the Constitution of People's Republic of China in 1954 there were provisions of President of Republic.<sup>338</sup> In Czechoslovakia's consideration, Czechoslovakia had more influence of capitalism and the personal high political reputation of President Masaryk and Benes made the President position in Czechoslovakia more important than his neighbors.<sup>339</sup> However, in the Chinese case, Chinese was the major power against the Axis Powers in China battlefield in Second World War. After the Civil War in China, Chinese Communist Party not only won the war, but also the support from masses. The leader of Chinese Communist Party Mao Zedong enjoyed the highest respect from the whole society. Therefore, when the Constitution of People's Republic of China in 1954 was adopted he became the first Chairman of the People's Republic.<sup>340</sup>

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<sup>337</sup> Similar regulation could be found in 1936 Soviet Union Constitution, however since Soviet Union was a federal State, autonomous areas in Soviet Union were called "Republic", China, as a unitary State, the highest-level autonomous area was equal a province. Ninth of May Constitution of Czechoslovak Republic regulated the Slovak national organs in Chapter Five, since Slovak was the second nations in the State. However, according to the Ninth of May Constitution, Czechoslovakia was still a unitary State.

<sup>338</sup> Chapter Three, Ninth of May Constitution of Czechoslovak Republic and Section Two, Chapter Two, Constitution of People's Republic of China provided the provisions of President (Chairman) of the Republic.

<sup>339</sup> During the drafting process of Ninth of May Constitution, Benes was still the President of Czechoslovak Republic. Edward TABORSKY, *Communism in Czechoslovakia, 1948-1960* (Princeton University Press, 1961) 187-190

<sup>340</sup> Mao Zedong and other leaderships of Chinese Communist Party participated in the drafting process of Constitution, in order to perform the State power more efficiency and security, Mao suggested to set up the position of Chairman, he even mentioned that in the Constitution of Czechoslovakia and German Democratic Republic were provided the position of President. Chongde XU, *中华人民共和国宪法史*

## 3.2 Comparative Analysis of Text of the First Communist Constitution Between China and the Visegrad States

In this part, the author will analyze the text of the first Communist Constitution in each Socialist States in Visegrad area and China. It is difficult to compare the text of Constitution word by word, since the numerous provisions in the Constitution. therefore, in this part, the author will mainly focus on the Preamble, fundamental rights and duties of citizens and the supreme organ of State power parts.

### 3.2.1 Comparative Analysis of the Preamble of the First Communist Constitution Between China and the Visegrad States

The 1936 Soviet Union Constitution didn't include the Preamble part, however these three Communist Constitutions in Visegrad States and the Constitution of People's Republic of China in 1954 were included the Preamble part.

Except for the Constitution of Hungarian People's Republic, the rest three Constitutions spent lots of attention on the Preamble part. As the first part of the Constitution, no matter it was long or short, the Preamble of the Constitution was the political declaration of the Constitution. It legitimated the sovereignty of State and the leadership of the working class in the country. Since Soviet Union was the "big brother" in the Socialist world, all of the Constitutions mentioned the Soviet Union in the Preamble. Nevertheless, by examining the speech related the Soviet Union, we could find the relationship between each State and Soviet Union. In Chinese case, Soviet Union was mentioned in the last paragraph of the Preamble, "Soviet Union" and other "People's Democracies" were friends of People's Republic of China, the relationship between China and Soviet Union was equal.

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*[History of Constitutional Law of People's Republic of China]* (Fujian People's Publishing House 2003) 186, 190. See also Guihua LI, '存与废、虚与实：新中国国家主席制度的变迁 *[Existing or Abolishing, Virtual and Actual: the Changes of the Chairman system of People's Republic of China]*' (*Beijing Daily*, 6 September 2010) <<http://dangshi.people.com.cn/GB/85040/12643464.html>> accessed 19 September 2017.

However, in the Hungarian case, the Preamble stated that “The armed forces of the great Soviet Union liberated our country from the yoke of the German fascists...” in the first sentence. In the Czechoslovakia case, after the review of the revolutionary history of Czechoslovakia, the Constitutional draftsman admitted the importance of “Union of Soviet Socialist Republics” on the liberation of Czechoslovakia during the Second World War. The similar speech on Soviet Union also could be found in the Preamble of Constitution of Polish People’s Republic in 1952, “The historic victory of the Union of Soviet Socialist Republics over fascism liberated Polish soil...”<sup>341</sup>

Since the different level of “importance” of the Soviet Union during the liberation period in the Second World War, Constitutional draftsman gave different attitudes to Soviet Union. For Visegrad States, according to the speech in the Preamble, the Soviet Union was a savior; however, for China, the Soviet Union was like a true friend. Because of such differences of the relationship between Visegrad States and the Soviet Union and between China and the Soviet Union, the Soviet Union always supervised the reforms in Visegrad States, and China split with Soviet Union in 1960s.

### 3.2.2 Comparative Analysis of the Fundamental Rights and Duties of Citizens of the First Communist Constitution Between China and the Visegrad States

Stipulating the fundamental rights and duties of citizens was a fad among Socialist States, which led by the 1936 Soviet Union Constitution. As a People’s Republic, China also followed this trend. In Constitution of People’s Republic of China 1954, there was one Chapter to regulate the fundamental rights and duties of citizens. Meanwhile in Visegrad States, the drafting committee of Constitution in each States also took such fad

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<sup>341</sup> Constitution of the People's Republic of China in 1954  
< <http://en.pkulaw.cn/display.aspx?cgid=52993&lib=law>> accessed 19 September 2017. Constitution of Hungarian People’s Republic in 1949, English version was published in Budapest, 1953 and supplied by Ministry of Foreign Affairs. Constitution of Czechoslovak Republic in 1948, English version was published in Prague, 1948 by Czechoslovakia Ministry of Information. Constitution of Polish People’s Republic in 1952, English original version was published in Warsaw, 1953, reproduction by permission of the Buffalo & Erie county public library.

into account and published their Constitution with the provision of fundamental rights and duties of citizens.<sup>342</sup>

By examining the fundamental rights and duties of citizens in each Constitution, it is easy to find the rights and duties which provided by Constitution were quite similar. Not only the scope of the rights and duties, but also the structure of rights and duties. Basically, the rights and duties of citizens which regulated in the 1936 Soviet Union Constitution could be found in the Constitutions of Visegrad States and China, even Constitution of Hungarian People's Republic in 1949 and Constitution of Polish People's Republic in 1952 followed the Soviet structure to stipulate the detailed provisions. For example, the first four fundamental rights of citizens in Soviet Union were related to the rights of work, leisure, assistance in sickness and disability of workers and education. Hungarian Constitution and Polish Constitution totally followed this order. All the Constitutions were designed to protect the freedom of speech, press, assembly, equality between man and woman, also the citizens were asked to defend of the State. there was no doubt that such high similarity among these Constitution on the issue of fundamental rights and duties of citizens, since the whole Constitution in Visegrad States and China had a strong influence of 1936 Soviet Union Constitution.

However, because of the unique social condition and history in each State, there were some differences in each Constitution on the issue of fundamental rights and laws. 1936 Soviet Union Constitution regulated that "...citizens of the U.S.S.R. are ensured the right to unite in public organizations--trade unions..."<sup>343</sup> Similarly, Constitutions in Visegrad States also regulated these rights to their citizens. The only exception was Constitution of People's Republic of China, there was no similar provision on the right to organize trade unions. Even though, Trade Union Law of People's Republic of China was published in 1950. The public resources didn't give us the reason why the 1954 Chinese Constitution deleted this right. But obviously Trade Union didn't play an

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<sup>342</sup> In Chinese Constitution in 1954, Chapter Three; in Hungarian Constitution in 1949, Chapter Eight; in Czechoslovakia Constitution in 1948, Chapter one of detailed provisions of the Constitution; Polish Constitution in 1952, Chapter Seven regulated the fundamental rights and duties of citizens.

<sup>343</sup> Article 126, Constitution of the Union of Soviet Socialist Republics 1936, English version is available < <https://constitutii.files.wordpress.com/2013/01/1936-en.pdf>>, accessed 19 September 2017.

important role in the history of People's Republic of China compared with his brother States in Visegrad.<sup>344</sup> Also, since Constitution of People's Republic of China didn't set one Chapter on the electoral system, universal suffrage was regulated in the Chapter of fundamental rights and duties of citizens.

Citizens from Czechoslovakia enjoyed more Constitutional rights than their Socialist comrade in Visegrad States and China. There was one part of fundamental rights of citizens on personal freedom, according to the regulation, Czechoslovakia citizen would not suffer the illegal prosecution, arrest and custody. It was more advanced than the rest Constitutions in Visegrad States and China. One reason for this advanced provision was Czechoslovakia was more developed economically, in the year of adoption of the Ninth of May Constitution, Czechoslovakia was already an industrialized country.<sup>345</sup> What's more, the Ninth of May Constitution in Czechoslovakia used a different structure to regulate the fundamental rights and duties of citizens. Apparently, it followed the structure of Constitution of Czechoslovak Republic in 1920, since the Ninth of May Constitution was a hybrid of 1936 Soviet Union Constitution and 1920 Constitution of Czechoslovak Republic.<sup>346</sup>

### 3.2.3 Comparative Analysis of the Supreme Organ of State Power of the First Communist Constitution Between China and the Visegrad States

Even though, all the Communist Constitution advocated that all the power of the State belongs to the (working) people in the very beginning part of the Constitution.<sup>347</sup> Apparently, it was unrealistic to ensure everyone could perform his or her State power in practice, therefore, the highest organ in the State, the organ which on behalf of the (working) people will exercise the State power. Notwithstanding, this organ should not

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<sup>344</sup> Trade Union in Hungary, Czechoslovakia and Poland played a very important role during the reform period, the most obvious example was Polish Trade Union, Solidarity in 1980s.

<sup>345</sup> Martin MYANT, *The Czechoslovak Economy 1948-1988: The Battle for Economic Reform* (Cambridge University Press 1989) p. 1.

<sup>346</sup> Constitution of the Czechoslovak Republic (1920), English version is available <<https://archive.org/details/cu31924014118222>> accessed 20 September 2017.

<sup>347</sup> In 1936 Soviet Union Constitution, 1949 Hungarian Constitution and 1952 Polish Constitution, "State power belongs to working people". In 1954 Chinese Constitution and 1948 Czechoslovakia Constitution, "State power belongs to the people".

be the Parliament, since according to the political philosophy of Marxism-Leninism, “The Commune,” Marx wrote, “was to be a working, not a parliamentary, body, executive and legislative at the same time...”<sup>348</sup>

Each Socialist States “created” a supreme organ to carry out the State power on behalf of the (working) people, even though the name of this supreme organ of State power in each country was different. In Soviet Union, it was Supreme Soviet of U.S.S.R.; in People’s Republic of China, it was National People’s Congress; in Hungarian People’s Republic, the Constitution named it as “Országgyűlés” (someone translated as National Assembly, some of them translated as Parliament); in Czechoslovak Republic, this supreme organ was “Národní shromáždění” (National Assembly); in Polish People’s Republic, the Constitutional draftsman followed the tradition, “Sejm” was the name for this supreme organ. Even only by examining the name of the supreme organ of State power, it could find some preferences of the Constitutional draftsman during the process of Constitution making. The Communist Constitutions in the Visegrad States followed their traditional name of Parliament, even their master of communism, Marx and Lenin declared to the whole world, Parliamentarism should be abolished. In China, People’s National Congress was not a traditional word which inherited from the former ruling government,<sup>349</sup> the first time for “National People’s Congress” this phrase was in Constitution of Chinese Soviet Republic, a regional government in China in 1930s. Visegrad States exercised Parliamentary system for long time, however in China, the history of exercise Parliament was short than Visegrad States and it always was interrupted by the brutal wars in China.

In spite of the supreme organ of the State power should play the same role as Parliament, it undertook the role of legislature, passed the annual State budget and elected the some officers in different committees, etc. Since the supreme organ of State power in each State only held the short sessions per year,<sup>350</sup> therefore a resident

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<sup>348</sup> V.I. Lenin, *State and Revolution* (first published 1932, International Publishers 1932) p. 39.

<sup>349</sup> National Assembly was officially regulated in 1947 Constitution of Republic of China, Constitution of Republic of China 1947.

<sup>350</sup> In Visegrad States, it was usually twice per year, in China, it was once per year.

organization was needed for the daily political life. This resident organization almost entitled all the power which the supreme organ of State power had, except some ultimate powers, such as amending the Constitution.

What's more, in Czechoslovakia and China, the *de facto* head of the State, President of the Republic shared some power from the supreme organ of the State power more or less. In Czechoslovakia case, since the Ninth of May Constitution was a hybrid of 1936 Soviet Union Constitution and Constitution of Czechoslovak Republic in 1920. The power of President of Republic which regulated in the Ninth of May Constitution was almost the same as in Constitution of Czechoslovak Republic in 1920. In China, the 1954 Constitution also regulated the position of Chairman of the Republic. However, in Chinese case, the role of Chairman was supposed as the Figurehead.

In each State, the supreme organ of the State power consisted of Deputies, and Deputies should be elected. Constitution and the constitutional regulation, Electoral Law in each State guaranteed the election for the supreme organ of State power were universal, equal and carried out by secret ballot. Not every country took the direct way to elect the Deputies of the supreme organ. In China, the election for the National People's Congress was indirect. Deputies for National People's Congress were elected by the provincial level People's Congress. Even the Deputies from different electoral districts were represented different proportion inhabitants. According to the 1953 Electoral Law of People's Republic of China that "...in the proportion of one Deputy to 800,000 inhabitants; in Municipality and the city with 500,000 inhabitants, in the proportion of one Deputy to 100,000 inhabitants..."<sup>351</sup> it seems unfair since the Deputy of National People's Congress represented different proportion inhabitants in different electoral districts. Deng Xiaoping, the chief designer of reform and opening up policy explained that "... such regulations seem unfair... it guarantees the Deputies to each nation, each class shall correspond with their social status..." in 1953, the proportion of urban population in the total population in China was 10.6 %.<sup>352</sup> Most working class

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<sup>351</sup> Electoral Law of People's Republic of China 1953.

<sup>352</sup> Bojun LI, 'Gradually Achieving the Deputy Election to National People's Congress with the Same Proportion in Rural and Urban area' (official website of National People's Congress, 5 November 2007)

lived in urban areas and in Constitution, “The People's Republic of China is a people's democratic state led by the working class”<sup>353</sup> In order to guarantee the leadership of working class, the Electoral Law in China regulated such odd provisions.

#### **4. Conclusion**

In this chapter, the author introduced the first Communist Constitution in China and Visegrad States. After the Second World War, The Great Powers divided the political sphere in Europe. Soviet Union enjoyed the overwhelming influence in Eastern Europe, including Visegrad area. In the middle of 20<sup>th</sup> century, States in this region established their Socialist Sovereignties and published Communist Constitutions. Almost in the same time, in Eastern Asia, people from People’s Republic of China witnessed the similar process of their State with the “help” of Soviet Union.

The Constitution is the fundamental law in the modern States, by examining the Constitution, the ultimate system in the Sovereignty could be presented to us. The first Communist Constitutions between China and Visegrad States presented their Soviet Union’s style pattern in front us, however, the different social conditions, especially in economic and political fields made each Constitution so unique. The author employed the comparative analysis method in this Chapter, brought his conclusion on this comparative work: States in Visegrad were much more under the supervision of Soviet Union compared with China, therefore the Constitutions in this area were taken more from the 1936 Soviet Union Constitution’s ideas into their own Constitution. However, States in Visegrad had a longer history of modern concept of democratic exercises, in some sense, the regulations in the Constitution were more “open” than the Chinese one, and in fact the Constitution in Visegrad States have performed better than Chinese practice.

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<[http://www.npc.gov.cn/npc/xinwen/rdltrdjs/2007-11/05/content\\_374368.htm](http://www.npc.gov.cn/npc/xinwen/rdltrdjs/2007-11/05/content_374368.htm)> 26 September 2017.

<sup>353</sup> Constitution of People’s Republic of China 1954.

## Chapter Four: Development of the Constitution Between China and the Visegrad States in the Reform Period

In the last Chapter, the author introduced how the Constitutional draftsman “produced” their work, that is the Constitution in each State, and made a comparative work of the structure and text of the Constitution between each State.

In this Chapter, the author will introduce the development of Constitution in each State during the reform period, then a comparative analysis of the Constitutions in each State will be presented. Besides the Constitution in the paper, the author will also compare how the supreme organ of the State power in each State operates in practice, and the last part will be a short conclusion.

Before the author starts the main part of this Chapter, the concept of reform period should be clarified. In this Dissertation, the reform period commenced from middle of 1950s in Visegrad States. In the People’s Republic of China, the reform period came much later. Here, the author divides the turning point of the reform period from 1976, the year of the ending of Cultural Revolution in China. Regarding to the end of the reform period, the author divides it in the late of 1980s, more specific, before the Revolutions of 1989 in Eastern Europe. “Reform” as a noun, means “an improvement, especially in a person's behavior or in the structure of something.”<sup>354</sup> Until the collapse of the Socialist system in Visegrad States, all the changes in the society and amendments of the Constitutions in each State took place in the Socialist framework. No matter the 1956 Revolution in Hungary, Prague Spring in 1968 and Solidarity in Poland in 1980s, or the collapse of the Cultural Revolution in China in 1976. Several significant reforms happened in the Socialist Regimes.

There were two States which published new Constitutions under the Communist Parties rule, People’s Republic of China and Czechoslovakia. In Hungary and Poland, even though the new Constitutions were not drafted by the Constitutional Committee, some notable Amendments were passed by the supreme organ of the State.

In the following section, the author will introduce these developments of the

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<sup>354</sup> “Reform”, <<http://dictionary.cambridge.org/dictionary/english/reform>> accessed 27 September 2017.

Constitutions in each States separately. The development of Constitution of People's Republic of China will be introduced in the first place, Visegrad States, as a group, Constitutional development in these States will be introduced one by one.

## **1. Development of the Constitution in People's Republic of China in the Reform Period**

The first Communist Constitution in China was published in 1954. However, this Constitution did not last for a long time. At the beginning of the 1954 Constitution was promulgated, it performed quite well, the leadership of the State, Chinese Communist Party and its government followed the regulations in the Constitution.<sup>355</sup> However, the “rule of law” status in China didn't last too long. In Han Dayuan's book, he divided the implementation of Constitution into three periods: the first period started from 1954 and finished in 1956, in these two years, the 1954 Constitution was fully performed by the State authorities; notwithstanding, the honeymoon between the ruling Party and Constitution or law only lasted two years; and from 1957 to 1965, the second period, conflicts between the ruling government and Constitution emerged from the “harmonious period”, more and more provisions which regulated in the Constitution were heavily damaged by the ruling Party. Numerous Movements were introduced by the ruling Party, the whole State sunk into the odd enthusiasm of building a Socialist society. This fever had been simmering for ten years, from 1966 to 1976. With the Culture Revolution, the 1954 Constitution was completely invalid, the whole State was ruled by man.<sup>356</sup>

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<sup>355</sup> Some leadership of the government and National People's Congress expressed their opinions on the implementation of the Constitution of China in public, for example, in 1955, the vice chairman of the Standing Committee of National People's Congress, Peng Zhen addressed the importance of Constitution in the performance of State power; in the next year, one of the leader of the Chinese Communist Party, Dong Biwu, President of the Supreme People's Court of China made a report in the 8<sup>th</sup> National Congress of the Communist Party of China, emphasized the importance of law, especially the Constitution. Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]* (Hunan People's Publishing House 2004) 480. Not only the leaderships declared the importance of Constitution, in the few years after the 1954 Constitution was published, Chinese Constitution was well implemented. Take an example, when the Constitution was promulgated, State organs in the central level were immediately elected according the provisions and principles of 1954 Constitution. Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) 410, 411.

<sup>356</sup> Dayuan HAN, *1954 年宪法与新中国宪政 [The 1954 Constitution and the Constitutionalism of New China]* (Hunan People's Publishing House 2004) 466-498.

During the reform period, People's Republic of China adopted two Constitutions in 1978. The second version Constitution of People's Republic of China adopted in 1975, as the "achievement" of the Cultural Revolution. However, without the introduction of the 1975 Constitution, the study of Constitutional development in China can't be accomplished. Therefore, the author presented the 1975 Constitution of People's Republic of China in the reform period.

### **1.1 The Constitution of People's Republic of China, 1975**

Before the reform period commenced in China, the country received tremendous damage from various movements and Cultural Revolution, the whole country fallen into chaos, not only the economic and political field, but the legal system. The country ceased the legal education system as well. Therefore, the 1954 Constitution didn't fulfill its functions. In contrast, the State functioned without law.<sup>357</sup> Under such a situation, the second Constitution of People's Republic of China was passed by the Fourth National People's Congress in 1975, epilogue of Cultural Revolution.<sup>358</sup>

During the Cultural Revolution period, Mao came up with the idea of drafting of new Constitution, since the 1954 Constitution was obviously not fit for the current situation. And he hoped to change the State Structure, cancel the position of Chairman of People's Republic of China, in 1970 March, the drafting work started.

The 1975 Constitution was supposed to be a Socialist Constitution and would be promulgated in 1970 when the Fourth National People's Congress was held in the same year. However, the real situation didn't follow the plan and a series of incidents<sup>359</sup> postponed the convening of the National People's Congress. Therefore, the drafted Constitution was postponed for nearly five years until the Fourth National People's Congress was held in 1975.

On 17 January of 1975, the Fourth National People's Congress with 2864 Deputies

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<sup>357</sup> Highest leader of the Communist Party, also Chairman of People's Republic of China gave a speech in 1958, and he mentioned that "rule of law or rule of man, it seems that mainly rely on (rule of) man, law is only the reference of governing." Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) p. 419, 420.

<sup>358</sup>

<sup>359</sup> Such as the Lin Biao Incident, Lin Biao was the vice Chairman of the Communist Party and official successor of Mao, and Lin's successor position was even regulated in the Party Constitution and the drafting of the 1975 Constitution. The Conflict between Mao and Lin made Lin fled from the Country, Lin died from air crash.

(2885 Deputies in total) passed the 1975 Constitution, it was the second Constitution of People's Republic of China.

The 1975 Constitution was much simpler than the 1954 Constitution in words, only around 4000 characters, with 30 Articles in the Constitution, compared with the 1954 Constitution with 106 Articles. It was apparently less complexed and “seasoned with a revolutionary flavor”<sup>360</sup> and it was heavily decided by Mao Zedong.<sup>361</sup>

However, the 1975 Constitution followed the basic structure of the 1954 Constitution. It was equipped with the Preamble, the General Principles, the State Structure, the Fundamental Rights and Duties of Citizens and the National Flag, National Emblem, Capital.<sup>362</sup>

The Preamble was the first part in the Constitution, included with the punctuations, it almost accounted 20% of the whole Constitution characters. There were 8 paragraphs in the Preamble, and it could be divided into two parts. The first part was the review of the revolutionary history of China, and how Chinese Communist Party lead the people to reach the success of socialist construction after the establishment of People's Republic of China. The second part of the Preamble was full of the political declarations and most of them could be found in the Constitution of Communist Party of China.<sup>363</sup>

The General Principles was the second part of the 1975 Constitution and it included 15 Articles, considered the whole Constitution only presented to us 30 Articles in total, the overwhelming proportion of General Principles decided the 1975 Constitution was not a normal Constitution. It was a political slogan style Constitution.

The first Article declared the People's Republic of China is a Socialist State, compared with the 1954 Constitution, “People's Democratic State”. The 1975 Constitution ensured this Communist Party ruling State officially transformed to a

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<sup>360</sup> Chin KIM, *Recent Developments in the Constitutions of Asian Marxist-Socialist States* (1981) 13 Case W. Res. J. Int'l L. p. 483, 485.

<sup>361</sup> During the drafting period, Mao Zedong brought up his opinion, the Constitution should be simplified and easy to memorize. There was another version of drafting Constitution with 60 Articles, and Mao thought it was too complicated.

<sup>362</sup> Constitution of People's Republic of China, 1975, <[http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4362.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4362.htm)> accessed 2 October 2017.

<sup>363</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) 465,466. Constitution of Communist Party of China, 1973 <<http://cpc.people.com.cn/GB/64162/64168/64562/65450/4429427.html>> 2 October 2017.

Socialist State. After the declaration of the socialist system in China, Article 2 ensured the leadership of Chinese Communist Party in China. It was rare to proclaim one political party's ruling role in the Constitution. However, the 1975 Constitution not only addressed the leadership of Chinese Communist Party in such as an important place of in the Constitution, but also emphasized it in different places in the Constitution.<sup>364</sup>

The election principle of each level People's Congress was also mentioned in this part. Article 3 proclaimed the Deputies will be designed by democratic consultation. It seriously damaged the suffrage of citizens.

Related to the ownership of means of production, there were only two means listed in the Constitution, whole people and collective ownership, and the individual working people ownership and capitalist ownership which listed in the 1954 Constitution were removed.<sup>365</sup>

The third part was State Structure. The structure of this part was similar with the 1954 Constitution, only without Chairman of People's Republic of China section. Since one of the main reasons to publish a new Constitution was Mao Zedong didn't want to set up the office of Chairman of People's Republic of China, it was quite easy to understand the Chairman part was not included.

National People's Congress was still the supreme organ of the State power. However, it was led by the Chinese Communist Party.<sup>366</sup> It implied the highest position of Chinese Communist Party in the whole nation. What's more, there was a very odd regulation in this part, related to the power of National People's Congress. "National People's Congress entitles the power... perform the power which National People's Congress considers it should has." It seems the National People's Congress will enjoy any power without limit. State Council was still the executive organ in the central government.

In local level, an outcome of Cultural Revolution was introduced to us, people's

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<sup>364</sup> Take an example, there were four places in the Preamble mentioned "the leadership of Chinese Communist Party".

<sup>365</sup> Chin KIM, 'The 1975 Constitution of the People's Republic of China' (1977), 1(1) *Hastings International and Comparative Law Review* <[http://heinonline.org/HOL/Page?handle=hein.journals/hasint1&div=17&g\\_sent=1&casa\\_token=&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/hasint1&div=17&g_sent=1&casa_token=&collection=journals)> accessed 2 October 2017.

<sup>366</sup> *Ibid*, 15, 16.

commune. It was the standing committee of local People's Congress and the executive organ in local State power. Even in the autonomous area, people's commune should exist. The last part of State Structure was judiciary.

The independence of judiciary and people's procuratorate system in the 1954 Constitution were deleted, public security bureau took the role of prosecution, and the judiciary should mobilize people to criticize the severe anti-revolutionary criminal case. Fundamental rights and duties of citizens part was presented in the 1975 Constitution. Compared with the 1954 Constitution, the second version Constitution in China was less than the first one. There were 19 Articles in the 1954 Constitution, however in the 1975 Constitution, there were only four Articles. Surprisingly, the 1975 Constitution list a new citizen right, the right to strike. What's more, the 1975 Constitution put the duties of citizen part in front of the rights of citizens. It implied such mentality that is the citizens should perform their duties rather than enjoy their rights.

The last part of the Constitution was the national flag, national emblem and capital. It was similar with the 1954 Constitution. Five-star red flag was the National flag, and national emblem in China was "Tiananmen under the light of five stars, framed with ears of grain, and with a cogwheel at the base." Capital was Beijing.<sup>367</sup>

## **1.2 The Constitution of People's Republic of China, 1978**

In 1976, the course of the Cultural Revolution ceased, the Gang of Four was captured and prosecuted by the judiciary.<sup>368</sup> Since the highest leadership was changed, Cultural Revolution style Constitution didn't fit the political and economic system in China. Therefore, a new Constitution was needed by the ruling Party. Mao Zedong and Zhou Enlai, the most powerful persons in China passed away in 1976, Hua Guofeng became the most powerful person in the Communist Party, and he insisted to follow Mao's ruling policies in Cultural Revolution period. For this reason, the new Constitution didn't revise the mistakes in the 1975 Constitution, in contrast, the 1978 Constitution continued the mistakes which regulated in the 1975 Constitution.

The 1978 Constitution was not drafted by the Constitutional drafting committee, it

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<sup>367</sup> Article 30, Constitution of People's Republic of China, 1975.

<sup>368</sup> Gang of Four was considered as the leadership of Cultural Revolution, included Jiang Qing, wife of Mao Zedong, Zhang Chunqiao, Wang Hongwen and Yao Wenyuan.

was drafted by the Politburo of Communist Party of China. Then the drafted version of Constitution was read by the 2nd Plenary Session of the 11th Central Committee of the Communist Party of China in 1978. In the same year, the 5th National People's Congress was held in Beijing, new Constitution passed and promulgated.<sup>369</sup>

The 1978 Constitution was a compromise between the 1954 Constitution and the 1975 Constitution. The structure of the Constitution followed its tradition, one Preamble and four Chapters. The number of the Articles also implied the balance, 60 Articles in total.

The 1978 Constitution had the "largest" Preamble, it consisted of 8 paragraphs with 1119 characters in total. Like the preceding Constitution, the first two paragraphs reviewed the revolutionary history. In the second paragraph, Cultural Revolution was still treated as a Party achievement, and it declared "People's Republic of China has become a Socialist State with the preliminary of prosperity." What's more, there were three parts to be noted, the first one was Chairman Mao was declared as the founder of the State. The second one was Cultural Revolution was considered as achievement of the Party. The last part was "liberate Taiwan, unite the State" and became a main task for the State.<sup>370</sup>

The first Chapter in the Constitution was General Principles, which consisted of 19 Articles, compared with the preceding Constitution, the most parts remained unchanged. However, there were still some significant changes to be mentioned. Firstly, the 1978 Constitution deleted the democratic consultation electoral principle for the Deputy of People's Congress. Secondly, in political Articles, even though it kept most the Cultural Revolution style Articles, the term "see truth from the facts" was addressed in Article 16. Later this term was used a lot during the debate of whether we need reform and opening or not.<sup>371</sup> Thirdly, in social economic Articles, the 1978 Constitution has restored the expression of "The State protects the rights of citizens to own lawfully-earned

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<sup>369</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) p. 501, 503.

<sup>370</sup> Constitution of People's Republic of China, 1978. See also Ph. De HEER, 'The 1978 Constitution of the People's Republic of China' (1978) Vol. 4 *Review of Socialist Law* <[http://heinonline.org/HOL/Page?handle=hein.journals/rs14&div=36&g\\_sent=1&casa\\_token=&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/rs14&div=36&g_sent=1&casa_token=&collection=journals)> accessed 3 October 2017.

<sup>371</sup> Ibid.

incomes...” which regulated in the 1954 Constitution.<sup>372</sup> Fourthly, in cultural and education Articles, the 1978 Constitution deleted the “Speaking out freely, airing views fully, holding great debates and writing big-character posters” such Cultural Revolution period slogan and established “Hundred Flowers Campaign” policy to encourage the flourishing of culture.<sup>373</sup>

Since the 1978 Constitution followed the structure of the previous Constitution, Chapter Two was still State Structure. Because of the most powerful person in the Party, Hua Guofeng insisted on following Mao’s policy, the office of Chairman of People’s Republic of China was not restored.

National People’s Congress was considered as the supreme organ of State power, and “under the leadership of the Chinese Communist Party” which regulated in the 1975 Constitution was deleted. However, the election of a Deputy still followed the democratic consultation principle with secret ballot. Related to the power of National People’s Congress, the Constitution listed the power which entitled to the National People’s Congress and most of them could be traced in the 1954 Constitution, except the power related to the Chairman of People’s Republic of China. Notwithstanding, it was understandable since there wasn’t the position of Chairman in this Constitution. With the same reason, the Chairman of the Standing Committee of the National People’s Congress took some responsibilities of Chairman of People’s Republic of China.<sup>374</sup>

The State Council continued to play its role, executive organ of the supreme organ of State power and the Central Government. Compare with the 1975 Constitution, State Council gained more power to rule this country, however some powers which regulated in the 1954 Constitution still did not restored.

In the local level People’s Congress and Revolutionary Committee, the 1978 Constitution reset three-level system of local State power, i.e. provincial, county and commune level. City level which regulated in the 1975 Constitution was eliminated, and township level in the 1954 Constitution became commune level in the 1978

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<sup>372</sup> In the 1975 Constitution, it was regulated as “The State protects the rights of citizens to own lawfully-labor incomes...”

<sup>373</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People’s Republic of China]* (Fujian People’s Publishing House 2003) p. 519.

<sup>374</sup> Ibid.

Constitution instead. Revolutionary Committee was one of the vestiges of the Cultural Revolution. It shows again the 1978 Constitution didn't overcome the harm of Cultural Revolution, therefore this Constitution wasn't successful.

Government in Ethnic minorities living area, self-government of national autonomous area entitled two powers in the 1978 Constitution: making regulations and using their own language. Compared with the 1954 Constitution, two powers still absent: arranging the public finance and organizing public security bureau.

In the Judiciary part, the people's procuratorate system was reestablished in the 1978 Constitution, however the relationship between higher level procuratorate and inferior one was different compared with the regulation in the 1954 Constitution. In this Constitution, the higher procuratorate supervised the inferior one instead of leadership.

People enjoyed more rights in the 1978 Constitution, compared with the 1975 Constitution. However, two regulations should be noticed, the first one was "citizens enjoyed the right of striking and employ the way of 'Speaking out freely, airing views fully, holding great debates and writing big-character posters'..." Right of striking first regulated in the 1975 Constitution, and the second right came from a famous slogan in Cultural Revolution period. It shows again the remaining of Cultural Revolution still played an important role in China. In duty part, family planning became a duty to every Chinese citizen.

The last Chapter in the 1978 Constitution on the national flag, emblem and capital remained the same Article in the 1954 Constitution.

### **1.3 The Constitution of People's Republic of China, 1982**

Hua's<sup>375</sup> ruling in China didn't last too long, Deng Xiaoping gained his esteemed reputation among the core leadership in China. The debate of should China continue the vestiges of Cultural Revolution was openly discussed in the media. In May of 1978, an article titled as "Practice is the Sole Criterion for Testing Truth" was first published in Theoretical Trends which is an internal journal of the Party. Later, a national newspaper,

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<sup>375</sup> Hua Guofeng, former Chairman of Chinese Communist Party and former Prime Minister of State Council.

Guang Ming Daily reproduced the whole article and received a national attention.<sup>376</sup> In the same year, the 3rd Plenary Session of the 11th Central Committee of the Communist Party of China formed one of the most important policies in the history of People's Republic of China, Reform and Opening policy, it indicated the leadership of the Communist Party turned its attitude to Cultural Revolution. Deng Xiaoping, later the core figure of second generation of Communist Party ensured his primacy in the State.

In 1982, the 5th Plenary Session of 5th National People's Congress was held in Beijing, and the most important activity in this Session was promulgated the 1982 Constitution. There were 3421 Deputies in National People's Congress, and 3040 Deputies attended this Session. After a secret ballot, the result finally came out: 3037 Deputies voted in favor, 0 opposed, and 3 abstained.<sup>377</sup>

Before the 1982 Constitution was adopted, the 1978 Constitution was already revised. There were two main revisions passed by the National People's Congress, which happened in the second Session and third Session of 5th National People's Congress. These two revisions abolished the influence from Cultural Revolution. The process how the Constitutional was revised is also interesting, as an example, the second revision initiated by the Central Committee of Chinese Communist Party, after it passed by the Committee, this document was sent to the Standing Committee of National People's Congress, since according to the law, the Central Committee of Chinese Communist Party did not entitle the power to submit a bill. The Standing Committee of National People's Congress passed the resolution and submitted it to the Third Session of 5th National People's Congress. Finally, Deputies in the Session passed the Resolution of Constitution.<sup>378</sup>

The 1982 Constitution finally back on track, and according to Chiu's opinion, "On paper, the 1982 Constitution is far better than any of its predecessors in establishing a

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<sup>376</sup> Today in History, 10 May 1978, Publication of 'Practice is the Sole Criterion for Testing Truth' <<http://www.people.com.cn/GB/historic/0510/6267.html>> 4 October 2017.

<sup>377</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) 764.

<sup>378</sup> In this resolution, National People's Congress decided to abolish one right of citizens, right to speaking out freely, airing views fully, holding great debates and writing big-character posters, since it was considered as the most famous vestiges from Cultural Revolution.

certain degree of ‘rule of law’ in China.”<sup>379</sup>

The 1982 Constitution is also the current Constitution. It consisted of 5 parts, one Preamble and 4 Chapters. The basic structure of the Chapter only made a slight change. Fundamental rights and duties of citizens became the second Chapter, in front of State structure.

13 paragraphs constituted the Preamble, and it mainly telling us four narratives, the first part consisted of 6 paragraphs and it mainly review the revolutionary history of China. Paragraph seven declared the essential task of the State was achieved four modernizations. In the next paragraph, it emphasized the importance of struggle of classes. Paragraph nine mainly dealt with the union of the State, Taiwan issue. These three paragraphs addressed the three tasks of the State, and it should be carried out by the people and with the leadership of Chinese Communist Party. The following three paragraphs stated the three conditions in order to realize these tasks. They were patriotic united front, harmonious nations and peaceful global environment. And the last paragraph in the Preamble emphasized we should respect the Constitution.<sup>380</sup>

Chapter One of the 1982 Constitution was General Principles, which consisted of 32 Articles, compared with the 1975 Constitution only provided 30 Articles in total, the 1982 Constitution was more detailed. Apparently, first Article of the Constitution was very important. It ensured People’s Republic of China is a socialist State, which was ensured since the 1975 Constitution. Besides, it was the first time that the Constitution declared “Socialist system is the basic system of People’s Republic of China”. Therefore, the whole Constitution was based on this primary system. In the political field, there were not significant changes, however, in the economic field, there were some terms presented. In Article 11, private economy was considered as the component of the socialist public economic. In Article 18, foreign enterprises’ legal interests were to be protected by the law, since 1978. Reform and open policy was established in the State, to attract foreign investment and to develop the Chinese economy became a State

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<sup>379</sup> Hungdah CHIU, *The 1982 Constitution of People’s Republic of China and the Rule of Law* (1985) *Review of Socialist Law* p. 155.

<sup>380</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People’s Republic of China]* (Fujian People’s Publishing House 2003) p. 769, 770.

policy. In cultural and educational field, “building of a socialist society with an advanced culture and ideology” was a new term in the Constitution.<sup>381</sup> One of potential bad influences of reform and open policy was with the open the door policy of China, “bad” influence and ideology will also come to China. In order to protect the socialist cultural and ideology, the Constitution emphasized the importance of socialist cultural and ideology. What’s more, in Article 19, the government promotes the nationwide use of Putonghua,<sup>382</sup> in the same Article, it stated that “The State... universalizes compulsory primary education...” Such regulations promoted the education level in China, and it helped the development of Chinese economy. During the Constitution drafting period, reunion of Hong Kong and Macau with mainland of China were under negotiation, and the special administrative region was designed and regulated in the Constitution.

It was the first time that fundament rights and duties of citizens become the content of the second Chapter in the Constitutional history of People’s Republic of China. This arrangement shows an attitude that the government values the right of citizens. Also, the 1982 Constitution ended an argument of the meaning of citizen. According to the regulation “All persons holding the nationality of the People’s Republic of China are citizens of the People’s Republic of China.”<sup>383</sup>

Compared with the 1954 Constitution, the current Constitution almost restored the rights of citizens which stipulated in the first Constitution in People’s Republic of China, except the freedom of residence and movement. This right was regulated in the Article 90 of the 1954 Constitution, however it disappeared in the 1982 Constitution.<sup>384</sup> It would be understood with the situation at that time, Hukou system limited the right of residence and movement in China.<sup>385</sup> Also, there were two significant rights of citizens

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<sup>381</sup> Article 24, Constitution of People’s Republic of China, 1982.

<sup>382</sup> Putonghua, the standard language in People’s Republic of China.

<sup>383</sup> Article 33, Constitution of People’s Republic of China, 1982. Before the 1982 Constitution settled this argument, there were different define of citizen. Some of them argued only the person who reached the age of 18 shall be considered as citizen; some of them think that only the person who enjoyed the political rights shall be considered as citizen.

<sup>384</sup> Hungdah CHIU, ‘*The 1982 Constitution of People’s Republic of China and the Rule of Law*’ (1985) *Review of Socialist Law* p. 148.

<sup>385</sup> Hukou system is a traditional system in China, government use this system to rule the citizens. Every citizen in China should register in the local government; anyone who wants to resident in other places,

missed in the current Constitution. The first one is right to strike, which regulated in the 1975 and 1978 Constitution. The National People's Congress or its Standing Committee didn't provide the reason for this change, in my opinion the government wanted a stable environment for the development of the economy. The second change is the right to free speech, airing views fully, holding great debates and writing big-character posters. As mentioned before, this right was regulated in the 1978 Constitution and considered as the vestige of Cultural Revolution. It abolished in 1980.

Notwithstanding, the 1982 Constitution provided some new rights to Chinese citizens. The most obvious provision was Article 38, which protects citizens' dignity, since during the Cultural Revolution period, there were so many cases that former leaders and intellectuals were insulted and slandered by the red guards.<sup>386</sup> There were also some new duties to perform. For example, Citizens should defend the honor and interests of the motherland.

The third Chapter was State structure, it followed the structure of antecedent Constitution. The most significant change was the position of President<sup>387</sup> of People's Republic of China was restored and a new position provided, The Central Military Commission.<sup>388</sup>

Compared with the previous Constitution, the 1982 Constitution regulated a very detailed provision on each State structure. In Article 64, it provided the procedure how to modify the Constitution. In Article 70, it regulated what specific Committees will be established by National People's Congress. The question that who will in charge of Chinese military also solved in this Constitution, the newly established institution was considered as the leader of national military. In local level State power, the role of commune, as the local governor, was not existed any more, and township became the

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especially from rural area to urban area should get the permission from the government. However, now the regulation of Hukou system is much loose.

<sup>386</sup> Red guards were mobilized in the Cultural Revolution period, and usually consisted of students. They insulted the privileged people in the name of revolution.

<sup>387</sup> In Chinese, this position's name is the same, 主席 (Zhu Xi). However, the English version makes the difference. In the 1954 Constitution, it translated as chairman, and in the 1982 Constitution, it translated as president. Not only in the Constitution, in English context, Mao Zhu Xi translated as Chairman Mao, the current leader in China, Xi Zhu Xi usually translated as President Xi.

<sup>388</sup> William C. JONES, 'The Constitution of the People's Republic of China' (1985) 63 Wash. U. L. Q. p. 707, 730.

lowest State power. Regulations of Judiciary were more reasonable, on paper, people's courts and the people's procuratorates were independent and only obligated to the law.

In general, the provisions of State structure in the 1982 Constitution were much more reasonable, it provided a favorable condition to the development of Chinese economy.

The last Chapter in the 1982 Constitution was the national flag, national emblem and the capital. It was exactly the same as the regulations of the 1954 Constitution.

#### **1.4 Conclusion**

In the modern country, the Constitution is usually considered as the most important legal document in the state. Only after the extreme changes of the society, one state may change its Constitution. However, from 1975 the second Constitution of People's Republic of China to the current Constitution, which promulgated in 1982, during the short eight years, the whole world witnessed three Constitutions adopted in People's Republic of China. On the one hand, it shows how dramatic changes happened during those years; the other hand, it also shows the Communist Party treat the Constitution not so seriously in that certain period.

The current Constitution was put into force since 1982, along with four amendments. The continuous Constitution implies the stable environment of People's Republic of China. It is also one of the most important reasons that China can develop so dramatic in economic growth.

## **2. Development of the Constitution in the Visegrad States in the Reform Period**

As mentioned in the last Chapter, countries in the Visegrad area established their socialist regimes and promulgated Soviet Union style Constitutions in the late of 1940s and beginning of 1950s.<sup>389</sup>

However, this harmonious socialist scenario did not last as longer as its communist leader's thought. In 1953, Stalin, the main designer of the 1936 Soviet Union Constitution,<sup>390</sup> passed away. His successor, Nikita Khrushchev obviously did not agree

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<sup>389</sup> Czechoslovakia adopted its communist Constitution in 1948; Hungary published its Constitution in the next year; in 1952, the last country in Visegrad States, Poland promulgated its Constitution.

<sup>390</sup> 1936 Soviet Union Constitution, also known as the Stalin Constitution. In many articles, authors refer

with Stalin's ruling policies in the Soviet Union. Three year later, the 20th Congress of the Communist Party of the Soviet Union was held in Moscow. During this meeting, the secret speech of Khrushchev later released. In this speech, Khrushchev gave a crucial criticism of Stalin. This decisive speech soon spread from east to west, all socialist States and their Communist leaders had to respond to this shocking news.<sup>391</sup>

In Visegrad States, the Communist Party also had to deal with the de-stalinization. Since the death of Stalin, socialist doctrine from Soviet Union seemed not so strict any more, States in Eastern bloc had the chance to practice their own socialist road. At that time, there were two ways of socialism, the Soviet Union model and Yugoslavia model. In Soviet Union's position, there was in no way possible to allow his Eastern socialists give up the Soviet Union model. However, some States in Visegrad area did some reforms in their society, such experimental reforms not only happened in economic field but also in the legal areas. Here, the author will present how the Constitution developed in Hungary, Czechoslovakia and Poland.<sup>392</sup>

Since during the whole reform period, which the author defined from the middle of 1950s to 1988, only Czechoslovakia promulgated a new Constitution, the other two States only published Constitutional amendments. Therefore, the author will present how the Constitutional amendments developed in the Hungarian People's Republic and Polish People's Republic and how the development of the Czechoslovakia Constitution.

## **2.1 Development of the Constitutional Amendments of Hungarian People's Republic in the Reform Period**

Hungary adopted a socialist system since 1949 when the communist Constitution promulgated in public. It should be admitted that Soviet Union used more influences to "help" Hungarian choose socialism compared with Hungary's neighbor,

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to Stalin Constitution as 1936 Constitution. For example, in Getty's article, he mentioned both terms "Stalin Constitution" and "1936 Constitution" in this article. J. Arch Getty, 'State and Society under Stalin: Constitutions and Elections in the 1930s' (1991) Vol. 50, No. 1 *Slavic Review* p. 18.

<sup>391</sup> In People's Republic of China, when Khrushchev's speech came to China, the leadership had many discussions on it. In Visegrad States, it also caused some debates. Miklos MITROVITS, *The First Phase of De-Stalinization in East-Central Europe (1953-1958), A Comparative Approach* (postdoc study) <[http://real.mtak.hu/30824/1/The\\_First\\_Phase\\_of\\_De\\_Stalinization\\_in\\_East\\_Central\\_Europe\\_u.pdf](http://real.mtak.hu/30824/1/The_First_Phase_of_De_Stalinization_in_East_Central_Europe_u.pdf)> accessed 10 October 2017.

<sup>392</sup> Ibid.

Czechoslovakia.<sup>393</sup> Such differences later came up with the different reactions of the ruling parties in different States with the issue of de-stalinization, or more broadly, during the whole reform period.

In the Hungarian People's Republic, there were several Constitutional amendments were adopted by the National Assembly during the reform period. Among these amendments, the amendments in 1972 and 1983 were notably by their significant changes, and the most important one was the 1972 Amendment.<sup>394</sup>

Act 1 of 1972 which published in Hungarian Gazette on 26 April 1972. The 1972 Constitutional amendment consisted of one Preamble and 10 Chapters. It heavily changed the 1949 Hungarian Constitution and most significant change was in the 1972 Constitution amendment. It declared that the Hungarian People's Republic officially became a socialist state, not the earliest one among the neighboring States, but still earlier than Polish People's Republic, the latter officially announced the regime became a socialist state in 1976, nearly four years later than Hungary.

At that time, Hungarian People's Republic was ruled under the leader of Hungarian Socialist Workers' Party, Janos Kadar since 1956.<sup>395</sup> The whole regime was rather stable until Kadar lost his ruling in May 1988.

The 1972 Constitutional amendment was adopted on 26 April 1972.<sup>396</sup> Compared with 1949 Hungarian Constitution which heavily "copied" the 1936 Soviet Union Constitution, the new version Constitution contained more Hungarian historical

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<sup>393</sup> In Czechoslovakia, the Communist Party was much more employed the democratic tactics to seize power, nevertheless, in Hungarian case Soviet Union had to put more sources interfering in the establishment of socialist regime in Hungary. Ibid.

<sup>394</sup> There were 49 Constitutional amendments of the 1949 Constitution of Hungarian People's Republic, however, if we only calculate the Constitutional amendments in reform period, until 1988, there were 20 amendments adopted by the National Assembly. Alkotmány módosítások 1949-2009 (Constitutional amendments 1949-2009) <[http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/ALK\\_m%F3dos%EDt%E1sok\\_1949-2009.doc](http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/ALK_m%F3dos%EDt%E1sok_1949-2009.doc)> accessed 14 October 2017. See also IBP USA, *Hungary Country Study Guide: Volume 1 Strategic Information and Developments* (2013 edn, International Business Republications 2013). See also Gyorgy ANTALFFY, 'Main Features of State and Constitutional Development in the Hungarian People's Republic' in Gyorgy ANTALFFY, Rezso HARSFALVI (eds.), *New Traits of The Development of State and Legal Life in Hungary* (Szegedi Nyomda 1981).

<sup>395</sup> After the Soviet Union's intervention, Revolution of 1956 in Hungary was fall. Nagy Imre left his office and Kadar started his regime in Hungary nearly 32 years. Ignac ROMSICS, *Hungary in the Twentieth Century* (first published in 1999, second edn, Corvina Books Ltd. 2010) p. 315, 316.

<sup>396</sup> 1972 Constitutional amendment of Hungarian People's Republic, Hungarian version <[http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/Alk\\_egyseges\\_3.pdf](http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/Alk_egyseges_3.pdf)> accessed 15 October 2017.

continuity.<sup>397</sup> This feature could be found in the Preamble part as well.

The Preamble of the 1972 Constitution was longer than the 1949 one. It included 5 paragraphs. In the first paragraph, it addressed the more than 1000 years history of Hungary which full of suppress and struggle between ruling and populace. The narrative of Hungarian history was newly added part. By showing the revolutionary history of Hungary, it rationalized the socialist regime with Hungarian historical revolutionary continuity. However, the Soviet Union's "liberation" of the whole state during the Second World War also should be taken into account. Therefore, the next paragraph reviewed how Soviet Union "helped" Hungary to establish the socialist regime. Hungarian socialist revolutionary tradition also contributed to the establishment of the new state. The history of the 1919 Hungarian Soviet Republic was introduced in the third paragraph.<sup>398</sup>

The 1972 Constitutional amendment also changed its structure compared with the 1949 Constitution. As mentioned in the last Chapter, the 1949 Constitution of Hungarian People's Republic consisted of 11 Chapters, the 1972 one combined the first two Chapters to one Chapter. Therefore, there were only 10 Chapters in the 1972 Constitutional amendment.<sup>399</sup> The following three Chapters in the 1972 Constitutional amendment were National Assembly of Hungarian People's Republic and Presidential Council of the Hungarian People's Republic, Council of Ministers of the Hungarian People's Republic and the Local Councils. Chapters Two, Three and Four in the 1972 Constitutional amendment employed more concrete titles than the titles in the 1949 Constitution. Nevertheless, if we examine the text of the Constitution, the differences were not so notable. The rest of Chapter titles in the 1972 Constitutional amendment followed the title in the 1949 Constitution.

First Chapter of the 1972 Constitutional amendment was dramatically changed. There

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<sup>397</sup> Ignac ROMSICS, *Hungary in the Twentieth Century* (first published in 1999, second edn, Corvina Books Ltd. 2010) 334.

<sup>398</sup> Constitutional amendment of Hungarian People's Republic, Hungarian version <[http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/Alk\\_egyseges\\_3.pdf](http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/Alk_egyseges_3.pdf)> accessed 15 October 2017.

<sup>399</sup> The first two Chapters in the 1949 Constitution were Hungarian People's Republic and Social structure. In 1972 Constitutional amendment, the first Chapter was Hungarian People's Republic and Social Structure.

were 18 Articles in this Chapter, some new regulations were also provided. Article 2 officially declared Hungarian People's Republic was an effective socialist state. Another Article should be noted was Article 3 which announced the leadership of Marxist-Leninist party in the society. Patriotic People's Front recognized as an important movement to solve the political, economic and cultural problems. What's more, unlike the 1949 Constitution payed its main attention on economy. The draftsman for the 1972 Constitutional amendment apparently drew a more comprehensive picture in the social structure part. It distributed its attentions not only in economy, but also social and cultural fields.<sup>400</sup>

The following three Chapters focus on the state power from central level to local level. The supreme organ of the state power gained more powers. Since there were only two sessions each year for National Assembly, a standing organ, Presidential Council performed the most power of the National Assembly. Council of Ministers was the executive organ, the 1972 Constitutional amendment specified its powers. Local Council was the local state power. In the 1949 Constitution, it divided the Hungarian territory into four levels: county, district, city and community. However, the district level was entirely abandoned in 1984.<sup>401</sup>

Judicial and Prosecutor's office constituted the judiciary system of Hungarian People's Republic. The Chief Prosecutor of Hungarian People's Republic still elected by the National Assembly however the term of office changed from six years to four years.

The most improvement of rights and duties of citizens came with change of the term "workers" to "citizens". Take an example, in the 1949 Constitution, Article 46 regulated "The Hungarian People's Republic guarantees to the workers the right to rest and to enjoy holidays." A similar regulation was addressed by the 1972 Constitutional amendment "The Hungarian People's Republic guarantees to the citizens the right to rest."<sup>402</sup> Only entitled certain rights to certain class violated the equality principle.

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<sup>400</sup> For example, regulations on protecting the family, supporting the people indeed and developing science, etc. were stipulated in the Chapter one in 1972 Constitutional amendment.

<sup>401</sup> Tamas ANTAL, 'Local soviets and councils in the Ex-socialist European States with special regard to Hungary (1950–1990)' (2010) 24, *Hungarian Studies*, 135.

<sup>402</sup> Constitution of Hungarian People's Republic 1949 and Amendment to the 1949 Constitution of Hungarian

Therefore, in the 1972 Constitutional amendment, it entitled the rights to all Hungarian citizens was great progress of the history of Hungarian Constitution in socialist era.

In the electoral system section, it abolished the regulation “Enemies of the working people and persons suffering from mental disease are excluded by law from the right to vote.”<sup>403</sup> On paper, every citizen in the Hungarian People’s Republic finally enjoyed the suffrage equally.

Compared with the 1949 Constitution, the Emblem and National Flag were also changed in the following Constitutional amendments in 1950s, and such changed parts continuous effected in the 1972 Constitutional amendment.

As the Hungary, Country Guild Study quoted the Hungarian political scientist Istvan Kovacs’s saying, “The 1972 amendments brought into harmony the wording of the Constitution and the socialist transformation of the country between 1949 and 1972.”<sup>404</sup> By publishing the 1972 Constitutional amendment, not only officially declared Hungarian People’s Republic a socialist state, but ensured the fruits of each Constitutional amendment from 1950 to 1972. It implies Hungary was trying to find its own “socialist road” instead of copy “Soviet socialist road”.

After the publication of the 1972 Constitutional amendment, the Hungarian National Assembly passed another important amendment in 1983. In this amendment, a legal organ Constitutional Council was established, this organ was supposed to protect the Constitution in case there was any Constitutional violation.<sup>405</sup>

## **2.2 Development of the Constitutional Documents of Czechoslovakia in the Reform Period**

Among the countries in Visegrad area, Czechoslovakia was the earliest country adopted communist Constitution, and its economy also was the first place in the region.<sup>406</sup> During the reform period, several amendments adopted, however the most

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People’s Republic, 1972.

<sup>403</sup> Paragraph 2, Article 63, Constitution of Hungarian People’s Republic 1949.

<sup>404</sup> IBP USA, *Hungary Country Study Guide: Volume 1 Strategic Information and Developments* (2013 edn, International Business Republications 2013) 66.

<sup>405</sup> Article 1, Amendment to Constitution of Hungarian People’s Republic 1983. See also Lorant CSINK, Balazs SCHANDA, ‘*The Constitutional Court*’ in Lorant CSINK, Balazs SCHANDA and Andras Zs. VARGA (eds.), *The Basic Law of Hungary: A First Commentary* (Clarus Press 2012)

<sup>406</sup> According to the table of Maddison project, GPD per capita among Czechoslovakia, Hungary and

important Constitutional documents in this period was the 1960 Constitution and its amendment in 1968. The 1960 Constitution officially declared that Czechoslovakia became a socialist state, the notable Constitutional Amendment adopted eight years later, Czechoslovakia changed from a unitary state to federal state.

In the following part, the author will introduce the 1960 Constitution and its 1968 Constitutional Amendment. The Constitution of Czechoslovak Socialist Republic was adopted by the National Assembly of Czechoslovakia on 11 July 1960. Before the Constitution was adopted, a drafting preparation for the Constitution was completed in the state.<sup>407</sup> The significant meaning of this Constitution could be found in the Preamble and the first Chapter. In the Preamble of the 1960 Constitution, it solemnly declared “Socialism has triumphed in our country”. Meanwhile in the Chapter One, it announced “The Czechoslovak Socialist Republic is a socialist state founded on the firm alliance of the workers, farmers and intelligentsia, with the working class at its head.”<sup>408</sup> Therefore, the 1948 Czechoslovakia Constitution, as a framework for the transition from capitalism to socialist, finally achieved its historical task and officially abolished capitalism. Czechoslovakia became the first country in the region entered the socialist system.

The 1960 Constitution consisted of one Preamble and nine Chapters. Compared with the 1948 Constitution, socialism was the most significant character of the new Constitution. Like other socialist states, the Preamble in the Constitution not only was used as a political propaganda, but also set up some goal for the future. The Preamble of the 1960 Constitution was divided into three parts. In the first part, it declared that “we” achieved the goal, the transition from capitalist to socialist state, and such movement shall carry on, in order to reach the goal “an advanced socialist society and gathering strength for the transition to communism.” Also, it addressed the diplomatic policy of

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Poland in communist period, Czechoslovakia was always the first place. The Maddison-Project <<http://www.ggd.net/maddison/maddison-project/home.htm>> 2013 version, accessed 17 October 2017.

<sup>407</sup> The drafted version Constitution firstly presented to the central committee of the Party in April of 1960, then, a nationwide discussion was held in May and June, finally it submitted to the National Assembly, and adopted. See H. Gordon SKILLING, ‘*The Czechoslovak Constitution of 1960 and the Transition to Communism*’ (1962) Vol. 24, No. 1 *The Journal of Politics* p. 143.

<sup>408</sup> Constitution of Czechoslovak Socialist Republic 1960 (English version, third edition was published by Orbis, Prague, 1964)

Czechoslovakia to make friendship with other socialist states. The second part of the Preamble reviewed the history of the state since 1945, and how the working people leading the state transitioned to the socialist state. The last part asked the state to continue the socialist construction and achieve the higher goal, communist state. In order to encourage people, it also described the wonderful life in the communist society, “from each according to his ability, to each according to his needs.”<sup>409</sup>

Compared with the Preamble in the previous Constitution, the 1960 Constitution abandoned its democratic character. More Marxist-Leninist doctrines were introduced. It seemed like a standard Preamble for a socialist state. In the 1948 Constitution, the Preamble started as “We, the Czechoslovak people...” However, in the 1960 Constitution it revised as “We, the working people of Czechoslovakia...” The classic statement in Marxism-Leninism was also addressed in the Preamble. Such as the principle of Socialism “From each according to his ability, to each according to his work” and the principle of communism, cited in the previous paragraph.

In the 1948 Constitution, it kept a unique structure compared with other socialist states in the region. The 1960 Constitution abandoned this unique character. Therefore, the structure of the 1960 Constitution was much more similar with other socialist states’ Constitution. The first Chapter in the Constitution was social order. It regulated the principles of the state, and the term, “working people” replaced “people” which appeared frequently in the 1948 Constitution. For instance, the 1960 Constitution regulated all power of the Republic belongs to working people, while in the 1948 Constitution state power shall belong to people. Of course, as a socialist state, the most people in Czechoslovakia were “working people”, however it officially announced the minority which do not belong to “working people” were subordinated to the majority “working people”.

The second Chapter in the Constitution was rights and duties of citizens. Citizens in Czechoslovakia seemed to still enjoy numerous freedoms and rights. However, the narrative of these provisions was full of the socialist character. “Working people” as the leader of the state enjoyed the rights which guaranteed by the Constitution.

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<sup>409</sup> Ibid.

Notwithstanding, to realize such rights, citizens should do so in accordance with the socialist interest.

Political Institutions in the 1960 Constitution could be fully reserved, nevertheless some slightly changes were introduced in the new Constitution. Since the power of President in the Republic was narrowed, National Assembly, which was recognized as the supreme organ of state power, could somehow extend its power. For instance, National Assembly could not only enact the Constitution, but also supervise its implementation. Meanwhile, competence of President of Republic was shrunk. The regulation in the 1948 Constitution, President could dissolve the National Assembly, and it disappeared now.<sup>410</sup> In the government part, the most important change was a socialist premise introduced to the public. The activities of the government should fit the purpose of “fulfilment of the economic and cultural tasks of socialist construction, the raising of the standard of living of the working people, strengthening of the country’s security, and pursuance of a peaceful foreign policy.”<sup>411</sup> The Slovakia part was still considered as an autonomous area, therefore, Slovakia National Council, the national organ of state power, enjoyed some privileges and regulated in the Constitution. Compared with the 1948 Constitution, the central government reduced the competences of Slovakia national organ in whole. However, the 1960 Constitution strengthened the power of the Slovakia National Council. In the former Constitution, there were three national organs in Slovakia. However, the 1960 Constitution abolished the Board of Commissioners, and the Slovakia National Council became the core organ in Slovakia. In the local level, national committee was designed as an administrative organ. Related to the competences of the national committee, the latter Constitution somehow enlarged the power of national committees.<sup>412</sup> However, the 1960 Constitution as a socialist Constitution, it more focused on its socialist character. Again, the 1960 Constitution used the term “working people” instead of “people”.

The Judiciary system in Czechoslovakia followed the Soviet pattern. It consisted of

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<sup>410</sup> H. Gordon SKILLING, ‘The Czechoslovak Constitution of 1960 and the Transition to Communism’ (1962) Vol. 24, No. 1 *The Journal of Politics* p. 152, 153.

<sup>411</sup> Article 68, Constitution of Czechoslovak Republic 1960.

<sup>412</sup> Ibid, H. Gordon SKILLING, ‘*The Czechoslovak Constitution of 1960 and the Transition to Communism*’ (1962) Vol. 24, No. 1 *The Journal of Politics* p. 159.

two organs, courts and prosecutor office. In the 1960 Constitution, judiciary organs should serve socialist system. What's more, judges in different levels should be elected by National Assembly or national committee. The term of judge was not permanent any more.

The whole chapter of economic system was deleted in the 1960 Constitution, regulations on national flag and emblem also specific stated.

The 1960 Constitution latterly revised by several amendments until 1992 with the split of Czechoslovakia. Among these amendments, the most important one was Act of 143 in 1968 (Hereinafter referred to as the 1968 Amendment).<sup>413</sup> It officially declared that Czechoslovakia was a federal state.

After the tanks which sent from the Soviet and the communist military organization, Warsaw Pact to Prague in August of 1968, the most important reform in Czechoslovakia, "Prague Spring" finally turned into fall. In the same year, the National Assembly of Czechoslovakia Socialist Republic adopted a new Constitutional amendment on October 27, according to the new amendment, unitary Czechoslovakia became a federal state.

The most important issues which regulated in the 1968 Amendment also mainly focus on the condition of federal in the country, such as introduced bicameral legislature in the federal level, each state entitled to have its own National Assembly. Besides, a Constitutional supervisor organ, Constitutional Court also was introduced to the 1968 amendment.<sup>414</sup>

The 1968 Amendment consisted of one Declaration and eight Chapters. In the Declaration part, it stated the fact of 50 years cooperation of the two nations and the voluntary federate between the two nations. If we follow the history of Czechoslovakia

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<sup>413</sup> In reform period, there were six amendments adopted by the National Assembly, then new amendments adopted in 1989-92. Although, Act of 143 in 1968 was considered as the most important amendment, the other amendments still did a great change, for example, Act of 144 in 1968 mainly focus on the right of minorities in Czechoslovakia. WILLIAM B. SIMONS (ed.), *The Constitutions of the Communist World* (SIJTHOFF&NOORDHOFF 1980) p.138. Act of 143 in 1968, English version is available < <http://czecon.law.muni.cz/content/en/ustavy/1968/>> accessed 18 October 2017.

<sup>414</sup> LLOYD CUTLERT and HERMAN SCHWARTZ, 'Constitutional Reform in Czechoslovakia: *E Duobus Unum?*' (1991) *The University of Chicago Law Review* <<http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4711&context=uclev>> accessed 18 October 2017.

Constitution, it is very interesting to find that the narrative of the relationship between Czechs and Slovaks is so different. In the first Constitution which adopted in 1920, Czechs and Slovaks was considered as one nation, and now, in 1968 the Constitution recognized that Czechs and Slovaks are different nations.

The 8 Chapters in the 1968 Amendment mainly focused on the state power and Constitutional court. It should be admitted the Czech part always took a dominant position in the country no matter political or economic field. Therefore, the federation provisions in the amendment greatly enlarged the political position of Slovak.

On paper, Czech Republic and Slovak Republic shared the same power in the country. Czech Republic governed Czech territory, Slovak Republic governed Slovakia territory. Prague was the capital city of the federal country, it was also the capital of Czech Republic. However, in Slovakia the capital city was Bratislava, the current capital of Slovakia as well.

Federal Assembly was the supreme organ of the federal state. However, in order to protect Slovakia performing its governing in Slovakia territory, there were two houses designed in the federal level: House of People and House of Nations. The first House consisted of 200 deputies and the deputy shall be elected by proportion of the population. Czech region therefore had more deputies since its large population. House of Nations consisted of 150 deputies, and it divided into two parts to each nation. 75 deputies shall elect in Czech Republic and the rest of the 75 deputies elect in Slovak Republic.

Another Constitutional institution which designed by the 1968 Amendment was the Constitutional Court. As the Article 86 of the 1968 Amendment addressed, “The Constitutional Court of the Czechoslovak Socialist Republic is a judicial organ for the protection of constitutionality.” In the federal level, Constitutional Court consisted of 12 members and four of them were substitutes. With the same consideration, in order to protect the right of Slovakia, the 1968 Amendment regulated four judges and two substitutes should be elected among the citizens of Czech Republic and the rest of members should be the citizens of Slovakia. Meanwhile, in each Republic should organize Constitutional Court.

The 1968 Amendment divided its state power to two Republics. Slovakia enjoyed more power now according to the amendment. Notwithstanding, in practice, the federal government still controlled the whole state by the Communist Party. Constitutional Court, which supposed to protect the constitutionality didn't set up.<sup>415</sup>

### **2.3 Development of the Constitutional Amendments of Polish People's Republic in the Reform Period**

The last country in the region was Polish People's Republic, it adopted its communist Constitution in 1952 and by 1989 there were 17 amendments adopted by Sejm, the highest state organ in Poland.<sup>416</sup> Since 1970s, the amendment to the 1952 Constitution slightly enlarged citizens' civil rights, meanwhile, more socialist characters also introduced to the Constitution. Among these significant changes, the 1976 amendment was the most important one. In this amendment, Polish People's Republic officially became a socialist state, which its comradely neighbor states did before.

In the following part, the author will introduce the 1976 amendment, and how it changed the structure and text in the 1952 Constitution.

The 1976 amendment did numerous changes on the 1952 Constitution. It was believed that nearly one third of the provisions changed after the 1972 amendment.<sup>417</sup> This amendment was consisted of one Preamble and 11 Chapters. Compared with the 1952 Constitution, one extra Chapter was presented to the public.<sup>418</sup> What's more, the new version Constitution included more Articles.

The biggest change in the 1976 amendment was it officially declared that Polish People's Republic was a socialist state. It was regulated in the first Article of the first Chapter, political system in the amendment. In this Chapter, some new elements were also introduced to the populace. Firstly, Polish United Workers' Party ensured its leading position in the state. It was the "guiding political force of society in building

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<sup>415</sup> Ibid, 520.

<sup>416</sup> Mark F. BREZEZINSKI and LESZEK GARLICKI 'Polish Constitutional Law' in Stanislaw FRANKOWSKI and Paul B. STEPHAN III (eds), *Legal Reform in Post-Communist Europe: The View from Within* (Martinus Nijhoff Publishers)

<sup>417</sup> Poland, The Constitution of 1952, <<http://www.country-data.com/cgi-bin/query/r-10729.html>>, accessed 20 October 2017.

<sup>418</sup> Chapter 4 in the 1976 amendment introduced a new organ to masses, supreme board of control. Amendment to Constitution of Polish People's Republic, 1976, English version, <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1976.html>>, accessed 20 October 2017.

socialism.” The mechanism of National Unity Front was established for the purpose of consolidating the leader power of the Party.

In the state power part, the 1976 amendment followed the structure of state power in the 1952 Constitution, the highest organ of the state power was the Sejm (or Diet), Council of Ministers and its individual members was the highest administration organ in the state, and it was appointed by the Sejm. In local level, there were People’s Councils in different level. Court and Public Prosecutor's Office constituted the judiciary system in Poland. Besides, in the 1976 amendment, a new organ was designed to supervise the state administration in central and local levels.

Nevertheless, some changes also happened in the state power part. For example, the number of the member of Sejm was ensured. There were 460 deputies in total in the Sejm. Council of State, the standing organ of Sejm was entitled “to watch over the constitutionality of laws”.<sup>419</sup> Supreme Board of Control, the new organ was supposed to supervise the state administration activities and inspect the economic activities in non-socialized and socialized economy, and it was subordinated to the supreme organs of state authority and administration. A new member of the Council of Ministers was regulated, the chairman of Supreme Board of Control. The term of People’s Councils was not united any more, it will be regulated by law. Court and Public Prosecutor’s Office in Polish People’s Republic still designed as a protector of the achievement of socialist system. However, judges shall be appointed by the Council of State instead of election.

In the rights and duties of citizens part, there was one new right and duty shall be noted, the right to benefit from natural environment and the duty to protect of it. The environment provision was a creative work from the 1976 amendment. It shows the advancement of Polish Legislative technique, even though environment here was used as the object not subject.

The principle of electoral law in these two versions of Constitution didn’t change. In the coat of arms, colors, national anthem and capital part, national anthem of Polish People’s Republic were regulated. Mazurek Dąbrowskiego (Polish is not yet lost) was

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<sup>419</sup> Leszek GARLICKI, ‘*Constitutional Developments in Poland*’ (1988) 32 St. Louis U. L.J. p. 713, 718.

chosen as the national anthem. What's more, in this part, a provision of respect and special protection of the coat of arms, colors, national anthem was stated.<sup>420</sup>

Besides the 1976 amendment, there were several amendments adopted by the Sejm. For instance, the Supreme Board of Control was transferred from Council of Ministers to Sejm in order to reduce the influence of Polish United Workers' Party over the Sejm in 1980. Two important organs were amended in the 1982 amendment, Constitutional Tribunal and the State Tribunal with the purpose of implementation of the rule of law. In 1987, another important organ introduced to the masses, people's ombudsman. What's more, there were several times the provision of martial law was halted and again regulated by the amendments.<sup>421</sup>

## **2.4 Conclusion**

With the development of the socialist construction, states in Visegrad region declared the establishment of the socialist state in the Constitutional document in succession. Compared with the first communist Constitution in each state which heavily followed the pattern of the 1936 Soviet Union Constitution. the development of Constitution in different countries in this region even though reached different levels. One trend of the development of Constitution could be applied to each state, try to find its own path to develop socialist construction. Meanwhile the development path of the Constitution also followed the following pattern, in the beginning, more and more provisions with socialist characters were regulated in the Constitutional documents and with the development of the states in Visegrad region in reform period, Communist Party's influence over the state power which regulated in the Constitution gradually reduced. Inspection organ for the constitutionality was established in each state and also regulated in the Constitutional amendments.

In general, the development of Constitution in the Visegrad States in the reform period could be included as follow, on the path to the western style Constitutional tradition or you may say it was back to its historical exercises. Countries in the region

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<sup>420</sup> Constitution of Polish People's Republic 1952, English version is available <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1952a-spis.html>>, the 1976 amendment is available <<http://libr.sejm.gov.pl/tek01/txt/kpol/e1976.html>>, accessed 21 October 2017.

<sup>421</sup> Poland, the Constitution of 1952, <<http://www.country-data.com/cgi-bin/query/r-10729.html>>, accessed 22 October 2017.

were mostly practiced and followed the European legal system in their countries' history. Such kind of development of Constitution in the reform period finally caused the 1989 Revolution and the collapsed of socialism in the region.

### **3. Comparative Analysis of Development of the Constitution between China and the Visegrad States in the Reform Period**

In the last part, the author presented the development of Constitutional between China and Visegrad states in reform period. During this period, the most significant change among these countries was all states declared that the state became socialist state in their Constitutional document in succession.<sup>422</sup> With the establishment of socialist system in the different states, more and more provisions with socialist character also regulated in the Constitutional document. However, there were still some differences between China and Visegrad states, even in the Visegrad region, development of Constitution in each state also differed. Therefore, in the following part, the author will analyze the similarities and differences between China and each state in Visegrad region.

#### **3.1 The Similarities**

The reform period which defined in this work started from the middle of 1950s and finished in 1988, one year before the Revolutions of 1989. Over 30 years constitutional development in each state is presented us one trend. That is each state was tried to get rid of the influences from the Soviet Union and established its own road to socialist.

In the last Chapter, the author shows how the influence of the 1936 Soviet Union Constitution to each state's first communist Constitution. Basically, each state more or less copied the structure and people's democratic style provisions of the 1936 Soviet Union Constitution, and Soviet Union was treated as the big brother in the socialist family.

However, the harmonious atmosphere in socialist community didn't last too long.

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<sup>422</sup> People's Republic of China announced it in the 1975 Constitution, Czechoslovakia announced it in the 1960 Constitution, Hungarian People's Republic adopted the amendment to Constitution which included the socialist state provision in 1972 and Polish People's Republic adopted the similar provision of amendment to Constitution in 1976.

With the movement of de-Stalinization in the middle of 1950s, more and more countries were trying to find their own way to develop socialism. Such kind of trend in each state caused the deep changes in the society and finally these changes were ensured by the supreme organ of the state power and amended into the Constitutional amendment even in some countries like China and Czechoslovakia adopted new Constitution.

The friendship between China and Soviet Union finished in the beginning of 1960s.<sup>423</sup> In Visegrad states, different grassroots revolutions which were against hegemony of Soviet Union took place in the reform period, even some leaders of the Party shared different thinking to develop socialism with the Soviet Union.<sup>424</sup> Such conflicts with Soviet Union finally reflected the ruling policy of the Party in each state. To develop its own road to socialism gradually became the consensus in each state. Although states in Visegrad region were controlled by Soviet Union in general, some changes still happened in the reform period. In the Chinese case, developing its own socialist system unavoidable caused changes in China. And some of the significant changes finally became Constitutional provisions in each state.

In the Chinese case, after the break up with the Soviet Union, a series of movements were installed by the Chinese Communist Party, among them, Cultural Revolution definitely had the strongest influence. Two Constitutions, the 1975 and 1978 Constitution were the result of the Cultural Revolution to some extent. The 1975 Constitution totally destroyed the normal political system and civil rights of Chinese citizens, the 1978 Constitution recovered some but it still remained the vestiges of Cultural Revolution.

In the Visegrad states, developing its own socialist road also caused changes, even though in a different way compared with China. Some democratic traditions came back

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<sup>423</sup> The unpleasant aspect between two countries started from the end of 1950s. Chendun HAO, ‘试论苏南冲突和中苏交恶的共同特点 [On the similarities between the Tito-Soviet Split and Sino-Soviet Split]’ (2003) vol.5 no.1 *International Forum* <<http://niis.cssn.cn/webpic/web/niis/upload/2012/11/d20121123113436498.pdf>>, accessed 24 October 2017.

<sup>424</sup> During the reform period, revolutions happened all the time in the Visegrad states. In Hungary, 1956 Revolution was suppressed by Soviet Union. In the same year, an uprising broke out in Poznan, a city in Poland, and finally failed because of the suppression of the government. In Czechoslovakia, Prague spring failed after the Soviet Union and Warsaw Pact’s tank enter the capital of Czechoslovakia in 1968.

to the political field in order to protect the Constitutionality and the civil rights of citizens. For instance, Hungarian People's Republic used term "citizen" instead of "workers", Czechoslovakia regulated the Constitutional Court in the 1968 Constitutional amendment, and similar provision (Constitutional Tribunal) could be found in the 1982 Constitutional amendment in Poland.

Another notable similarity was each state recognized it as a socialist state and ensured it in the Constitutional documents. Because of the consideration of socialist state, some socialist style provisions also adopted by supreme organ of state power in each state.

The 1975 Constitution of the People's Republic of China firstly announced "China is a socialist state". Even the 1975 Constitution was only composed of 30 Articles, some socialist principle still existed. In Article 9, it stated "the state shall carry out... 'from each according to his ability, to each according to his work' socialist principle".<sup>425</sup>

In the Hungarian case, the 1972 amendment kept this socialist principle "from each according to his ability, to each according to his work" which exactly took from the 1936 Soviet Union Constitution.<sup>426</sup>

The same situation also happened in the Polish Constitution case, the 1952 Polish Constitution regulated the same socialist principle in Article 14, and in the 1976 amendment kept this provision.

The Czechoslovakia Constitution even moved a little bit further. The Constitution of Czechoslovak Republic in 1948 didn't address such socialist principle. However, the 1960 Constitution specified the path of socialist construction. In socialist level, the principle was "from each according to his ability, to each according to his work". In the higher level, that is communist level, the principle should be "from each according to his ability, to each according to his needs", since with the development of the economy, the materials in the society can meet people's needs.<sup>427</sup>

During the reform period, the ruling Party in each state also legitimate its leading

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<sup>425</sup> Article 9, Constitution of People's Republic of China, 1975.

<sup>426</sup> This socialist principle original came from 1936 Soviet Union Constitution, in the Article 12 of Chapter One, and it copied by the Constitution of Hungarian People's Republic in 1949 (Paragraph 4, Article 9), and it kept in the 1972 amendment (Paragraph 4, Article 14).

<sup>427</sup> This idea of communist principle can be found in Marx's Critique of the Gotha Program, <[https://www.marxists.org/archive/marx/works/download/Marx\\_Critique\\_of\\_the\\_Gotha\\_Programme.pdf](https://www.marxists.org/archive/marx/works/download/Marx_Critique_of_the_Gotha_Programme.pdf)>, accessed 26 October 2017.

position by regulating its supremacy in the Constitution. In the Chinese case, the 1975 Constitution ensured “Chinese Communist Party is the leadership core of all Chinese people” in Article 2. In the 1972 Hungarian amendment “Marxist-Leninist workers’ Party is the dominate power” which regulated in Article 3. Czechoslovakia and Polish People’s Republic also had the similar regulation in the Constitutional documents. The 1960 Czechoslovakia Constitution claimed that the Communist Party of Czechoslovakia is the guiding force in the society and the state (Article 4). The 1976 amendment regulated such provision in Article 3 “The Polish United Workers' Party shall be the guiding political force of society in building socialism” in Polish People’s Republic.

### **3.2 The Differences**

Because of the same social system, China and Visegrad states all belongs to socialist states. There were some similarities in their Constitutions during the reform period. They followed the Marxist-Leninist doctrines and regulated such principles in the Constitution. The Communist Party legitimated its ruling position in the Constitution and tried to find its own road to develop socialism.

However, there were still some differences since each country has its own history, economic, political condition and leadership. After over 30 years development of the Constitution between China and Visegrad states, each state adopted numerous Constitutional documents and it is almost impossible to analyze all those changes in a few paragraphs. Therefore, in the following part, the author will analyze the mainstream of Constitutional develop in political and economic fields. However, at the very beginning of the analysis work, the background of the society during the reform period in each state will be presented first.

People’s Republic of China developed its own Constitutional practice according to its social movement. There were many movements initiated by the Communist Party, Great Leap Forward, Cultural Revolution<sup>428</sup> that have led to political fanaticism in the whole

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<sup>428</sup> Great Leap Forward (大跃进) a social movement started in 1958 in order to accelerate the development of economy in China, and failed in 1961. Adriana PALESE, ‘*The Great Leap Forward (1958-1961): Historical events and causes of one of the biggest tragedies in People’s Republic of China’s history*’ (Bachelor thesis, Lund University 2009) <<http://lup.lub.lu.se/luur/download?func=downloadFile&recordOid=1671693&fileOid=1671694>>, accessed 27 October 2017. Cultural Revolution officially initiated in 1966 and it was considered as the

state. This enthusiasm finally had cooled down after the 3rd Plenary Session of the 11th Central Committee of CCP in the end of 1978.<sup>429</sup> After this meeting, a new Constitution was adopted in 1982, the road to socialism in China gradually normalized.

The situation in Visegrad states was different. Although there were lots of protests and even revolutions happened during the reform period in each state, the Soviet Union still had supremacy in this area. Warsaw Pact was established in order to antagonize the threat from NATO.<sup>430</sup> Notwithstanding, the main trend of the development of Constitution in the region was evolved in a more democratic direction.

In political part, even though states in Visegrad region joined the Soviet group, the development of Constitution was more democratic than China. For instance, during the reform period, new Constitutional institutions were introduced in the Constitutional amendments in order to protect the constitutionality in each state.

In Hungary, a Constitutional Council was introduced to the public in Act of 2 in 1983, as an organ to protect the constitutionality in Hungary.<sup>431</sup> In the Czechoslovakia practice, the organ to protect Constitution was regulated in the 1968 amendment to the Constitution of Czechoslovakia in 1960, Chapter Six specified on the Constitutional Court in the Federal Republic.<sup>432</sup> However, until the Revolutions of 1989, this Constitutional organ never really established itself in Czechoslovakia, due to the failure of adopting the implementing laws.<sup>433</sup> In Poland, the situation quite similar, the specific

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most tragic moment during the reform period. CIA, *The Chinese Cultural Revolution* (National Intelligence Estimate 1967) <[https://www.cia.gov/library/readingroom/docs/DOC\\_0001095914.pdf](https://www.cia.gov/library/readingroom/docs/DOC_0001095914.pdf)>, accessed 27 October 2017.

<sup>429</sup> 3rd Plenary Session of the 11th Central Committee of CCP (十一届三中全会), held in 1978, during this meeting, reform and opening-up policy established and “two whatevers” policy abolished. People’s Daily, ‘Third Plenary Session of 11th Central Committee of CPC held in 1978’ (People’s Daily 2008) <<http://en.people.cn/90002/95589/6512371.html>>, accessed 28 October 2017.

<sup>430</sup> In Hungary, mainly university student participated in the 1956 Revolution, In Czechoslovakia, the famous Prague spring failed in the late summer of 1968, Polish had Poznan uprising in 1956 and development of trade union latterly became the solidarity movement in 1980s. Warsaw Pact established in 1955 in Warsaw. CIA, *Eastern Europe and the Warsaw Pact* (CIA 1965) <<https://www.cia.gov/library/readingroom/docs/1965-08-26.pdf>>, accessed 28 October 2017. NATO, North Atlantic Treaty Organization established in 1949 by US and Countries in Western Europe. <<https://www.nato.int/nato-welcome/index.html#events>>, accessed 28 October 2017.

<sup>431</sup> Act of 2, 1983 or 1983 amendment. It adopted in December 27 of 1983. This Act was Published by Hungarian Gazette (Magyar Kozlony) in the same day.

<sup>432</sup> Act of 143 in 1968, English version is available <<http://czecon.law.muni.cz/content/en/ustavy/1968/>> accessed 18 October 2017.

<sup>433</sup> Maartje De VISSER, *Constitutional Review in Europe: A Comparative Analysis* (1st edn, Hart publishing, 2014) p. 70.

organ, Constitutional Tribunal was introduced to the masses in the 1983 amendment to the Constitution. However, since the implementing law finally adopted in 1985, this Constitutional organ acted its role started from 1985.<sup>434</sup>

In the Chinese case, the development of the Constitution was much complicated. After three years of adoption, the 1954 Constitution gradually invalid in the middle of 1950s, since then the state ruled by man for almost 20 years.<sup>435</sup> After the Cultural Revolution and 3rd Plenary Session of 11th Central Committee of CCP, the principle of rule of law became consensus among the leaderships. The 1982 Constitution restored the political structure which regulated in the 1954 Constitution.<sup>436</sup> Therefore, during the reform period, the Constitution in China didn't achieve magnificent progress in political part.

In economic part, since states in Visegrad region had have much longer experience of practicing capitalism before the states joined the Eastern Bloc. Visegrad states were much tolerant of private property in Constitution. In Hungarian case, the 1972 amendment stated "Hungarian People's Republic recognizes and protects private property".<sup>437</sup> In Czechoslovakia case, the Constitution will protect "The citizen's personal ownership of consumer goods, particularly articles of personal and domestic use, family houses, as well as savings derived from labor..."<sup>438</sup> In Polish Constitution, it addressed "The Polish People's Republic shall recognize and protect - on the basis of the law - individual property and the right to inherit land, buildings and other means of production owned by peasants, craftsmen and home-workers."<sup>439</sup> Chinese government treated the private property more strict than before. The 1975 Constitution and the 1978 Constitution regulated the same provision on private property, "The state protects lawful income, saving, house and ownership of other consumer goods." In the 1982

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<sup>434</sup> Paul BLOKKER, *New Democracies in Crisis: A Comparative Constitutional Study of the Czech Republic, Hungary, Poland, Romania and Slovakia* (1st edn, Routledge, 2014) p. 66.

<sup>435</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) p. 419, 420.

<sup>436</sup> The 1975 and 1978 Constitution were more like utopian experiments in socialist China, it damaged the political tradition which established in the 1954 Constitution. With the enthusiasm finally cooled down, the 1982 Constitution reconstructed the political system in China by restoring the 1954 Constitution's political tradition.

<sup>437</sup> Article 11, Amendment to Constitution of Hungarian People's Republic, 1972.

<sup>438</sup> Paragraph 1, Article 10, Constitution of Czechoslovakia, 1960.

<sup>439</sup> Article 17, Amendment to Constitution of Polish People's Republic, 1976.

Constitution, the term of “consumer goods” was changed to “lawful property”. During the reform period, there was a clear boundary between personal consumer goods and personal means of production. The later one only belonged to the state or group.<sup>440</sup>

Besides, in practice, in the rural area in China, collective farms were developed “better” than other socialist states in Visegrad region. In the end of October of 1958, over 99% peasants joined the rural people’s commune.<sup>441</sup> Even in the 1975 Constitution, the rural people’s commune was considered as the integrated organ of administration and economic management, and land was considered as the state or collective owned.<sup>442</sup> However, in the states of Visegrad region, the policies in rural area were more tolerant. There were possibilities for peasants to own land.<sup>443</sup>

During the reform period, Constitution in each country had changed significantly. Some of the changes were similar, like all the states announced their state became socialist state by adopting new Constitutional documents. However, some differences could be found when we examined the trails of Constitutional development in each state. The development of Constitution in China during the reform period was more like an irrational social experiment, finally, it returned back to the origin of the 1954 Constitution. Notwithstanding, the development of Constitution in Visegrad states were inclined towards democracy.

#### **4. Comparative Analysis of the Supreme Organ of State Power between China and the Visegrad States**

As mentioned many times in the previous part, the Soviet Union was the big brother

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<sup>440</sup> Amendment to Constitution of People’s Republic in 2004 changed this provision, “Citizens’ lawful private property is inviolable.” It showed that as an individual, it allowed to own means of production. Yanfeng FAN, ‘公民的合法的私有财产不受侵犯——财产权入宪的意义 [Citizens’ Lawful Private Property Is Inviolable: the Meaning of Property Right in the Constitution]’ (*Qiushi*, 1 August 2004) <<http://www.npc.gov.cn/npc/oldarchives/zht/zgrdw/common/zw.jsp@label=wxzlk&id=331708&pdmc=1504.htm>> accessed 31 October 2017.

<sup>441</sup> Jianmei LIU, “‘大跃进’与人民公社化运动 [‘The Great Leap Forward’ and the Movement of People’s Commune]” (*CPCNews*, 2010) <<http://dangshi.people.com.cn/GB/221024/221026/221622/15017986.html>> accessed 31 October 2017.

<sup>442</sup> Article 7, Constitution of People’s Republic of China, 1975. And the provision of land until the current Constitution in China still regulated as only owned by state or collective.

<sup>443</sup> Cases of Poland, Czechoslovakia and Hungary were available in Nigel SWAIN, ‘Getting Land in Central Europe’ in Ray ABRAHAMS (ed.), *After Socialism: Land Reform and Social Change in Eastern Europe* (Berghahn Books 1996).

in the socialist states, and the political structure in the Soviet Union also effected other socialist states, included China and Visegrad states.

According to the Soviet Union's Constitution (1936 version and 1977 version), "The highest organ of state authority of the U.S.S.R. is the Supreme Soviet of the U.S.S.R."<sup>444</sup> China and States in Visegrad region followed this political pattern, regulated the similar organ in the Constitution. In the following part, the author will introduce the development of the supreme organ of state power in each country and then make a comparative analysis of it.

#### **4.1 Development of the National People's Congress in People's Republic of China**

On the point of the establishing People's Republic of China, the founding fathers of this new country designed a Soviet Union style political system and regulated it in the Constitutional document, Common Program.<sup>445</sup> "The supreme organ of the state authority is National People's Congress..." After the first election for the National People's Congress, deputies of the National People's Congress passed the Constitution of People's Republic of China in 1954.

In the 1954 Constitution, the first Section of Chapter Two officially ensured the position of the National People's Congress, "the supreme organ of the state authority". Besides, it was the "only legislative authority in the country". The term of the National People's Congress was four years and each year there was one regular meeting. The National People's Congress exercised its power by holding the meeting. During the meeting, National People's Congress was entitled to amend the Constitution and enact laws, elect or decide some important officers in the state, such as chairman, Premier, and has the power to remove these officers. In the economic field, it can decide or supervise the national economic plan, the state budget and financial report. The permanently acting body of National People's Congress was the Standing Committee. It

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<sup>444</sup> Article 30, Constitution of USSR 1936. The 1977 Constitution of USSR regulated the same regulation in Article 108. English version of 1936 Constitution is available <<https://www.departments.bucknell.edu/russian/const/1936toc.html>> accessed 5 November 2017. English version of 1977 Constitution is available <<http://www.departments.bucknell.edu/russian/const/1977toc.html>> accessed 5 November 2017.

<sup>445</sup> Paragraph 2, Article 12, Common Program 1949.

entitled to interpret the laws, and decide or remove some important officers, such as vice-president of the Supreme People's Court and deal with the foreign relations. In the special situation, it can decide mobilization or martial law in some areas or the whole state.<sup>446</sup>

In the 1975 Constitution, because of the influence of Cultural Revolution, the political system was dramatically damaged. However, National People's Congress was still considered as the supreme organ of state authority on paper. It should be noted that the so called "supreme organ of state authority" was under the leadership of the Chinese Communist Party. The term of the National People's Congress was extended to five years. Since the position of chairman of People's Republic of China was deleted, the National People's Congress will appoint the Premier according to the advice of Central Committee of Communist Party of China. The Standing Committee was the permanently acting body of National People's Congress, but the competence of the Standing Committee was shrunk.<sup>447</sup>

In the 1978 Constitution, it partially restored the competence of the National People's Congress and its Standing Committee which regulated in the 1954 Constitution. However, there were still some differences. For instance, the deputy of National People's Congress was elected by democratic consultation. The National People's Congress shall supervise the enforcement of the Constitution and the law. Standing Committee shall interpret not only the law but also the Constitution.<sup>448</sup>

The Current Constitution developed the structure of National People's Congress which regulated in the 1954 Constitution. In the new Constitution, the regulations were more accurate. For example, the Standing Committee shall "enact and amend statutes with the exception of those which should be enacted by the National People's Congress" the power to supervise the enforcement of the Constitution was transferred to the Standing Committee. What's more, the current Constitution payed more attention on deputies of the National People's Congress, the speech and vote of the deputies during the meeting shall not cause any legal prosecution, it provide legal condition for the

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<sup>446</sup> Section 1, Chapter 2, Constitution of People's Republic of China, 1954.

<sup>447</sup> Section 1, Chapter 2, Constitution of People's Republic of China, 1975.

<sup>448</sup> Section 1, Chapter 2, Constitution of People's Republic of China, 1978.

deputies to fulfill their duties and rights.<sup>449</sup>

## **4.2 Development of the National Assembly in Hungarian People's Republic**

After the election of National Assembly in 1949, since the Communist Party won the election, a new Constitution was adopted by the National Assembly. In the Soviet-style Constitution, the supreme organ of state authority in Hungarian People's Republic was National Assembly.<sup>450</sup> The term of the National Assembly was four years. Each year there were two regular meeting will be held. The National Assembly had following competences in order to perform its powers: to enact law, to elect some officers, to decide the war and peace issue and amnesty. In the economic part, it is supposed to decide the national economic plan and state budget. In the special situations, the National assembly may dissolve itself or prolong its term.

Since the Constitution of Hungary didn't provide the president of the state position, the Presidential Council, permanently acting body of National Assembly of Hungarian People's Republic, also shared some competences of head of state, such as "appointing diplomatic representatives and receiving the letters of credence of foreign diplomatic representatives." 21 members constituted the Presidential Council, one president, two vice-presidents, one secretary and 17 members, and it will be elected by the National Assembly. Since the National Assembly of Hungarian People's Republic was not a permanently acting body, the Presidential Council took a more active role in the political life of the People's Republic. When the National Assembly was not in session, Presidential Council may exercise the competences of the National Assembly, except the amending Constitution.<sup>451</sup> In reality, the Presidential Council was the de facto legislature organ by publishing the decree. What's more, it also could be considered as the Constitutional protection organ, since in Paragraph 2, Article 20 stated "Presidential Council may annual or modify by-law, regulation or measure, in the case of infringe of the Constitution..."

The electoral system of deputy of the National Assembly also regulated in the 1949

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<sup>449</sup> Section 1, Chapter 3, Constitution of People's Republic of China, 1982.

<sup>450</sup> Országgyűlés, this Hungarian word literally means "country assembly". However, since the different translation, in some English version of Constitution of Hungarian People's Republic, it translated as National Assembly, in other version, it translated as Parliament.

<sup>451</sup> Paragraph 4, Article 20, Constitution of Hungarian People's Republic, 1949.

Constitution, Hungarian citizens entitled to vote and elected as a member of the National Assembly of Hungarian People's Republic. The election will be universal, equal and direct suffrage by secret ballot. However, the so called "enemies of the working people" shall exclude from the suffrage.<sup>452</sup>

### **4.3 Development of the National Assembly in Czechoslovak Republic**

The Constitution of Czechoslovak Republic in 1948 was considered as the first Communist Constitution in Czechoslovakia. However, as we examined in the previous Chapter, the 1948 Constitution was more like the hybrid of the 1920 Constitution and the Soviet Union Constitution. Therefore, more Czechoslovakia political traditions remained in the 1948 Constitution.

In the 1948 Constitution, the National Assembly was only considered as the supreme organ of legislative power,<sup>453</sup> not like other countries in the region or China, which enjoyed more power and regarded as the supreme organ of state power. The term of the National Assembly was six years, and each year there were two general sessions, in March will be held the Spring Session, in October will be the Autumn Session. Deputies were protected by the Constitution while they exercised their mandate. Czechoslovakia kept the position of President of Republic, who shall summon or dissolve the National Assembly. The most important task for the National Assembly was to adopt the laws. Furthermore, it is to enact the state budget law and to audit the state account also considered as the tasks for the National Assembly. Presidium of the National Assembly was the permanently acting body for National Assembly, which consisted of 24 members. When the National Assembly was not in session, Presidium of the National Assembly may practice some competences of the National Assembly.<sup>454</sup>

The 1948 Constitution had significant changes in 1960, after the Constitution officially announced Czechoslovakia was socialist state. In the 1960 Constitution, the National Assembly was considered as "the supreme organ of state power".<sup>455</sup> 300 Deputies constituted the National Assembly with a term of four years. There were two

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<sup>452</sup> Paragraph 2, Article 63, Constitution of Hungarian People's Republic, 1949.

<sup>453</sup> Article 5, Constitution of Czechoslovak Republic, 1948.

<sup>454</sup> Chapter 2, Constitution of Czechoslovak Republic, 1948.

<sup>455</sup> Paragraph 1, Article 39, Constitution of Czechoslovak Republic, 1960.

regular sessions for each year. Compared with the 1948 Constitution, the 1960 Constitution endowed more competences to the National Assembly, since it was not only the Legislative organ any more. The President of Republic shall be elected by the National Assembly and take responsibility for the National Assembly. The National Assembly shall have the power to declare war. Presidium of National Assembly was also enlarged, 30 members will be elected by National Assembly.

In 1968, the Constitution of Czechoslovak Republic heavily changed, since the socialist state became a federal state. In the new Constitution, federal Assembly became “the supreme organ of state power”, and it consisted of two houses, the House of the People and the House of Nations.<sup>456</sup> There were 300 members in House of the People, 150 members in House of Nations. The term of each House was four years and each year will hold two regular sessions in spring and autumn. In general, the decisions of Federal Assembly shall get the approval from each House.<sup>457</sup> In case of the Federal Assembly was not in session, Presidium of Federal Assembly shall take charge, and each House had its own deputies to the Presidium. Twenty members of the Presidium shall be elected by House of People, and twenty members shall be elected by House of Nations.<sup>458</sup>

#### **4.4 Development of the Sejm in Polish People’s Republic**

Polish People’s Republic adopted its Constitution in 1952. And according to this Constitution, Sejm was “the supreme organ of state authority”. The amounts of deputies not fixed, each 60,000 inhabitants may elect one deputy to Sejm and for a term of four years. Each year, the Sejm shall hold at least two sessions. Besides to enact law and to adopt national economic plan and state budget, Sejm shall elect some important officers. Council of State was the permanently acting body for Sejm, which member was elected by Sejm. The Council of State shall interpret laws, appoint officers. Since there wasn’t the position of the President of Republic, some competences of the head of state were

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<sup>456</sup> Article 29, Constitution of Czechoslovak Socialist Republic, 1968.

<sup>457</sup> In general, a simple majority of deputies of House of People represented in enough, however, in House of Nations case, a simple majority of deputies should meet the condition: both deputies of Czech Socialist Republic and Slovak Socialist Republic shall be simple majority. Article 40, Constitution of Czechoslovak Socialist Republic, 1968.

<sup>458</sup> Article 56, Constitution of Czechoslovak Socialist Republic, 1968.

undertook by the Council of State, such as to appoint and recall Polish ambassadors to other states and to receive letters of credence and recall diplomats from other states to Polish People's Republic.<sup>459</sup>

Regulations on Sejm changed in the Constitution several times. For instance, in the amendment to the Constitution of Polish People's Republic in 1976, one change was the number of deputies to Sejm fixed. In total there were to be 460 deputies. Another change should be noted was Council of State shall "watch over the constitutionality of laws."<sup>460</sup>

#### **4.5 The Similarities of Development of the Supreme Organ of State Power Between China and the Visegrad States**

The most obvious similarity of the supreme organ of state power between these socialist states was this organ was not the purely legislative organ. Although the name of this organ in each Visegrad state was unchanged after the state adopted soviet-style system, more political and economic competences were endowed to this supreme organ. The founding father of Socialism, Marx addressed his opinion on parliament, "parliamentary cretinism...had destroyed all the conditions of parliamentary power with their own hands..."<sup>461</sup> Therefore, the first socialist state abandoned the capitalist parliament and established its own supreme organ of state power.

The Constitution in each state also regulated the term of the so called supreme organ and the session for each year. Especially when each state announced their country became socialist state in the Constitution. In China, the term of National People's Congress was five years, each year there was one regular meeting.<sup>462</sup> In Visegrad states, Hungarian People's Republic kept its four years term for National Assembly. Each year there were at least two times. In the first Soviet-style Constitution, Czechoslovakia followed the previous Constitution regulation. A term for the National Assembly was six years, and each year the National Assembly shall hold two regular sessions. Until the

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<sup>459</sup> Article 25, Constitution of Polish People's Republic, 1952.

<sup>460</sup> Paragraph 3, Article 30, Amendment to Constitution of Polish People's Republic, 1976.

<sup>461</sup> Karl MARX, *The Eighteenth Brumaire of Louis Bonaparte* (first published 1852, Progress Publishers 1937), chapter five. <<https://www.marxists.org/archive/marx/works/1852/18th-brumaire/index.htm>>, accessed 6 November 2017.

<sup>462</sup> The 1952 Constitution regulated the term of National Assembly for four years then it extended to five years since the second Constitution.

1960 Constitution announced the state became a socialist state. It changed its term from six years to four years. In the Constitution of Polish People's Republic, the term of Sejm was four years, each year there were at least two sessions.

In the competences of the supreme organ of state power, the ultimate power was legislation. Besides, there were some similarities between each state. This supreme organ also dealt with the economic policies. In China, the National People's Congress shall "adopt the national economic plans, examine and approve the state budget and the financial report".<sup>463</sup> In Visegrad states, Hungarian People's Republic undertook similar task, a socialist style national economic plan and state budget shall be decided by the National Assembly.<sup>464</sup> In the Czechoslovakia case, after the state announced itself chose Soviet style system, the National Assembly had to bear more task than it used to. Besides to enact the State Budget Act and to audit the state account, the National Assembly shall review the reports of Uniform Economic Plan which mainly implemented by the Government.<sup>465</sup> Polish People's Republic also regulated the similar provisions, it stated Sejm shall adopt National economic plan and state budget.<sup>466</sup>

Since the supreme organ of state power in each state only hold the regular session for one or two times per year, a permanently acting body had set up in the Constitution. Usually this organ shall undertake the most tasks of the supreme organ of state power during the supreme organ was not in session. However, there were some competences of the supreme organs shall not share with their permanently acting body. For instance, to revise or adopt a new Constitution shall be the ultimate competence of the supreme organ of the state power.

#### **4.6 The Differences of Development of the Supreme Organ of State Power between China and the Visegrad States**

China and Visegrad states joined the socialist community after the Second World War and then they copied the Soviet-style political system and ensured in their Constitution. There were some differences of the supreme organ of state power in each state, since

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<sup>463</sup> Article 27, Constitution of People's Republic of China, 1954.

<sup>464</sup> Paragraph 3, Article 10, Constitution of Hungarian People's Republic, 1949.

<sup>465</sup> Article 163, Constitution of Czechoslovak Republic, 1948.

<sup>466</sup> Article 19, Constitution of Polish People's Republic, 1952.

the reality and historical background in each state were so different, especially when we considered Visegrad states as a whole group and China is another one.

The first time for Chinese to practice the parliament system took place in 1910 when Qing Dynasty established the Advisory Council, soon with the collapse of Qing Dynasty in 1911, this parliamentary organ ceased to exist. Later, Republic of China summoned its first parliament session in 1913. Then it was interrupted since the numerous wars happened in China.<sup>467</sup> Notwithstanding, countries in Visegrad region had a much longer history of practicing parliament, especially in the Hungarian case. The first representative parliament gathered on 4 of July in 1948 and it performed its competences during the communist period.<sup>468</sup> Therefore, the practices of supreme organ of state power between China and Visegrad states were so different. In China, not only the first Soviet-style Constitution only lasted several years and the whole were governed without the instruction of laws, but the National People's Congress almost adjourned in the Cultural Revolution period.<sup>469</sup> In contrast, the states in Visegrad region continued the practices of supreme organ of state power during the communist period.

In practice, there was another difference of the election of deputy to supreme organ of state power between China and Visegrad states. In the Chinese case, according to the Electoral Law of People's Republic of China in 1953, each 800,000 inhabitants shall elect one deputy to the National People's Congress; however, in urban areas each 100,000 inhabitants shall elect one deputy to the National People's Congress. This regulation changed in 1995, each rural people's congress deputy represented four times more people than an urban deputy. Finally, the new Electoral Law in 2010 realized the equality of each vote between rural area and urban area. The same amounts of

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<sup>467</sup> Yufa ZHANG, '民国初年的国会 [Parliament in the Early Period of Republic of China]' (1984) 13 *Journal of Institute of Modern History* <[http://www.mh.sinica.edu.tw/MHDocument/PublicationDetail/PublicationDetail\\_997.pdf](http://www.mh.sinica.edu.tw/MHDocument/PublicationDetail/PublicationDetail_997.pdf)> accessed 7 November 2017.

<sup>468</sup> Nobert HERMANN, 'Revolution and War of Independence' in Istvan Gyorgy TOTH (ed.), *A Concise History of Hungary: The History of Hungary from the Early Middle Ages to the Present* (Corvina Books Ltd. 2005)

<sup>469</sup> Duoduo TANG, '人大制度四大发展阶段 [Four Development Period of People's Congress System]' *Outlook Weekly* (Beijing, 15 September 2014) <[http://www.npc.gov.cn/npc/zt/qt/jndbdhcllszn/2014-09/17/content\\_1878887.htm](http://www.npc.gov.cn/npc/zt/qt/jndbdhcllszn/2014-09/17/content_1878887.htm)> accessed 8 November 2017.

inhabitants shall elect one deputy to the National People's Congress.<sup>470</sup> However, the principle of equality of each vote was regulated in the Constitution in each state in the Visegrad region at the very beginning.

## 5. Conclusion

In this Chapter, the author examined the development of the Constitution between China and Visegrad states during the reform period, and made a comparative analysis of the Constitution in each state. Besides, the author analyzed the development of the so called "supreme organ of state power" in each state by examining the changes of provisions in the Constitution in each state.

The most significant change of the Constitution during the reform period in each state was "announcement of socialist state". Based on this premise, each state revised its Constitution and adopted more socialist-style provision. The notable example was Czechoslovakia. In its first Soviet-style Constitution which adopted in 1948, the Constitution was considered as "hybrid of the 1936 Soviet Constitution and the 1920 Czechoslovakia Constitution". Tremendous provisions in the Constitution of Czechoslovak Republic in 1948 kept the features of the 1920 Constitution, such as the structure of the Constitution, National Assembly was only defined as "supreme organ of legislative power". Citizens enjoyed more rights compared with its neighboring state and China. However, after the country declared it entered the socialist state stage, from the structure of the Constitution to the provisions of the Constitution became more similar with the countries in the Visegrad area.

At the reform period, each state tried to find its own road to develop its socialist system, and the outcomes of the development of the socialist construction also regulated in the Constitution in each country. By examining such revisions in the Constitution, we may find how fruitful or fruitless of the socialist construction in each state. People's Republic of China was an extreme case here, the first Soviet-style Constitution only

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<sup>470</sup> Xiaoli ZHAO, '论全国人大代表的构成 [The Formation of the Deputy to National People's Congress]' (2012) 24 (5) *Peking University Law Journal* <<http://journal.pkulaw.cn/PDFFiles/%E8%AE%BA%E5%85%A8%E5%9B%BD%E4%BA%BA%E5%A4%A7%E4%BB%A3%E8%A1%A8%E7%9A%84%E6%9E%84%E6%88%90.pdf>> accessed 8 November 2017.

entered into force for several years, then the whole country sunk into so called “class struggle” nearly twenty years. The outcome of the Culture Revolution, the 1975 Constitution supported my argument, whole Constitution consisted of 30 Articles, compared with the former one which had 106 Articles. People’s commune was not only the economic organization, but the administrative organ in the local level.

The supreme organ of the state power in each state shared some similarities since the similar system they operated. However, since the different economic, cultural conditions and historical background in each state there were some differences that existed, especially between China and the Visegarad states. Because of the country’s lack of practicing parliamentary system, the people’s congress system didn’t function well in China during the Cultural Revolution period.

## Chapter Five: Development of the Constitution Between China and the Visegrad States in the Transform Period

In the last Chapter, the author introduced and compared the development of Constitution in each state during the reform period, and made a comparative analysis of the supreme organ of state power between China and Visegrad states. Even though, during the reform period, each country declared the establishment of a socialist system in the Constitution, and some similar provisions were regulated in the Constitution in each state as well, the numerous differences caused different results of the Constitution in each state, especially when we considered Visegrad states as a whole group and compared the development of Constitution between China and Visegrad countries.

In this Chapter, the author will analyze the development of Constitution between China and Visegrad states during the transform period. Here, the author defined the transform period which started from 1989, and finished until the new Constitution adopted. However, the maturation time was hardly to be defined in an exact time point. Therefore, here the author roughly defined it the second half of 1990s.<sup>471</sup> It was a vital period for each state, during this period, Revolutions of 1989 happened in Eastern Europe; in the same year, Beijing, the capital of People's Republic of China witnessed the Tiananmen Incident, which latterly urged the Communist Party ameliorated its ruling policies in the whole country. Besides, the implementation of Constitution required a special organ guarantee the constitutionality in the state. Therefore, in this Chapter, the author will also examine the constitutional review system in each state and make a comparative analysis.

### **1. Development of the Constitution in China in the Transform Period**

When people review the history of 20th Century, the year of 1989 destined for its marvelous incidents. In that year, China and Visegrad states experienced a vital moment, and the results of these turning points still affect each country now.

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<sup>471</sup> The transform period in different states were different. Like Czech Republic and Slovakia, new Constitution adopted in 1993, Poland had its new Constitution in 1997, and in Hungarian case, 1949 Constitution officially out of valid until 2011, even though, a series of radical modifies had been made National Assembly. And in Chinese case, socialist Constitution still entered into force, with four amendments.

In this Chapter, the author will introduce the first two amendments to the current Constitution. There were four amendments to the current Constitution. The first amendment adopted in 1988, and the last one adopted in 2004. As Deng Xiaoping Theory mentioned, “China is at the primary stage of socialism, and will remain so for a long time to come”<sup>472</sup> Based on this theory, current Constitution is Socialist Constitution and the higher level of the Constitution should be Communist Constitution. However, here the author will analyze the development of Constitution in Visegrad states from 1989 to the second half of 1990s. Therefore, the author will introduce the development of current Constitution of People’s Republic of China by examining the first three amendments, which adopted in 1988, 1993 and 1999.

### **1.1 The First Amendment to the Current Constitution in China**

Six years after the adoption of Constitution of People’s Republic of China in 1982, the first amendment to the current Constitution was adopted by the National People’s Congress in 1988. There were only two Articles revised, and mainly focused on the economy field.

The first Article of the amendment regulated on “the private sector of the economy”. With the development of reform and opening-up policy, the economy of China has rapidly increased, especially the private sector of the economy. According to the statistics, in 1987, the private sector of the economy constituted 5.6% of the gross industrial output value in the whole state, and back to 1978, the percentage was almost zero.<sup>473</sup> Since the private sector of the economy was more and more important to the state economy, the 7th National People’s Congress adopted the first Article of Amendment to the Constitution of People’s Republic of China, it stated that “The State permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The State protects the lawful rights and interests of the private sector

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<sup>472</sup> De Xiaoping, the second generation of leadership core in China, after his death in 1997, his thoughts were introduced as Deng Xiaoping Theory and adopted by the 15th National Congress of the Communist Party of China. Deshan YANG, ‘Deng Xiaoping Theory’ (CPCNEWS) <<http://cpc.people.com.cn/GB/64162/64171/4527683.html>> accessed 10 November 2017.

<sup>473</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People’s Republic of China]* (Fujian People’s Publishing House 2003) p. 844, 845.

of the economy, and exercises guidance, supervision and control over the private sector of the economy.”<sup>474</sup> Therefore, the private sector of the economy was officially protected by the Constitution.

Another modification of the Constitution regulated on “land”. As a socialist state, lands in mainland of China owned by state or collectives. People allowed to use the land only, but not allowed to own the land. Household-responsibility system was another creative policy in 1980s. It firstly adopted in Xiaogang, a small village in Anhui province.<sup>475</sup> Soon it spread to the whole country. In 1987, almost 98% households in the countryside adopted this system in People’s Republic of China and it indicated that “rural people’s communes, agricultural producers’ co-operatives” became extinct.<sup>476</sup> Therefore, the second Article of the amendment granted “The right to the use of land may be transferred according to law.”

## **1.2 The Second Amendment to the Current Constitution in China**

Four years later, the second amendment was adopted by 8th National People’s Congress in Beijing. There were nine Articles amended.

In 1992, Deng Xiaoping started his South China tour and gave speeches to the public. In his speech, he urged a series of reforms should be done by the government and the state shall focus on the economic development.<sup>477</sup> These suggestions had been well taken by the Communist Party. In the following February, Central Committee of the Communist Party of China submitted its suggestion on Constitutional amending. This suggestion finally became a proposal and submitted to the 8th National People’s Congress and was adopted on 29 March of 1993.

The second Amendment to Constitution consisted of nine Articles. It main focused on the first two parts of the Constitution, two Articles related to the Preamble; five Articles were modified in General Principles. In fundamental rights and duties of citizens part,

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<sup>474</sup> Article One, Amendment to Constitution of People’s Republic of China, 1988. <[http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content\\_4498.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4498.htm)> accessed 11 November 2017.

<sup>475</sup> Jiang WU, Yanli ZHANG, ‘Looking Back 30 Years: Research on System of Household Contract Responsibility’ (2008) 11 *Economic Theory and Business Management*.

<sup>476</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People’s Republic of China]* (Fujian People’s Publishing House 2003) 844.

<sup>477</sup> ‘Deng Xiaoping’s South China tour’ (China.org.cn, 19 April 2011) <[http://www.china.org.cn/china/CPC\\_90\\_anniversary/2011-04/19/content\\_22392494.htm](http://www.china.org.cn/china/CPC_90_anniversary/2011-04/19/content_22392494.htm)> accessed 11 November 2017.

one Article had been revised. One Article related to the term of local level People's Congress had been amended.

The first Article in the second amendment declared “China is at the primary stage of socialism”, meanwhile, it brought forward “socialism with Chinese characteristics” to the public. China started to develop its socialist system with its own features.<sup>478</sup>

The second Article related to the party system. There are nine political Parties in People's Republic of China, except the ruling Party, Communist Party of China, the other eight Parties in mainland China and the ruling Party consisted the United Front and perform its competence via Chinese People's Political Consultative Conference. This Article ensured the “multi-party cooperation and political consultation system” shall exist and develop in China for a long time.

The third Article revised the term “state economy” to “state-owned economy”. It implied that the ownership of the socialist economy still belonged to the whole people. However, the state shall not run the state-owned enterprises directly are for consistency with the same consideration, the sixth Article and eighth Article in the amendment modified the term “state enterprises” to “state-owned enterprises”.

As mentioned previously, in the end of 1980s, household-responsibility system became the main trend for rural economy instead of “rural people's communes, agricultural producers' cooperatives” system. With several-years of practice, it turned out that household-responsibility system greatly liberated the productive forces in rural area. Therefore, the second amendment removed the provision on rural people's communes and ensured the household-responsibility system.

The establishment of socialism with Chinese characteristics in Constitution not only meant the government shall develop its own political system, but also indicated the economic reform. Planned economy was used to be considered as the best economic system for socialist state, in contrast, market economy was the option for capitalist states. However, the amendment creatively put forward “socialist market economy” and the state shall “strengthen economic legislation, improve macro-regulation and control”

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<sup>478</sup> For instance, in this amendment, it also promulgated that “The state practices socialist Market economy.”

in order to better practice socialist market economy.

Collective economic organization is important part to state-owned economy, the amendment deleted the “guidance of the State plan” part. It made the collective economic organization gain more free spaces to develop.

The last revised part in the amendment was it extended the term of county level people’s congress. It used to elect its deputies every three years, and according to the amendment, the term of county level people’s congress was five years. At this point, except the term for township level people’s congress, which was three years, the terms for rest level people’s congress were five years.<sup>479</sup>

### **1.3 The Third Amendment to the Current Constitution in China**

The last amendment in 20th century adopted in March of 1999, six Articles were made in this amendment. The process of amendment making exercised the same procedure of amendment making in 1993. Standing Committee of National People’s Congress accepted the proposal of amending Constitution which submitted by Central Committee of Communist Party of China, and submitted an official proposal to the Second Session of Ninth of National People’s Congress.<sup>480</sup>

The first Article modified the seventh paragraph of the Preamble, two main parts were revised. In the former amendment, it declared that “China is at primary stage of socialism”, 1999 amendment ensured this primary stage of socialism and pointed out that it will take a long time to come. Another main modification added the Deng Xiaoping Theory as the guidance along with Marxism-Leninism and Mao Zedong Thought.

The second Article regulated the rule of law provision. The establishment of rule of law in China caused a 20 years debate from 1979. Three main trends formed during the discussion. The first opinion argued that rule of law was important; the second one believed that a combination of rule of law and rule of man was needed; the third view considered rule of law was capitalist legal concept, as a socialist state, China should not

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<sup>479</sup> Amendment to Constitution of People’s Republic, 1993  
<[http://www.npc.gov.cn/englishnpc/Constitution/node\\_2828.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2828.htm)> accessed 13 November 2017.

<sup>480</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People’s Republic of China]* (Fujian People’s Publishing House 2003) p. 861,862.

implement rule of law, to build a socialist legal system was the best option. The crucial point for this debate happened in 1997, the Report of 15th National Congress of Communist Party of China expounded the importance of rule of law, and two years later, rule of law regulated in the Constitution.<sup>481</sup> It was one of the milestones of Chinese legal system. There was another Article in the amendment also related to the legal system. The Article 28 of Constitution removed the “counter-revolutionary activities” provision, since the Criminal Law of People’s Republic of China modified in 1997, “crimes of endangering national security” was regulated instead of “crimes of counter-revolutionary”.<sup>482</sup>

The remaining three Articles were related to economy. The basic economic system and distribution system were revised. Public ownership was in dominant status, however it allowed diverse forms of ownership develop side by side. In distribution system, according to work is the dominated principle, it allowed diverse modes of distribution coexist. In the rural economic field, it revised that “The rural collective economic organizations apply the dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of operation by households under a contract”.<sup>483</sup> Households under a contract system took the basic status, however as a socialist state, collective economic organization should be recognized by Constitution. Another change in the economic system was the status of individual and private sectors of the economy increased, which now considered as “an important component of the socialist market economy”.<sup>484</sup>

## **2. Development of the Constitution in the Visegrad States in the Transform Period**

In 1980s, even though the living standards in Visegrad states were increased, countries in the region suffered the economic crisis because of the planned economy.

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<sup>481</sup> Buyun LI, ‘*The Historical Process of Governing the Country by Law: Reviewing and Looking Ahead*’ (2008) vol. 4 *Legal Forum* <[http://pol.cssn.cn/zzx/zgzz\\_zzx/201408/W020140813372546696917.pdf](http://pol.cssn.cn/zzx/zgzz_zzx/201408/W020140813372546696917.pdf)> accessed 17 November 2017.

<sup>482</sup> Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People’s Republic of China]* (Fujian People’s Publishing House 2003) 871,872.

<sup>483</sup> Article 15, Amendment to Constitution of People’s Republic of China, 1999.

<sup>484</sup> *Ibid.*

Many economists and decision-makers believed that only systematic change could save the economy in Visegrad states. Meanwhile, new Soviet Union leader Gorbachev believed some changes should be done in socialist states, a more tolerant atmosphere formed in Eastern bloc with Soviet's permission.<sup>485</sup>

All these facts finally caused a series of significant events in socialist states, including the states in Visegrad area in 1989, which we now call Revolutions of 1989. The peaceful transitions in Visegrad states dramatically changed the state structure, socialist system didn't not existed in official documents, Czechoslovakia split into two countries, there are officially four countries in the Visegrad region. The evidences of change also could be traced in the governmental documents, especially the laws. Here, the author will examine the notable changes in the Constitution in each state during the transform period.

## **2.1 Development of the Constitution in Hungary in the Transform Period**

Since the state managed to peacefully transform into a rule of law state as it declared in the Constitutional amendment, it had four amendments in 1989, the beginning of the transform period, and it declared that these modification entered into force until the new Constitution was adopted, which at the very beginning, everyone considered this period should not take a long, however, it turned out the new Constitution was adopted not until 2011. After the first four amendments adopted in 1989, there were 25 amendments adopted.<sup>486</sup> Here the author will examine the final version of the 1949 Constitution, which had its last amendment in 2009.

There were 15 Chapters in the Constitution. The basic structure of the Constitution wasn't changed significantly, we still could divide it into six parts and a short introduction of the purpose of the amending, which was acting as a provisional Constitution for "a constitutional state, establishing a multi-party system, parliamentary democracy and a social market economy"<sup>487</sup> until the new Constitution was adopted by

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<sup>485</sup> Ronald D. ASMUS, J. F. BROWN, Keith CRANE, *Soviet Foreign Policy and the Revolutions of 1989 in Eastern Europe* (Rand Corp 1994) Summary.

<sup>486</sup> Each amendment of 1949 Hungarian Constitution is available <<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK09150.pdf>> accessed 17 November 2017.

<sup>487</sup> Act of 31,1949 Hungarian Constitution, final version is available <[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=190398](http://www.wipo.int/wipolex/en/text.jsp?file_id=190398)> accessed 15 November 2017.

the National Assembly.

The first part was the general provisions, it removed the “socialist state” provision, and “The State of Hungary is a republic”. The ultimate principles in the state were covered in this Chapter. From the economic system to political system, from people’s fundamental rights to foreign policy of the state, the first Chapter gave us a very first glance of this state, which was the core interest of Republic of Hungary.

In the political system, Hungary abandoned socialist-style political system, which was very centralized, and one Party ruling. In amendment, Article Three stated that “...political parties may be established and function freely...” With the purpose to implement the multi-party system which was announced in the brief introduction of the amendment, “...no single party may exercise exclusive control of a government body...”

In the economic system, Hungary adopted a market economy system, which was used to be attacked by socialist states. Public economy and private economy shall protect by law equally, and freedom of competition shall be guaranteed.

The Amendment also announced that citizens in Republic of Hungary shall guarantee their fundamental human rights and it was the primary obligation of the state.

In the foreign policy, Republic of Hungary turned to Western Europe’s group, to join and assimilate into European Union which became the government’s primary diplomatic task.<sup>488</sup>

Republic of Hungary also made several radical changes in the political system. Parliament still considered as the supreme body of the state power, the mandates of Parliament shall be carried out by sessions, and each year there were regular sessions. However, the period of each session was extended, the first session shall start in 1st of February and finish at 15th of June; the second session lasted from 1st of September to 15 of December. National referendum shall be held if there were enough voting citizens initiated. What’s more, the checks and balance system was introduced in to the political system in Hungary. Competences of Parliament required the cooperation of the President of Republic, who is elected by the Parliament and considered as the head of

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<sup>488</sup> Chapter One, final version of 1949 Hungarian Constitution.

state. Four other positions were introduced by the amendment, which closely related to the Parliament. Constitutional Court shall watch the implementation of the Constitution in the Act XXXII of 1989, a detailed examining shall be given in the following part. Republic of Hungary shall protect its citizens' civil rights by establishing the special office, Parliamentary Ombudsman. Two national offices, the State Audit Office and National Bank of Hungary were set up in order to build a healthy financial situation in Hungary.

Regulations on the Hungarian central government also changed. Prime Minister shall be elected by the Parliament based on the recommendation of the President. Besides the basic competences of government, Hungarian government and Parliament borne a special task in order to integrate into European Union. What's more, three national institutions were introduced to public. Hungarian armed forces and police shall protect the public security, maintain law and order, and guard the borders of the state. A national financial supervision authority (State Auditor Office of Hungary) was designed to keep a healthy economic order in the state. National media and info-communication authority shall take the responsibility to facilitate the operation of electronic communication market smoothly.<sup>489</sup>

The third part related to the judiciary system. The highest court in Hungary was the Supreme Court. The President of Supreme Court shall be elected by Parliament, based on the recommendation of the President of the Republic, other positions in the Supreme Court shall be appointed by the National Council of Jurisdiction. Judges in the court may not be any Parties member and engage in political activities, in order to keep the judgment fairly and without prejudice.

Office of the Public Prosecutor shall undertake the task to protect individuals, Constitutionality, and security of the state. Prosecutor in Chief was the highest body of prosecutory system. The election of Prosecutor in Chief was similar to the election of President of Supreme Court. Public prosecutors shall not be Party members and engage

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<sup>489</sup> From Chapter Two to Chapter Nine, which introduced the political system in Republic of Hungary. final version of 1949 Hungarian Constitution.

in political activities.<sup>490</sup>

Citizens in Republic of Hungary enjoyed numerous rights according to the Constitution, meanwhile, several duties were required to Hungarian citizens in order to protect the ruling the country smoothly. In general, citizens in Hungary were encouraged and guaranteed to participate in the political and social affairs. It was more difficult to change the provisions on civil rights, in order to guarantee the protection of civil rights were stable, a majority of two-thirds votes of Parliament members was required. Hungarian citizens were also asked to fulfil several duties, such as protect the homeland tax paying.<sup>491</sup>

The fifth part was electoral principles. Each level representatives and mayor of the city shall be elected by direct, secret ballot by voting citizens, and each voting has equal rights.

The last part adopted a national anthem and removed the socialist symbol in national flag and coat of arms. Besides, it ensured the fundamental status of Constitution also followed Constitution and laws were the obligated to Hungarian citizens.

## **2.2 Development of the Constitution in Czechoslovakia in the Transform Period**

Even though at the beginning of 1989, some crucial changes happened in socialist regime, citizens in Czechoslovakia did not expect the “velvet revolution” shall take place in their homeland. However, the solid communist regime suddenly collapsed in the end of 1989, Czechoslovakia turned its face to the west.<sup>492</sup>

The unexpected victorious transform in Czechoslovakia encouraged people, a new Constitution was planned to be drafted by a special Constitutional commission. For the same reason, the newly elected President of Czechoslovakia, Vaclav Havel and the Parliament were to serve their term of office for two years instead of the regula, four years.

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<sup>490</sup> Chapter Ten and Chapter Eleven regulated the judiciary system in Hungary, final version of 1949 Hungarian Constitution.

<sup>491</sup> Chapter Twelve, final version of 1949 Hungarian Constitution.

<sup>492</sup> Kevin MCDERMOTT, *Communist Czechoslovakia, 1945-89: A Political and Social History* (1st edn, Palgrave 2015).

As Cutler and Schwartz's Article indicated,<sup>493</sup> a Constitutional commission was formed in the Parliament in September 1990. It was to prepare a new Constitution and submit it to the Parliament. Then the new-born country shall develop with its new Constitution.

The following certain issues in the Constitution were required to pay a special attention, in order to have a smoothly Constitution-drafting period.

The first issue shall be focused was federalism. Czechoslovakia made an important amendment in 1968, according to the amendment, Czechoslovakia was a federal state instead of unitary state. In accordance with the federal structure, the structure of government, economic policy and jurisdiction in Czechoslovakia also revised.<sup>494</sup> After the collapsed of the Communist regime in Czechoslovakia, the federal state seemed became weaker than it used to be. The loose federalism in Czechoslovakia could be traced in the Constitutional crisis, which referred to the name of the federal state. On 29 March of 1990, Parliament in Czechoslovakia adopted a Constitutional amendment, since communist party lost its ruling position, therefore, socialist system was not apply for the state any more. The new name "Czechoslovak Federal Republic" replaced the old name "Czechoslovak Socialist Republic".<sup>495</sup> However, Slovaks were not satisfied with the new name, several demonstrations happened in Slovakia region. Luckily, the crisis didn't last too long and in April, shorter than one month a new Constitutional amendment was adopted. It shall to be Czech and Slovak Federative Republic.<sup>496</sup> Even the unofficial name Czechoslovakia, which was accepted by the world more than 70 years had a slight change, the new version shall be "Czecho-Slovakia"<sup>497</sup> It implied that Czechoslovakia as a whole was receiving less and less support in Czechoslovakia, especially in Slovakia region.

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<sup>493</sup> This article was the result of the request of President Vaclav Havel, and sponsored by 77-New York Foundation and the Salzburg Seminar. Lloyd CUTLERT and Herman SCHWARTZ, 'Constitutional Reform in Czechoslovakia: E Duobus Unum?' (1991) 58 *University of Chicago Law Review* p. 511, 522.

<sup>494</sup> Constitution of Czechoslovak Federation, 1968 <<http://czecon.law.muni.cz/content/en/ustavy/1968/>> accessed 19 November 2017.

<sup>495</sup> Act No. 81 of 1990 <<http://www.noveaspi.sk/products/lawText/1/38417/1/2>> accessed 20 November 2017.

<sup>496</sup> Act No. 101 of 1990 <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1990/101/>> accessed 20 November 2017.

<sup>497</sup> Jan RYCHLIK, 'The "Velvet Split" of Czechoslovakia (1989-1992)' in M. Mark STOLARIK (ed.) *The Czech and Slovak Republics: Twenty Years of Independence, 1993-2013* (CEU Press 2016) p. 28, 29.

The second issue focused on civil rights. The most notable Constitutional amendment of human rights and freedom was adopted on 9 January 1991 by Parliament. Not like the early stage of the bill of rights in other countries, the structure of Charter of Fundamental Rights and Freedoms<sup>498</sup> (hereinafter the Charter) in Czechoslovakia was more like a small Constitution. It included the Preamble, general provision and entailed Articles.<sup>499</sup>

The Preamble of the Charter addressed the democratic and self-governing traditions in Czechoslovakia, and it was suppressed during the communist period. The Charter was adopted under the request of Czech National Council and Slovak National Council, in order to protect human rights and freedom in Czechoslovakia and so called “join in dignity the ranks of countries cherishing these values” i.e. join the the latter European Union.

The second part of the Charter was a general provision. It consisted of four Articles. It ensured the fundamental rights and freedom of human shall be equal to everyone, and shall not be taken away by anybody or institutions without the legal trail. Fundamental duties shall only be imposed by law only if the fundamental rights and freedom were respected.

The detailed provisions in the Charter were divided into four sections. The first section was human rights and fundamental freedom. In detail, it consisted of two parts, fundamental human rights and freedoms and political rights. In general, such rights could be found in other countries’ bill of rights, since such rights were considered as universal rights, it shall be entitled to everyone, no matter his or her nation, sex and age. In the fundamental human rights part, for instance, people shall enjoy the right of life, freedom of movement, residence and thought, protect from force to work and slavery, it doesn’t matter he or she has Czechoslovakia citizenship or not. In the political rights part, citizens were encouraged to participate in the political movement and enjoy the freedom to express their own opinion.

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<sup>498</sup> Act No. 23 of 1991  
<[https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/23-1991.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/23-1991.pdf)> accessed 20 November 2017.

<sup>499</sup> Lloyd CUTLERT and Herman SCHWARTZ, ‘*Constitutional Reform in Czechoslovakia: E Duobus Unum?*’ (1991) 58 *University of Chicago Law Review* p. 511, 532.

The second section was rights of national and ethnic minorities. German in Czech region, Hungarian and Roma in Slovakia region were constituted the major minorities in Czechoslovakia. In this section, language and culture of minorities shall protect by the state.

The third section was economic, social and cultural rights. On paper, citizens in Czechoslovakia enjoyed more rights than their western neighbors. It was a combination of such rights in socialist states and capitalist states. For example, the free education at elementary and secondary schools and even in university.

The fourth section was right to judicial and other legal protection. Provisions in this part were more inclined to the European tradition. Especially in Article 37, it stated that “Everybody has the right to refuse to make a statement if he or she would thereby incriminate himself or herself or a close person.”

The last part of the Charter was the joint provisions. It included some technical provisions, in order to implement the Charter more smoothly.<sup>500</sup>

The third issue, which particularly concerned the governors, was independence of judiciary. As it mentioned in the Constitution, the judiciary system especially the court part could be divided into two parts, the Constitutional court and general court system. Constitutional court was amended in Constitution in 1968, however this provision never entered into force, therefore, the Constitution made some modification on Constitutional court. Since the Constitutional review of Visegrad states and China shall be compared in the last part of this Chapter, here the author only introduces these modifications on general court system. As indicated before, revisions of Constitution in this part were mainly focus on the independence of general court system. The most significant change was adopted in July 1991. In the Constitutional amendment, judges were required to perform his or her duties bound by law only.<sup>501</sup> Besides, in a previous amendment, newly elected-judges shall take an oath ensure they only bound by Constitution and other laws and make the judgment independently and impartially.<sup>502</sup>

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<sup>500</sup> This part was based on the Act No. 23 of 1991 and Lloyd Cutlert and Herman Schwartz’s article.

<sup>501</sup> Act No. 326 of 1991 <<http://www.zmenyzakonu.cz/zakon.aspx?id=9938>> accessed 21 November 2017.

<sup>502</sup> Act No. 376 of 1990 <<https://www.zakonyprolidi.cz/cs/1990-376/zneni-19910901?porov=19900920>>

Nevertheless, the expected new Constitution was never adopted by Parliament, since Czechoslovakia peacefully split into Czech Republic and Slovakia in the end of 1992. The transform period in Czechoslovakia was quite short. It started in 1989, and ended in 1992 when Czech Republic and Slovak Republic adopted their new Constitutions. Besides the Constitutional amendments mentioned before, the following amendment should be noted. The Act No. 135 of 1989 made two very impressive revisions. The first one deleted the leadership of Communist Party of Czechoslovakia in National Front. The second modification stated the cultural policies, development of education shall guide by “spirit of scientific knowledge and in accordance with the principles of patriotism, humanity and democracy” instead of “directed in the spirit of the scientific world outlook, Marxism, Leninism...”<sup>503</sup> Another Amendment adopted in 1990, changed the national symbols in Czechoslovakia.<sup>504</sup>

### **2.3 Development of the Constitution in Poland in the Transform Period**

During the whole of 1980s, Polish People’s Republic was famous of its trade union’s movements, Solidarity which was established in August 1980. In 1989, Solidarity reached its climax, it played a crucial role during the transform period in Poland.<sup>505</sup>

Like its neighbors in Visegrad region, after the collapse of communist Party in Poland, Constitution in Poland had several important revisions. Among these amendments, three of them were widely considered as the most significant. Thus, the author will mainly introduce these three amendments. The first amendment was adopted in April of 1989 and the second was adopted in the same year in December. The last one was so called small Constitution which was adopted in 1992. These amendments significantly changed the 1952 Polish Constitution, until the current Polish Constitution adopted in

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accessed 21 November 2017.

<sup>503</sup> Act No. 135 of 1989 <<https://www.zakonyprolidi.cz/cs/1989-135>> accessed 21 November 2017.

<sup>504</sup> Act No. 102 of 1990 <<https://www.zakonyprolidi.cz/cs/1990-102>> accessed 21 November 2017.

<sup>505</sup> Especially when Solidarity won the Parliamentary election in both Houses in June of 1989. Andrzej BALABAN, ‘*Developing a New Constitution for Poland*’ (1993) Clev. St. L. Rev. p. 503, 505 <<http://engagedscholarship.csuohio.edu/clevstlrev/vol41/iss3/4/>> accessed 22 November 2017. See also Grzegorz GORSKI, ‘*Constitutional changes in Poland between 1989 and 1997*’ (2014) Vol. 1, *The Journal of Kollegium Jagiellonskie Torunska Szkola Wyzsza* <<https://www.degruyter.com/downloadpdf/j/lape.2014.1.issue-1/lape-2014-0001/lape-2014-0001.pdf>> accessed 22 November 2017 and Maciej BARTKOWSKI, ‘*Poland’s Solidarity Movement (1980 – 1989)*’ (2009) *International Center on Nonviolent Conflict* <[https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/bartkowski\\_poland.pdf](https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/bartkowski_poland.pdf)> accessed 22 November 2017.

1997.

The transform period in Poland started in 1989, in the same year, a Constitutional amendment was adopted on April 1989.<sup>506</sup>

During the transform period, so called round table talks first initiated in Poland between the government and protesters who most came from the Solidarity in 1989, which later were followed by Hungary and Czechoslovakia.<sup>507</sup> The outcome of the round table was a Constitutional amendment which was adopted on 7 April of 1989. In the amendment, two major changes had been introduced.

The first change was a new Parliamentary election. According to the new regulation, the election of Senate shall be totally free, and for the election of Sejm deputies, the free election proportion was 35 %, the remaining positions of deputies in Sejm shall be reserved to United Polish Workers' Party.

The second change in the amendment was new Constitutional institutions were introduced. As mentioned in the last paragraph, two Houses system was restored. Besides, the Sejm, Senate constituted one part of the Parliamentary system in Poland. The second institution which was restored in Poland was the head of state, President of Polish People's Republic, and who was granted wide competences. A new institution was introduced to the public, National Judiciary Council in order to strengthen the function of judiciary branch in Poland, the new judiciary body shall appoint the judges of the court.<sup>508</sup>

After the April amendment entered into force, an election was held in June, Solidarity won the election. In the same year, another important Constitutional amendment was adopted on 29 December 1989. It radically changed the political system in Poland, the Communist Party in Poland lost its ruling position.

Two major changes in the 1989 amendment had been made. The first modification was the freedom of political system and a multiparty system had been established in

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<sup>506</sup> Boguslaw BANASZAK, 'General Introduction' in BOGUSLAW BANASZAK et al. (eds), *Constitutional Law in Poland* (Wolters Kluwer 2012)

<sup>507</sup> Michael D. KENNEDY, 'Negotiating Revolution in Poland: Conversation and Opportunity in 1989' (2002) project essay of University of Michigan <<https://www.ucis.pitt.edu/nceer/2002-815-10g-Kennedy.pdf>> accessed 23 November 2017.

<sup>508</sup> Boguslaw BANASZAK, 'General Introduction' in BOGUSLAW BANASZAK et al. (eds), *Constitutional Law in Poland* (Wolters Kluwer 2012) p. 23.

Poland. The most significant change was restoring the traditional name of the State, the Republic of Poland replaced the name which was adopted in the 1952 Constitution, Polish People's Republic. What's more, release of the political control in Poland was established through the amendment. Communist Party in Poland lost its dominating position, political parties and politicians allowed to register freely in the case of following the laws and Constitutional regulations.<sup>509</sup> Since the socialist system was totally abandoned in Poland, the socialist ideology also lost its dominating position. The amendment removed the socialist style Preamble in the 1952 Constitution, and in the first two Articles of the new version Constitution, it announced that "a democratic state of law realizing the rules of social justice" and "the highest authority belongs to the nation"<sup>510</sup> The new state was not based on the socialist ideology any more, and the democratic system had been elaborated in the Constitutional amendment.

The second revision in the amendment was freedom in economic system. The six and seven Article in the Constitution removed the socialist economic system. Public or state ownership lost the dominating position, as it stated in the amendment "The Republic of Poland guarantees freedom of economic activity regardless of the form of ownership" Besides, the socialist economic style "national socio-economic plan" had been eliminated in the amendment.<sup>511</sup>

Solidarity continued its victories in political elections, the leader of Solidarity, Lech Walesa won the Presidential election in December of 1990.<sup>512</sup> With the development of Solidarity in Poland, Polish Constitution also improved. The most important amendment during the transform period was adopted on 17 October 1992, which was famous for its

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<sup>509</sup> Andrzej BALABAN, 'Developing a New Constitution for Poland' (1993) 41 Clev. St. L. Rev 503, 506. <<http://engagedscholarship.csuohio.edu/clevstlrev/vol41/iss3/4>> accessed 23 November 2017.

<sup>510</sup> Grzegorz GORSKI, 'Constitutional changes in Poland between 1989 and 1997' (2014) Vol. 1 *The Journal of Kolegium Jagiellonskie Torunska Szkoła Wyższa* <<https://www.degruyter.com/downloadpdf/j/lape.2014.1.issue-1/lape-2014-0001/lape-2014-0001.pdf>> accessed 23 November 2017.

<sup>511</sup> Amendment to 1952 Polish Constitution, 29 December 1989 <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19890750444/T/D19890444L.pdf>> accessed 23 November 2017. See also Bogusław BANASZAK, 'General Introduction' in Bogusław BANASZAK et al. (eds), *Constitutional Law in Poland* (Wolters Kluwer 2012) p. 24, 25.

<sup>512</sup> Grzegorz GORSKI, 'Constitutional changes in Poland between 1989 and 1997' (2014) Vol. 1 *The Journal of Kolegium Jagiellonskie Torunska Szkoła Wyższa* <<https://www.degruyter.com/downloadpdf/j/lape.2014.1.issue-1/lape-2014-0001/lape-2014-0001.pdf>> accessed 23 November 2017.

unofficial name Small Constitution, since it included the preamble, general principles and detailed Chapters for political system in Poland.<sup>513</sup>

The preamble part of Small Constitution stated the purpose of the amendment. That is, “improving the activity of the supreme authorities of the State, pending the passing of a new Constitution of the Republic of Poland”<sup>514</sup>

Two Articles were regulated in the general principles part. The first Article divided the state power into three parts: legislative power shall be shared by Sejm and Senate of the Republic of Poland. Executive power shall be shared by President of the Republic of Poland and the Council of Ministers. Judiciary power shall belong to independent courts. The second Article required the central level officers shall perform their mandates under the law. What’s more, central level officers shall report their financial situation at the beginning and end of the term of the office.

Four chapters constituted the detailed provisions of political system in the Republic of Poland. The first part regulated the legislative power. As mentioned above, the Republic of Poland restored the two Houses system since the April Constitutional amendment was adopted in 1989. Sejm was consisted of 460 deputies via a secret ballot in general, equal, direct, and proportional elections. Senate consisted of 100 senators chosen by administrative region for the term of the House of Representatives, by secret ballot, in free, general and direct elections. In the amendment, there were several provisions were regulated in order to guarantee the Deputy in the Sejm may perform his or her mandates independently. For instance, after the election, the Deputy in the Sejm shall not follow the instruction from his or her electoral district and shall not be subject to recall. During the Sejm session and after, the performance of deputies shall not be prosecuted unless such activities violating human rights occur. Sejm and Senate cooperated during the legislative exercises, any statute which adopted by Sejm shall be submitted to Senate by Marshal of Sejm, Senate may adopt or not adopt the statute. If the Senate accepted the bill, then Senate shall be submitted it by the Marshal of Sejm to

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<sup>513</sup> Small Constitution in Poland, 1992 <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19920840426/T/D19920426L.pdf>> accessed 24 November 2017, English version is available <[http://www.servat.unibe.ch/icl/p102000\\_.html](http://www.servat.unibe.ch/icl/p102000_.html)> accessed 24 November 2017.

<sup>514</sup> Ibid.

President of the Republic of Poland. If the Senate didn't accept the bill, it shall return to Sejm, however, if the Sejm passed the statute with an absolute majority vote, then Sejm may overrule the rejection of Senate. Meanwhile, during the law-making process, the President has the similar competence like the Senate has. The principle of the checks and balance was embodied in the Polish Constitutional amendment.

The second part stated the executive power of the Republic of Poland which shared by the President of the Republic of Poland and the Council of Ministers. Chapter Three of the Small Constitution regulated the competences of President of the Republic of Poland. The Presidential election shall be operated by a direct and secret ballot. Presidential term for President was five years. President, considered as the head of state, played a very important role in the international relationship with other states, the observer of the Polish Constitution. What's more, the President shall be the supreme commander of the armed forces in Poland. President shall appoint the Prime Minister of the Government, and as mentioned before, President of the Republic of Poland had an important role in the law-making process in Poland.

Chapter Four in Small Constitution focused on the other executive branch, the Council of Ministers, or so-called Government. The Council of Ministers consisted of Prime Minister, Deputy Prime Minister, ministers and other officers. Prime Minister was the chief officer in the Government. The President of the Republic of Poland shared some executive power, Council of Ministers considered as the most important executive branch in the state. It shall implement the statutes, supervise the local governmental activities and safeguard the security of homeland. Regulations shall be issued by the Council of Ministers in order to fulfil the tasks mentioned above.

Regulations on local self-government were promulgated in the Chapter Five. Small Constitution entitled a broad governing power to local government. The performance of the local self-government shall act for the local inhabitants' interests. Local self-government enjoyed a great freedom in governing, only limited by laws. For the purpose of fulfilling the task, officers in the local self-government shall elected by the local inhabitants directly.

The last part in the Small Constitution was transitional and final provisions. The first

Article in this Chapter provided a reason for the deputy or senator who appointed the officers mentioned in the Article 8 of the Small Constitution. Provisions in the Small Constitution shall replace the former provisions in the 1952 Polish Constitution. Small Constitution shall enter into force in 14 days after its promulgation.

Until the 1997 Constitution promulgated, one Constitutional amendment adopted in 1994. After the collapse of Communist regime, even though, the 1952 Polish Constitution was significantly changed, adopting a newly democratic Constitution became the desire of the masses. The most significant change in this amendment was in Poland it was allowed to submit a draft version Constitution, if there were over 500,000 citizens signed the petition.<sup>515</sup>

### **3. Comparative Analysis of Development of the Constitution Between China and Visegrad States in the Transform Period**

Revolutions of 1989 dramatically changed the political environment in Visegrad states and affected the ruling policies in People's Republic of China. In the last part, the author introduced how the Constitution in Visegrad states had the crucial amendments during the transform period, also some modest revisions of the Chinese Constitution created a better political and economic environment for the development of the Chinese economy, which now led an economic miracle in the past thirty years. In this part, the author will make a comparative approach and examine the similarities and differences of the Constitutional development between China and Visegrad states during the transform period.

#### **3.1 The Similarities**

People's Republic of China and the states in Visegrad region witnessed the vital point in the end of 1980s. Even though, after the Revolutions of 1989, Visegrad states abandoned the socialist system and officially announced that the state will not be

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<sup>515</sup> Amendment to 1952 Polish Constitutional, 1994 <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19940610251/T/D19940251L.pdf>> accessed 24 November 2017. See also Lech GARLICKI, Zofia A. GARLICKA, 'Constitution Making, Peace Building and National Reconciliation: The Experience of Poland' in Laurel MILLER (ed.) *Framing the State in Times of Transition: Case Studies in Constitution Making* (U.S. Institute of Peace Press 2010) p. 396.

socialist state any more in the Constitutional amendments. In Chinese case, several important Constitutional amendments adopted by the National People's Congress, albeit the state still announced the socialist system will practice in People's Republic of China but with so called Chinese characteristics.

The first similarity of the Constitutional development between People's Republic of China and Visegrad states was each country made their own serious decisions on their own country's future. There were no Soviet Union influences any more. Even the road to develop between People's Republic of China and Visegrad states seemed led to opposite direction, and it was reflected in the Constitutional amendments in each state.

In Chinese Constitutional amendments which adopted during the transform period, the country kept the socialist system, but the creative minds in the Chinese Communist Party added the Chinese characteristics into the Constitutional amendment. Besides, it divided the stage of the socialist system, and China during the transform period belonged to primary stage for a long time to come.<sup>516</sup> The revisions which mentioned above showed the creativeness of the Communist Party. It led China to build its own road of socialist construction.

Visegrad states chose another road to develop their countries. Socialist system and the ruling position of Communist Party in the Constitution were deserted immediately after the Revolutions of 1989. Hungarian Constitutional amendment should be considered as a good example. It was the outcome of Round Table Talks, which were inspired by the Polish model. The Preamble of the Act 31 of 1989 in Hungary, which is also the Constitutional amendment in 1989, promulgated that Hungary will take a "multiparty system, parliamentary democracy..." and finally will lead to a "peaceful transition to a Constitutional state"<sup>517</sup> Many Constitutional traditions before the Second World war

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<sup>516</sup> In 1993 Amendment to Constitution of the People's Republic of China, it modified the Preamble part, and firstly introduced so called socialism with Chinese characteristics theory, in order to build Chinese socialist system. In the same Article, it stated that "China is at the primary stage of socialism." Later, in the next Constitutional amendment which adopted in 1999, it predicted that the primary stage of socialism in China shall last a long time to come. Amendment to Constitution of the People's Republic of China, 1993 <[http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content\\_4585.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4585.htm)> accessed 26 November 2017, Amendment to Constitution of the People's Republic of China, 1999, <[http://www.npc.gov.cn/wxzl/wxzl/2000-12/10/content\\_7075.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/10/content_7075.htm)> accessed 26 November 2017.

<sup>517</sup> Act 31 of 1989, Amendment to the Hungarian 1949 Constitution, 1989. See also Rudolf L. TOKES, 'Institution Building in Hungary: Analytical Issues and Constitutional Models, 1989-1990' in Andras

were restored in the new Constitutional documents. Polish reestablished the two Houses system, the position of President in Poland and Hungary were reinstated in the Constitution.

Another noticeable similarity was the doctrinal economic system of socialist system, i.e. planned economy was dumped in each state, including China.

It was easy to understand that Visegrad states abandoned the planned economic system in the economic principle in Constitution, since the states in Visegrad region gave up the socialist system and decided to restore their Constitutional traditions. Therefore, during the transform period, market economy in each state were reestablished and regulated in the Constitution.

Chinese Constitution also abandoned the planned economy and made a modification in the Constitutional amendment in 1993. Article Fifteen in the Constitution had been changed to “The state has put into practice a socialist market economy” that means in Chinese socialist theory, market economy was not the unique feature of capitalism, in socialist state, it was possible to employ market economy. The so called socialist market economy was the most important part of the Deng Xiaoping economic theory.<sup>518</sup> Deng has a very famous analogy of whether to choose market economy or planned economy in China, “It doesn't matter whether the cat is black or white, so long as it catches mice.”<sup>519</sup> The same consideration had been reflected in Chinese economic system, be market or planned economy, the economic system that can develop Chinese economy is the good one. However, as a socialist state with Chinese characteristics, the market economy also gained a premise, “socialist”.

During the transform period, crucial amendments on political and economic fields had been adopted in China and the Visegrad states, some of the modifications were even quite similar, only the extended changes in the Visegrad states were much deeper than

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BOZOKI (ed.) *The Roundtable Talks of 1989: The Genesis of Hungarian Democracy: Analysis and Documents* (Central European University Press 2002)

<sup>518</sup> Tieying LI, former leadership of Communist Party of China, ‘社会主义市场经济理论的形成和重大突破-纪念中国共产党十一届三中全会 20 周年 [The Formation and Significant Breakthrough of Socialism Market Economic Theory: In Memorial of the 30th Anniversary of the Third Plenary Session of the Eleventh Central Committee of CPC]’ (1999) Vol. 3 *Economic Research Journal*.

<sup>519</sup> ‘In quotes: Deng Xiaoping’ (*China Daily*, 20 August 2014) <[http://www.chinadaily.com.cn/china/2014-08/20/content\\_18453523.htm](http://www.chinadaily.com.cn/china/2014-08/20/content_18453523.htm)> accessed 27 November 2017.

the Chinese case.

### **3.2 The Differences**

Compared with the communist regime in established period and reform period, the differences of the Constitutional development in transform period between China and Visegrad states were more obvious. States in Visegrad region deserted the socialist system and tried to integrate with their western neighbors. Meanwhile, People's Republic of China kept the socialist system, but some changes had been introduced and reflected in the Constitutional amendments. In this part, the author will not compare how the detailed provisions of the Constitutional documents had been changed in each state, since such changes were so obvious and easy to access in the Internet. The main effort is focused on the reasons of different choice of Constitutional development between China and Visegrad states. Even though, each country in Visegrad region had its own social conditions, the main trend of Constitutional development was similar, socialist system collapsed and states in this region heavily revised their Constitutions during the transform period, latter, a new version capitalist Constitution adopted. Therefore, in the following analysis, Visegrad states will be treated as an entirety, and the comparative analysis will be conducted as two parts: legal tradition and political practices.

#### **3.2.1 Legal Tradition**

Even though, after the Second World War, People's Republic of China and states in Visegrad region established its socialist system and adopted the socialist Constitution. This system functioned in these countries forty years, more or less. However, if we trace the legal tradition between China and Visegrad states, especially on the constitutional culture, the huge differences were easily to noticed, and what happened during the transform period also showed how the legal tradition between China and Visegrad states leading the two groups chose different path and Constitution.

In Chinese legal education system, currently there were mainly four legal systems in the world, civil law legal system, common law legal system, Islamic legal system or so-called Sharia and socialist legal system. However, if we come to the legal history in

China even the whole Far East region, Chinese legal system dominated for centuries.<sup>520</sup> Chinese legal system is believed to originate in three sovereigns and five emperors period, it had the first crucial development in Qin and Han Dynasty, more than two thousand years ago and it finally formed in Tang Dynasty with the promulgation of Tang Code. Chinese legal system was a hybrid of Legalism, Confucianism and Taoism. Especially the Confucianism played a vital role in the whole Chinese legal system period. Three cardinal guides and five constant virtues,<sup>521</sup> as the major principle in the legislature in Chinese legal system, assimilated into Chinese daily life. In the relation between government and people in ancient China, it embodied that masses were considered as the subject of the governor, and they should express loyalty to the governor, and governor shall take care of his subjects.<sup>522</sup> This legal thought practice in ancient China until the late Qing dynasty forced to adopt the western legal system.<sup>523</sup> The modern concept of Constitution first appeared in China in the end of 19th century, later, Qing dynasty collapsed and its successor, Republic of China, nominally united China. However, warfare was in constantly broke out in China, implementation of Constitution became almost impossible.<sup>524</sup> With this consideration, Founding Father of the Republic of China, Sun Yat-sen planned his political road map in the Outline for Founding the Nationalist Government. Three stages were presented: military politics, tutelage politics and constitutional politics.<sup>525</sup> Which finally led to the third stage when the Constitution of Republic of China published in 1947.

Visegrad states experienced different legal tradition on Constitution in ancient time. The most notable example is the 1791 Constitution in Poland, which until now Polish

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<sup>520</sup> The Introduction of legal system is one major part in Jurisprudence course in China. However, the study of Chinese legal system should be conducted in the legal history course. Wangsheng ZHOU, *Jurisprudence* (1st edn, People's Court Press 2002) is available <<http://www.pkulaw.cn/fax/flx/index.htm>>, accessed 4 December 2017.

<sup>521</sup> Three cardinal guides: ruler guides subject, father guides son, husband guides wife. The five constant virtues were benevolence, righteousness, propriety, knowledge, and sincerity.

<sup>522</sup> Zhongqiu ZHANG, '中华法系道德文化精神及对未来大中国法的意义 [The Spirit of Ethical Culture of Chinese Legal System and Its Meaning for Greater China Law in the Future]' (2011) vol.5 *Law Science*. See also Maxim KOROLKOV. 'Legal Process Unearthed: A New Source of Legal History of Early Imperial China' (2017) 137.2 *Journal of the American Oriental Society*.

<sup>523</sup> The government in late Qing sent its ministers to other states and examined the legal system, finally the governor decided to adopt Japanese legal system which was considered as a successful follower of western legal system. *Ibid*.

<sup>524</sup> Qianfan ZHANG, *The Constitution of China: A Contextual Analysis* (1st edn, Hart Publishing 2012).

<sup>525</sup> *Ibid*.

people are proud of their second earliest Constitution in the world. This Constitution adopted by Sejm on 3 May 1791. It was the result of multi interest parts' compromise, after the republican revolution and numerous negotiations. King of the Polish - Lithuanian Commonwealth, Stanislaw August failed the control of the whole country and Sejm, people enjoyed more fundamental rights and a radical reform of law on government established in the 1791 Constitution.<sup>526</sup> However, according to some authors, the 1791 Constitution never entered into force,<sup>527</sup> it shows a totally different legal tradition between ancient China and Poland.

As an independent country, the first written Constitution in Hungary was the 1949 Constitution which as mentioned in the previous Chapter, fully copied the 1936 Soviet Union Constitution. Before the failure of First World War, Hungary was one constitutional state in Austro-Hungarian Monarchy. During the compromise period, a new Constitution adopted in December of 1867, which was called liberal Constitution. In the Constitution, Reichsrat (Imperial Council) gained the legislative power and citizens enjoyed more rights.<sup>528</sup> Czechoslovakia until the end of First World War independent from Austro-Hungarian Monarchy in 1918, two years later, a liberal Constitution adopted in 1920. Even in the Monarchy period, Czechs along with the other liberals fought for the legal Constitution in 1860s.<sup>529</sup>

The different legal traditions led China and Visegrad states to choose different paths to develop. After the Revolutions of 1989, legislature restored the pre-communist Constitution in Visegrad states and such revisions of Constitution were welcomed among the masses. In Chinese case, the liberal Constitution never was implemented. Most people were preferred to lead by a strong central government like their ancestors did a thousand years ago.

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<sup>526</sup> Richard BUTTERWICK, *The Polish Revolution and the Catholic Church, 1788–1792: A Political History* (1st edn, Oxford University Press 2012)

<sup>527</sup> Anna GOGUT and Jerzy KUGLER (eds.) *The Polish Road to Democracy: The Constitution of May 3, 1791* (1st edn, The Sejm Publishing House 1991)

<sup>528</sup> Robin OKEY, *The Habsburg Monarchy, 1765-1918: From Enlightenment to Eclipse* (1st edn, Palgrave Macmillan 2002) p. 198,199. Hungary as a unitary state in Monarchy, entitled much more competences than other latter independent states in Monarchy, A J P TAYLOR, *The Habsburg Monarchy 1809-1919: A History of the Austrian Empire and Austria-Hungary* (first published 1948, Penguin Books 1990) p. 148, 149.

<sup>529</sup> Jonathan KWAN, *Liberalism and the Habsburg Monarchy, 1861-1895* (1st edn, Palgrave Macmillan 2013) p. 46-64.

### 3.2.2 Political Practices

If we only examine the Constitutions from each state, there is no doubt that differences existed on paper. However, if we examine the constitutional in practice, the gap between China and Visegrad states were even much wider.

Two examples from the election will be given as follows. A Massachusetts historical journal described the voting with beans and corn system in United States hundred years ago.<sup>530</sup> It is a surprise to know that the similar electoral method was employed in rural areas of China in 1930s and 40s. In the early stage of the People's Republic of China, secret ballot or show of hands are the legal voting methods in the Electoral Law of 1953. Later, during the Revolution Cultural period, applause became the main voting method.<sup>531</sup>

In Visegrad states, the voting method was more advanced and liberal than Chinese one. Take an example, Hungary held its first general election in 1848, Act IV and Act V of 1848 regulated the parliamentary election issue.<sup>532</sup> Act V of 1848 gave the details of the election procedure. The eligible voter shall vote personally and the voting shall be recorded as well in order to make the election fair.<sup>533</sup>

Another difference of elections between China and Visegrad states during the communist period in practice was the election of national representatives. In Chinese practice, an unequal voting rights between rural area and urban area existed since 1953, that first electoral law in People's Republic of China was adopted. In rural area, deputy to National People's Congress represented eight times more the population than urban area. Later, it amended to 4:1. Each vote entitled the same right regardless the voter's resident in rural area or urban area. This was realized by a new amendment adopted in

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<sup>530</sup> January Meeting, 1924. Gifts to the Society, 'Voting with Beans and Corn' (1923) vol. 57 Proceedings of the Massachusetts Historical Society <<http://www.jstor.org/stable/25080155>> accessed 6 December 2017.

<sup>531</sup> Biyao TIAN, 'Witness Democracy Through the Development of Voting Methods: From Voting with Beans to Mechanical Voting' (People, 9 November 2004) <<http://www.people.com.cn/GB/14576/15017/2976367.html>> accessed 6 December 2017.

<sup>532</sup> Tibor SEIFERT, 'General Elections 1848-1998' in Maria ORMOS and Bela K. KIRALY (eds Nora Arato trans.) *Hungary: Governments and Politics 1848-2000* (Atlantic Research and Publications, Inc 2001)

<sup>533</sup> Act V of 1848, Hungary <<https://1000ev.hu/index.php?a=3&param=5273>> accessed 7 December 2017.

2010.<sup>534</sup> Even this unequal election system didn't function constantly, from 1965 to 1975, there were nearly ten years National People's Congress didn't operate.<sup>535</sup>

In conclusion, the differences of the legal tradition and political practices between China and Visegrad states led the different paths chosen by each state after the Revolutions of 1989. Masses in China, not like the citizens in Visegrad states who strongly influenced by modern democratic theories, prefer a strong leadership to lead the state prosperous. Under the influences of Chinese legal tradition and less political practices in forty years from 1949 to 1989, even though Tiananmen Incident happened, the Communist party finally controlled the nationwide protests mainly led by the university students. Nevertheless, several constitutional amendments were adopted, and these modifications were mainly focused on economic reform.

#### **4. Comparative Analysis of the Constitutional Review System between China and the Visegrad States**

One of the criticisms about socialist states is provision in the Constitution only functioned on paper. In practice, the supreme organ of state power was only regarded as a rubber stamp. How to ensure the constitutionality in practice, this is not only the problem which socialist states are facing now, but also capitalist states try to solve. Recently, more and more states adopted the so called constitutional review system, in order to protect the implementation of provisions in Constitution.

According to Ginsburg and Versteeg's article, constitutional review originated from United States, especially after the *Marbury v. Madison* case. Later, this system spread over the world, in 1951, 38% Constitutional states in the world adopted the constitutional review system; by 2011, it increased to 83%.<sup>536</sup>

In this part, the author will examine the constitutional review between China and

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<sup>534</sup> Yuankai TANG, 'An Equal Chance: Amendments to the Electoral Law Guarantee Equality' (*Beijing Review*, 21 November 2011) <[http://www.bjreview.com/print/txt/2011-11/21/content\\_406841.htm](http://www.bjreview.com/print/txt/2011-11/21/content_406841.htm)> accessed 7 December 2017.

<sup>535</sup> On 4th January 1965, the First Plenary Session of the Third National People's Congress closed, the next plenary session held in January of 1975. Chongde XU, *中华人民共和国宪法史 [History of the Constitution of People's Republic of China]* (Fujian People's Publishing House 2003) p. 420, 421.

<sup>536</sup> Tom GINSBURG and Mila VERSTEEG, 'Why Do Countries Adopt Constitutional Review?' (2013) vol. 30, No. 3 JLEO <<https://academic.oup.com/jleo/article/30/3/587/881605>> accessed 7 December 2017.

Visegrad states.

#### **4.1 The Constitutional Review System in People's Republic of China**

The current Constitution in People's Republic of China promulgated in 1982, during the transform period, three Constitutional amendments have been adopted. Nevertheless, the modifications of Constitution were mainly focused on the economic system, there is no single amended article related to the constitutional review.

There are four versions of Constitutions in People's Republic of China, none of them tried to establish the Constitutional review system in China. The first version Constitution adopted in 1954, heavily influenced by the 1936 Soviet Union Constitution. In this version Constitution, National People's Congress shall amend the Constitution and supervise the enforcement of the Constitution.<sup>537</sup> Since the National People's Congress only gathering once a time for couple of days per year, it was difficult for Congress to supervise the implementation of Constitution. Meanwhile, the first version Constitution sooner became the law only in paper. In practice, it lost its support from the ruling party to masses.

Later the second version Constitution adopted at the very end of the Culture Revolution, only 30 Articles promulgated in the Constitution, it even removed the supervisory power of National People's Congress. The failure of Cultural Revolution also buried the second version Constitution, the third version Constitution adopted in 1978. It restored the competences of National People's Congress, the permanent organ, the Standing Committee of National People's Congress entitled to interpret the Constitution.<sup>538</sup>

The current Constitution promulgated in 1982, with four amendments adopted later. It maintained the competences of National People's Congress and its Standing Committee, even the Standing Committee shall supervise the enforcement of Constitution.<sup>539</sup> It is more logical, since it is a permanent organ, unlike the National People's Congress, deputies gathered in Beijing only for a few days meeting.

However, there are no such provisions in the Constitution or laws which embodied

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<sup>537</sup> Article 27, Constitution of People's Republic of China 1954.

<sup>538</sup> Article 25, Constitution of People's Republic of China 1978.

<sup>539</sup> Article 67, Constitution of People's Republic of China 1982.

the constitutional review system. Compared with bold legislations in economic field, the ruling party in China is more cautious in political and judicial reforms. Even though the constitutional review system didn't establish in China until now, if we limited the research period, only examining the judiciary cases in People's Republic of China in 20th Century, several notable cases were still available.

Among these cases, Qi's case is extremely notable.<sup>540</sup> This case started in 1999, after two years trial, the final judgment given by Shandong Higher People's Court with the official Reply from Supreme People's Court.<sup>541</sup> In this case, Supreme People's Court brought the constitutional provision in the reply, and it appeared in the final judgment of Qi's case. The former vice-President of Supreme People's Court, Huang Songyou commented "it creates the precedent of judicialization of Constitution."<sup>542</sup>

These cases seemed to show a new era of judiciary in China had arrived, however the dawn of constitutional review in China shall last or turn to dark is still under examination. Even though, more and more legal experts asserted the importance of constitutional review and implementation of Constitution in practice.<sup>543</sup> There are still more work to be done in the future.

## 4.2 The Constitutional Review System in Hungary

After the Hungarian national round table, several compromises had been decided. Among these fruitful outcomes, Hungary initiated a new constitutional supervisor organ, Constitutional Court. The detailed provisions of this new organ had been presented in

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<sup>540</sup> A brief introduction of Qi case: Plaintiff, Qi Yuling, female, 28 years old (in 2001), lives in Shandong Province. Defendant, Chen Xiaoqi, female, the same age in 2001 and lives in Shandong province. In 1990, Qi passed the entrance examination, Chen did not. However, with the help of Chen's father, Chen got Qi's admission letter and had the chance to attend the school and got her further education. 11 years later, Qi was unemployed, Chen got a job in Bank of China. Finally, Qi found that her right of education was infringed by Chen and sued Chen Xiaoqi et al. in 1999, the Final Decision made by Shandong Higher People's Court in 2001. A more detailed introduction, see Qianfan ZHANG, *The Constitution of China: A Contextual Analysis* (1st edn, Hart Publishing 2012). See also, Guobin ZHU, 'Constitutional Review in China: An Unaccomplished Project or a Mirage?' (2010) 43 *Suffolk University Law Review* p. 625, 644-49.

<sup>541</sup> Official Reply of the Supreme People's Court on Whether the Civil Liabilities Shall Be Borne for the Infringement upon a Citizen's Basic Right of Receiving Education [expired], <<http://www.lawinfochina.com/display.aspx?lib=law&id=1954&CGid=>> accessed 8 December 2017.

<sup>542</sup> Songyou HUANG, '宪法司法化及其意义--从最高人民法院今天的一个《批复》谈起 [Judicialization of Constitution and its meaning: Discussion on Today's "Reply" of Supreme People's Court]' *People's Court Daily* (Beijing, 13 August 2001) B1 <<http://www.gongfa.com/huangsyxianfasifahua.htm>>, accessed 9 December 2017.

<sup>543</sup> Jizeng FAN, 'Constitutional Transplant in the People's Republic of China: The Influence of the Soviet Model and Challenges in the Globalization Era' (2015) 2(1) BRICS LJ.

the Act XXXII of 1989, this is also one of the critical constitutional amendments promulgated during the transform period.

The new constitutional amendment which adopted on 29 October 1989 consisted of five chapters, 59 articles. It was the first time Hungary established its own constitutional review system. Amendment regulated the competences, election regulations of Constitutional Judges and the operation rules of the Constitutional Court. In the original regulation, 11 Constitutional Judges shall be elected by the National Assembly, the term for Constitutional Judge was nine years. This newly formed organ shall respond for the constitutionality of governing and legislations with specific proceedings.<sup>544</sup>

Before the establishment of Constitutional Court in Hungary, Hungarian government set up Council of Constitutional Law as the supervisory organ for constitutionality in Hungary. It first was introduced in the 1983 Constitutional Amendment.<sup>545</sup> Later, the detailed provisions of Council of Constitutional Law promulgated in Act I of 1984. And it was officially replaced by Act XXXII of 1989.<sup>546</sup>

In practice, National Assembly in Hungary elected the first five Constitutional Judges in November of 1989. With the result of election, Constitutional Court of Hungary commenced its constitutional review system on 1st January 1990.<sup>547</sup> The remaining six Constitutional Judges were elected in June of 1990 by the freely and newly elected National Assembly.<sup>548</sup>

### **4.3 The Constitutional Review System in Czechoslovakia**

Czechoslovakia, as a unitary country only lasted for two years after the Revolutions of 1989. In the beginning of 1993, Slovakia officially announced its development. However, during the period of Czechoslovakia, the earliest constitutional review system had been established before the communist regime was established among the Visegrad

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<sup>544</sup> Act XXXII of 1989, Amendment to 1949 Hungarian Constitution.

<sup>545</sup> Act II of 1983, Amendment to 1949 Hungarian Constitution.

<sup>546</sup> “Simultaneously with the entry into force of this statute, Act I. of 1984 on the Council of Constitutional Law is repealed.” Paragraph 1, Article 58, Act XXXII of 1989, Amendment to 1949 Hungarian Constitution.

<sup>547</sup> Constitutional Court of Hungary, ‘Brief history of the Constitutional Court of Hungary’ <<http://hunconcourt.hu/history/>> accessed 9 December 2017.

<sup>548</sup> Janos KIS, *Constitutional Democracy* (Zoltan Miklosi tr, 1st edn, CEU Press, 2003). However, in the introduction of the official website of Constitutional Court of Hungary, it mentioned only five Judges were elected.

states.

Czechoslovakia and its neighboring state, Austria almost at the same time created this specialized judiciary organ in the world in 1920.<sup>549</sup> The first Constitution in Czechoslovakia which was adopted in 1920, stipulated in the very beginning of its provisions that when the conflicts between laws and Constitution existed in practice, this special Court was required to solve the unconstitutionality. It established the constitutional review system in Czechoslovakia. In the later detailed act, Act 162 of 1920 regulated that Constitutional Court of Czechoslovakia consisted of seven Judges who shall serve for the Court for ten years.<sup>550</sup>

However, compared with the popular constitutional review system at present, several shortages should be pointed out. First, the Constitutional Judge was nominated by certain bodies instead of election. In details, President of Czechoslovakia shall nominate three judges with the recommendation of these organs: The Chamber of Deputies, the Senate and the Diet of Russia (Carpathian Ruthenia). And among the three judges, one of them shall be appointed as President of Constitutional Court by President of the Czechoslovakia. The other four judges, “two each are taken from the ranks of the judges of the Supreme Court of Justice and the Supreme Administrative Court.”<sup>551</sup> Secondly, Constitutional Court shall decide the constitutionality of the law, only certain bodies entitled to start the motion.<sup>552</sup> In such situation, the constitutional review system in Czechoslovakia rather like an exclusive club only available for the ruling class. Individual constitutional complaint or petition which is popular currently, is excluded from the constitutional review system in Czechoslovakia.

Czechoslovakia restored the Constitutional Court in 1968, in the same constitutional

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<sup>549</sup> Constitutional Court of Czech Republic, ‘Constitutional court of the Czechoslovak republic and its fortunes in years 1920-1948’ <<https://www.usoud.cz/en/constitutional-court-of-the-czechoslovak-republic-and-its-fortunes-in-years-1920-1948/>> accessed 11 December 2017.

<sup>550</sup> Act 162 of 1920, Czechoslovakia <<https://ia600209.us.archive.org/32/items/cu31924014118222/cu31924014118222.pdf>> accessed 11 December 2017. It widely considered as one part of the Constitutional Law, adopted on 9 March 1920.

<sup>551</sup> Ibid.

<sup>552</sup> The following bodies may propose a motion. Supreme Court of Justice or the Supreme Administrative Court, the Electoral Court, the Chamber of Deputies, the Senate or the Diet of Russia. ‘Constitutional Court in Czechoslovakia (1922) 8(8) ABA J 464’ <<http://heinonline.org/HOL/Page?public=false&handle=hein.journals/abaj8&page=464&collection=journals>> accessed 12 December 2017.

amendment, Czechoslovakia established federal system. The federal level Constitutional Court shall consist of twelve members, eight judges and four alternates which are elected by Federal Assembly. In compliance with the equal principle, four judges and two alternates shall be elected from the citizens of Czech Socialist Republic and the rest shall be the citizens of Slovak Socialist Republic. Each term for the Constitutional Court was seven years. Individuals may initiate constitutional complaint with certain conditions.<sup>553</sup> However, this advanced constitutional review system never entered into force during the communist period. Until February of 1991, Federal Assembly adopted a Constitutional Act on Constitutional Court which initiated the reestablishment of constitutional review system in Czechoslovakia. In the newly adopted Act, Constitutional Court was considered as judiciary body of protection of constitutionality. The detailed provisions in the Act were very similar to the Act 162 of 1920. 12 Constitutional Judges were appointed by President of Republic, not elected by the Federal Assembly. the Constitutional Court mainly solves the unconstitutionality of laws in the governing level. Citizens or organizations can't access to the constitutional complaint which used to regulate in the 1968 Constitutional Amendment.<sup>554</sup> The Constitutional Court as the third part of the state power intended to play an important role of the checks and balance in Czechoslovakia.

However, as we all know that Czechoslovakia was separated itself into two independent states in the end of 1992. Constitutional review system in Czechoslovakia mostly only existed on paper.<sup>555</sup>

#### 4.4 The Constitutional Review System in Poland

Polish Constitutional Tribunal was introduced in the constitutional amendment which adopted in March of 1982, the constitutional amendment consisted of two articles. It

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<sup>553</sup> Act 143 of 1968, Czechoslovakia  
<[https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/History/Constitutional\\_act\\_1948.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/History/Constitutional_act_1948.pdf)>  
accessed 12 December 2017.

<sup>554</sup> Act 91 of 1991, Czechoslovakia  
<[https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/History/Constitutional\\_act\\_1991.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/History/Constitutional_act_1991.pdf)>  
accessed 12 December 2017. See also Jiri PEHE, 'Constitutional Court to Be Establishment' *RFE/RL Report on Eastern Europe*, (Prague, 15 March 1991)  
<<file:///H:/Chapter%20five/1991-15March1991RFERL.pdf>> accessed 12 December 2017.

<sup>555</sup> History, the brief introduction of Constitutional Court of Czechoslovakia  
<<https://www.usoud.cz/en/history/>> accessed 12 December 2017.

roughly introduced the structure of Constitutional Tribunal of Polish People's Republic which was the judicial organ to review the constitutionality of all legal acts.<sup>556</sup> The detailed provision on Constitutional Tribunal finally promulgated on 29 April 1985. There were 12 judges in the Tribunal, one president, one vice-president and ten judges. All the judges shall be elected by Sejm. The term for the Tribunal is eight years. Only several certain bodies may initiate the motion on the conformity of a legislative act with the Constitution or another normative act with the Constitution or a legislative act. Inspiring from the western constitutional review system and the own realities of Poland, three methods of initiating the constitutional case in Poland were provided. The first method as mentioned above, certain bodies brought up the constitutionality between laws and Constitution to the Tribunal. The second method was the constitutional question existed in the specific case and regular court may submit the constitutional question to the Tribunal. The last method to initiate a constitutional review was Constitutional Tribunal volunteered to start the proceeding.<sup>557</sup> The 12 judges were elected by the Sejm in November 1985 and Tribunal operated on 1 January 1986. Later, a new constitutional amendment was adopted in 1989. The amendment expanded the competences of the Constitutional Tribunal, it may adjudicate the unconstitutionality of the aim or activities of a political party.<sup>558</sup> Meanwhile several Acts enlarged the scope of constitutional review. First, Constitutional Tribunal may review the statute when President of Republic delivered the statute to the Tribunal and ask for a constitutional inquiry. Secondly, Constitutional Tribunal allowed to give universal binding interpretations of statutes, which the power used to belong to Council of State.<sup>559</sup> Before the current Constitution adopted in Poland, legal scholars suggested that

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<sup>556</sup> Amendment to Constitution of Polish People's Republic 1982 <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19820110083/O/D19820083.pdf>> accessed 13 December 2017. See also Mark BRZEZINSKI, *The Struggle for Constitutionalism in Poland* (1st edn, St. Martin's Press, 1998).

<sup>557</sup> Ibid, Mark BRZEZINSKI. See also Constitutional Tribunal Act of April 29, 1985 <<http://www.asgp.co/sites/default/files/documents//MNTINVDJETJUNQQJKBKBJDFGPYDTHMU.pdf>> accessed 13 December 2017.

<sup>558</sup> Amendment to Polish Constitution 1989 <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19890750444/T/D19890444L.pdf>> accessed 13 December 2017.

<sup>559</sup> Mark BRZEZINSKI, *The Struggle for Constitutionalism in Poland* (1st edn, St. Martin's Press, 1998).

Constitutional Tribunal shall review the constitutionality of international agreement.<sup>560</sup>

#### **4.5 The Similarities**

It is difficult to compare the detailed structure and competence of the constitutional review organ between China and Visegrad states, since until now, the western democratic standard constitutional review system still was not established in China. However, as former socialist states in Europe, the way to form constitutional review system in Visegrad states during the communist period is similar to the exploratory period of constitutional review system in China in the late 1990s and beginning of 21 Century.

As socialist states, the communist theory attacked the separation of powers or checks and balances and its derivative, constitutional court. Since in the classical communist theory of state power, the state power shall belong to whole people and supreme organ of state power shall represent people to exercise the state power. Therefore, there is no need to establish constitutional court as an individual and independent judicial power.

People's Republic of China and Visegrad states in communist period followed this rule. However, since the campaign of democracy across the world since last century, especially in 1970s, states in Visegrad region started their way to protect the constitutionality. In Poland, Council of State empowered to protect the constitutionality of laws when the 1976 Constitutional Amendment was adopted. Presidential Council of Hungarian People's Republic had the similar competence. Later, Hungary adopted a new constitutional amendment in 1983. A new organ was set up, Constitutional Council was supposed to watch over the constitutionality of laws. Regulations on constitutionality issue in Czechoslovakia were different. The heavily amended constitutional document which adopted in 1968 restored the constitutional court as the guardian of the Constitution. In China, because of the Cultural Revolution, the current 1982 Constitution entitled National People's Congress and its Standing Committee to supervise the enforcement of Constitution. National People's Congress shall amend the Constitution and Standing Committee shall interpret Constitution. Therefore, in most

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<sup>560</sup> Zdzislaw CZESZEJKO-SOCHACKI, *'The Origins of Constitutional Review in Poland'* (1996) vol 1996 *St. Louis-Warsaw Transatlantic L.J.* p. 15, 29. This suggestion was adopted by National Assembly and regulated in the Constitution of the Republic of Poland.

socialist states, at least on paper, the task of constitutional review was assigned to a non-judicial body.

Until now, even though, the former communist regime in Visegrad adopted the constitutional court and constitutional review system like their most western neighbors, the role of guardian the constitutionality of laws in China still belongs to National People's Congress and its Standing Committee. In transform period, Legislation Law of the People's Republic of China adopted in 2000,<sup>561</sup> National People's Congress and its Standing Committee may amend or repeal the law which considered in violation of the Constitution. Certain bodies may request for the constitutionality examination if they considered the laws against the Constitution. Meanwhile, the special committee of National People's Congress may review the constitutionality of laws and regulations.

#### **4.6 The Differences**

After the Revolutions of 1989, socialist system collapsed in Visegrad states. As many scholars noticed the new democracies adopted the constitutional court in the Constitution and constitutional review system (re)established.<sup>562</sup> Since then, a relatively common constitutional review system established in Europe.<sup>563</sup>

In the Chinese case, the regime is still governed by the Communist Party of China. The limited constitutional review system only applied to the constitutionality of laws and regulations. The power to review the Constitution only belongs to the National People's Congress and its Standing Committee.

The main difference of constitutional review system between China and Visegrad states is obvious, the fully western standard constitutional review system had been established in Visegrad states after the collapse of socialist system.<sup>564</sup> However, in China, it is still the state which is ruled by communist party, and constitutional review system still not fully established.

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<sup>561</sup> Legislation Law of People's Republic of China was adopted on 15 March 2000. This Law was modified in 2015.

<sup>562</sup> David ROBERTSON, *The Judges as Political Theorist: Contemporary Constitutional Review* (1st edn, Princeton University Press 2010).

<sup>563</sup> Benjamin BRICKER, *Visions of Judicial Review: A Comparative Examination of Courts and Policy in Democracies* (1st edn, ECPR Press 2016).

<sup>564</sup> Wojciech SADURSKI, *Rights Before Court: A Study of Constitutional Courts in Post-communist States of Central and Eastern Europe* (1st edn, Springer 2005).

Given this huge gap between China and Visegrad states, several differences are easy to note. First, the role for reviewing Constitution in Visegrad states are undertaken by constitutional court or tribunal. In Chinese case, to review Constitution is the exclusive power for National People's Congress and its Standing Committee. Secondly, individual plays a much more active role in the constitutional review system in Visegrad states compare with the conditions in China.

It should be admitted that to compare the work of the constitutional review system between China and Visegrad states is not easy, since the progress of constitutional review system in China is much slower than the states in Visegrad. Whether to build a western style constitutional review system in China is still in debate. As I mentioned before, the ruling party is much more cautious on the political and judiciary reform than the economic reform.

## **5. Conclusion**

In this Chapter, the author introduced the development of Constitution between China and Visegrad states during the transform period, which was a crucial point for both sides. Visegrad states abandoned the socialist system and return to their western neighbors. In China, Tiananmen Incident happened, it caused the ruling party to make some important reform, especially in economic part, which if we examined now, such reforms shall be the main internal reason of the economic miracle in China.

After the Revolutions of 1989, Constitution in each state in Visegrad had the vital amendment, even the new version of Constitution in each state will be adopted in few years or two decades (in Hungarian case). A western democratic style Constitution had been established in Visegrad states. Some important constitutional amendments also were adopted in China during the transform period. It should be pointed out that it is doesn't matter what kind of road for its own development was chosen by each country, the most important matter is that they make the best choice for their own good.

In the last part of this Chapter, the author also introduced the constitutional review system in each state and makes a comparative analysis. It is an easy task since the difference is so obvious, there is no space for constitutional court in Chinese

Constitution. Therefore, the constitutional review system in Visegrad states which existed since 1980s is still under debate whether China should build a western style constitutional review system or not. Notwithstanding, the experiences and lessons of the constitutional review system from former socialist states in Visegrad region should be studied and understood by China.

## Chapter Six: Conclusion

“Two roads diverged in a yellow wood. And sorry I could not travel both. And be one traveler, long I stood. And looked down one as far as I could. To where it bent in the undergrowth.”

--- The Road Not Taken, by Robert Frost<sup>565</sup>

Finally, this research work is drawing to a close. In this chapter, the author will address the following three parts. The first part is a comprehensive review of the whole research work. The second part mainly focuses on the different conditions in each state and how it led to a different road in each state. The third one is a brief conclusion of this research work.

### 1. Brief Review

After the Second World War, numerous countries regained their independence, countries in Visegrad region also “liberated” by Allies military, especially by the Soviet Union’s Red Army. According to the Yalta Conference, the three great powers agreed that Eastern European lie under the Soviet sphere of influence. Therefore, the communist party in each state established the communist regime, the communist Constitution also adopted respectively. In China, Chinese won the Second Sino-Japan War, then four years of civil war broke out in the same year. In 1949, the Chinese Communist Party established the People’s Republic of China. The constitutional document, Common Program was adopted in the same year. Five years later, Constitution of People’s Republic of China adopted by the National People’s Congress in 1954. The general idea of the 1954 Constitution is a hybrid of Chinese Common Program and 1936 Soviet Union Constitution. In the comparative part of first Communist Constitution between China and Visegrad states, it is worth to draw attention to the context and structure of the Constitution in each state. The context of the Constitution in each state was similar, since all the Constitutions were strongly influenced by the 1936 Soviet Union Constitution and Soviet Union enjoyed the dominance in the socialist family. Three parts of the context are compared in this part, the preamble of the Constitution, the fundamental rights and duties of the citizens and

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<sup>565</sup> Robert FROST, *The Road Not Taken*  
<<https://www.poetryfoundation.org/poems/44272/the-road-not-taken>>, accessed 21 December 2017.

the supreme organ of the state power.

It should be noted that the communist party in Visegrad states and China did not exist out of thin air. Therefore, the author gave a detailed examination on the birth of communist party in each state.

The communist ideology was spread in the Visegrad region in the late of 19th Century. The not successful land reforms in the Habsburg Empire or so-called Austro-Hungarian Monarchy and the development of the industrialization forced more and more farmers left the countryside and lived in the city as a worker. The significant number of working class formed the trade union and other political groups. Under such conditions, the communist ideology was introduced from Western Europe to Visegrad region, and gradually won the notable supporting among the workers. In Chinese case, the communist ideology brought to China by Chinese students who studied abroad, mostly from France and Japan. Zhou Enlai, the most famous and popular Prime Minister in People's Republic of China and Deng Xiaoping, the reform and opening-up policy maker and protector both studied in France. The earliest leaders of the Chinese Communist Party, Li Dazhao and Chen Duxiu spent their university time in Japan, these young intellectuals received the communist ideology and when they came back to China, the communist ideology was considered as on theory to save this old Empire to get rid of the colonization from the great powers. And since the course of the communist ideology spreading in Visegrad states and China are different. Namely, working class in Visegrad region had the chance to know the communist ideology. However, in China, it was mainly promoted by the young intellectuals and the spreading course is from top to bottom. It affected the course of communist development in China as well. In the Communist Party regime in China, the most notable movements were promoted by the central government and the Party rather than the people.

The first epic moment to the development of Communist Party in each state happened after the first communist regime established in the world in 1917. With the operation of Communist International in Moscow,<sup>566</sup> more and more people got the communist

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<sup>566</sup> Communist International or Third International is a communist organization which established in 1919 in Moscow <<https://www.marxists.org/history/international/comintern/index.htm>>, accessed 21

ideology and dispatched to the world. Among these communist comrades, Bela Kun,<sup>567</sup> the Hungarian communist member was sent back to Hungary, and after his return in Hungary, he soon gained an opportunity to establish a soviet Republic in March 1919, even a provisional soviet Constitution was drafted by the communist party. Nevertheless, this soviet experiment only lasted over 100 days. In China, the communist party formed in 1921. In 1930s, Mao Zedong operated a soviet experiment in communist-controlled area in Jiangxi Province, an Outline of Constitution of Soviet Republic of China was drafted. However, it never came into force.

When we examine the development of the Constitution between China and Visegrad states, a crucial point of the constitutional development should not be avoided. That is, the declaration of the establishment of socialist state in the Constitution. This is examined in the reform period in this thesis. The 1954 Constitution in China basically reflected the conditions in China at that time. However, this Constitution soon was abandoned by the leadership, a rule of man policy was employed by the governor and later a ten-year Cultural Revolution movement initiated by the leader of the Party. Under such circumstances, the 1975 Constitution announced the socialist system was fully established in People's Republic of China. However, when we look back to check this announcement now, it is more like an affirmation of the Cultural Revolution. States in Visegrad region also announced the socialist system established in their constitutional documents. In Hungary, it announced Hungarian People's Republic is a socialist state in 1972. Czechoslovakia did the similar announcement much earlier. The socialist system fully established in Czechoslovakia in 1960. Polish People's Republic had the 1976 Amendment to the 1952 Constitution, in this amendment, Poland became a socialist state.

The next vital moment for the development of Constitution between China and Visegrad states happened in 1989. Revolutions broke through firstly in this region, later spread in other socialist states. After the Revolutions of 1989, even though the socialist

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December 2017.

<sup>567</sup> Bela Kun, the founding father of Hungarian Communist Party, he was sent to Hungary in the end of 1918, before the founding of Communist International. <<https://www.marxists.org/archive/kun-bela/index.htm>>, accessed 21 December 2017.

Constitution was not out of validity immediately, several crucial constitutional amendments were adopted by the legislature in Visegrad states. The most dramatical change was these countries abandoned the socialist system, the provisions which related to the socialist system in the Constitution were modified. Constitutional review system (re)established in the Visegrad states. In China, Tiananmen Incident happened, however Chinese Communist Party didn't lose its sovereignty, several amendments were adopted by the National People's Congress. The reform mainly focused on the economic field, meanwhile, a so-called socialist with Chinese characteristics was ensured in the Constitution.

At last of this part, the gap between the law in books and the law in action should be noted. Given the fact that this PhD dissertation main focus on the law in the contextual, the Constitutional laws in each state may operate in a different way compared with what the law declared to the public. The Chinese case of disrespecting the law from late of 1950s to the late of 1970s had a disastrous impact on the country's economy.

## **2. Reasons for the Different Road**

It is also interesting to inquire why socialist states chose different roads to develop the Constitution. In this part, after the study of the development of Constitution between China and Visegrad states, there are three reasons may cause such a different choice was chosen by China and Visegrad states.

### **2.1 Socioeconomic Condition**

Carl Marx had a very famous speech on economy and superstructure. Economic changes sooner or later will transform the superstructure.<sup>568</sup> Therefore, it is important to study the socioeconomic condition in each state. In this part, the author will analyze the economy development during the communist period between China and Visegrad states.

It goes without saying, at the point of establishment of communist states between China and Visegrad states, the economic conditions in Visegrad states were much better than China's one.<sup>569</sup> Here is the brief introduction of economy in Visegrad states. After

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<sup>568</sup> Carl MARX, *A Contribution to the Critique of Political Economy*, Preface <<https://www.marxists.org/archive/marx/works/1859/critique-pol-economy/preface.htm>>, accessed 22 December 2017.

<sup>569</sup> Take the GPD per capita (current US \$) in 1991 as an example, GDP per capita in mainland of China

the First World War, Czechoslovakia and Poland as newly established countries in Visegrad region, Czechoslovakia inherited most industry of the former Austro-Hungarian Monarchy, Poland also gained large territory and population in the region. Spulber divided these countries, according to the economic development level, into three categories: Czechoslovakia was the only industrial country, Hungary and Poland belonged to the second categories, which is the agricultural countries with relatively significant processing facilities.<sup>570</sup>

In Chinese case, the economic condition was much worse than Visegrad states. The development of industry in China at the point of establishment of People's Republic of China was still relatively low. At that moment, China was a primarily agricultural economy,<sup>571</sup> even though the industrialization was slowly increased, the two huge wars heavily damaged the economy of China.

Another proof could be found in Maddison Project's database. In 1950, the GDP per capita in Czechoslovakia was highest, it reached 3501, Hungary and Poland were more or less in the same place, around 2400, and People's Republic of China only reached 448.<sup>572</sup> The economic position in each state didn't change during the whole communist period. In 1988, the eve of collapse of socialist system in Visegrad states, Czechoslovakia reached 8709, Hungary was the second place, 7031, Poland was 5789. However, People's Republic of China still much worse, it was only 1830.<sup>573</sup> Therefore, during the nearly 40-years economic development, the economic condition in the Visegrad states were much better than China's one.

Besides, the eagerness in the Visegrad states to join the market economy also should be considered. In order to integrate the Western Europe's market economy, not only the

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was 310.9 US\$, in Poland the number was 2235.5 US\$; in Slovakia part, the number was 2680 US\$, in Czechia part, it was 2878.7 US\$; and Hungary reached the highest number, 3349.8 US\$. The statistics from [World Bank](https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=1991&locations=CZ-CN-PL-HU-SK&start=1986), <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=1991&locations=CZ-CN-PL-HU-SK&start=1986>> accessed 15 July 2018.

<sup>570</sup> Nicolas SPULBER, *The State and Economic Development in Eastern Europe* (1st edn, Random House 1966).

<sup>571</sup> Loren BRANDT, Debin MA and Thomas RAWSKI, 'Industrialization in China' (Discussion paper, IZA, July 2016) <<http://groups.chass.utoronto.ca/brandt/wp-content/uploads/dp10096.pdf>>, accessed 22 December 2017.

<sup>572</sup> Maddison Project Database <<http://www.ggd.net/maddison/maddison-project/home.htm>>, accessed 22 December 2017.

<sup>573</sup> Ibid.

democratic political system was established in the Visegrad states, but the planned economy was abandoned, privatization and other economic policies were gradually implemented. In the Chinese case, the Constitutional Amendment in 1993 declared the country will practice socialist market economy. It justified the stability of the political system and the ruling position of the Chinese Communist Party in China.

## 2.2 Culture

There is no doubt that the Visegrad states belong to the Continent of Europe. Before 1918, Czechoslovakia and Hungary and large territory in Poland belonged to Austro-Hungarian Monarchy, which is considered as a constitutional monarchy. In Hungary, the noble-led liberalism was more successful than the Monarchy's Slavic provinces in practice from German's perspective. However, at that time, the goal of building a bourgeois society appeared. "Free press, free association and better education", such bourgeois slogans were spread in the territory of the Monarchy. Meanwhile, in Czech territory, the liberalism was much more popular than other Slavic lands, the Tabor movement which happened in 1868-70 was supported by over one million masses.<sup>574</sup>

In the Chinese case, it should be noted the influence of Confucianism. As mentioned in the last Chapter, the legal system in ancient China is a hybrid of Legalism, Confucianism and Taoism. Especially the Confucianism required the masses shall loyalty to the governor, and governor shall take care of his subjects.<sup>575</sup> During the period of 1960s and 1970s, the whole society was fully sunk into the political enthusiasm, several political movements, especially Cultural Revolution dramatically damaged the civil society in China.

## 2.3 International Relationship with Soviet Union

Except the internal reasons, the external reason also should to be studied. The relationship between socialist states and Soviet Union especially need to pay extra

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<sup>574</sup> Robin OKEY, *The Habsburg Monarchy 1765-1918: From Enlightenment to Eclipse* (1st edn, Palgrave Macmillan, 2002).

<sup>575</sup> Zhongqiu ZHANG, '中华法系道德文化精神及对未来大中国法的意义[The Spirit of Ethical Culture of Chinese Legal System and Its Meaning for Greater China Law in the Future]' (2011) vol.5 *Law Science*. See also Maxim KOROLKOV. 'Legal Process Unearthed: A New Source of Legal History of Early Imperial China' (2017) 137.2 *Journal of the American Oriental Society*.

attention.

The rising of the communist regime in Visegrad region, as the most Constitutions in Visegrad states stated that thanks to the help of Soviet Union's liberation.

Before the communist party seized the state power in each state, the local communists had already operated their activities with the support of the Soviet Union, even in the Nazi controlled period, communists had participated in the anti-Nazi movement. In the end of Second World War, Red Army was sent to Visegrad region and helped locals to defeat the German army.

In Hungary, as mentioned early, the Soviet experiment had been performed in 1919 which led by Bela Kun, the founder of the Hungarian communist party. Even though this experiment soon failed, Hungarian communists still operated locally with a low profile. After the Second World War, communists in Hungary used the so called "salami tactics"<sup>576</sup> and gradually came into power. In Czechoslovakia, communist party played an important role in the coalition government, and kept the crucial post in the government, like the minister of internal affairs. Finally, communists in Czechoslovakia launched the coup d'état in February 1948, and controlled the whole country. In Poland, Stalin asked the local communist to "move gradually toward socialism by exploiting elements of the bourgeois democratic order such as the parliament and other institutions".<sup>577</sup> After the establishment of communist regime in Visegrad region. Local people tried to change the socialist regime and the Constitution, however, such efforts, like Hungarian Revolution of 1956, Poznan protest in the same year in Poland and late the Solidarity Movement in 1979 and 1980, the Prague Spring in Czechoslovakia in 1968, went in vain, because of the suppress of Soviet Army or the military of Warsaw Pact.<sup>578</sup>

The Soviet army is also credited with the establishment of People's Republic of

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<sup>576</sup> The so called "salami tactics" was a strategy which employed by the Hungarian Communist Party, communist member Mátyás Rákosi and his comrades gradually disarmed the power of non-communist parties. Johanna C. GRANVILLE, *The First Domino: International Decision Making during the Hungarian Crisis of 1956* (1st edn, Texas A&M University Press, 2004).

<sup>577</sup> Mark KARMER, 'Stalin, Soviet Policy, and the Consolidation of a Communist Bloc in Eastern Europe, 1944-53' in Vladimir TISMANEANU (ed.) *Stalinism Revisited: The Establishment of Communist Regimes in East-Central Europe* (CEU Press 2009).

<sup>578</sup> Ben FOWKES, *The Rise and Fall of Communism in Eastern Europe* (1st edn, Macmillan Press ltd, 1993).

China, and Soviet helped China to establish its own industry in 1950s. However, the honeymoon between the two countries didn't last too long time. The Sino-Soviet split finally happened in 1960, the open disputes between China and Soviet Union caused the international tensions, in the beginning of 1960, China criticized the ideology of Soviet Union in public. Soviet also reacted to China, such as the withdrawal of the Soviet experts from China.<sup>579</sup>

### **3. Conclusion**

As the very beginning of the chapter mentioned, there are two roads, and only one road shall to be taken. After the Revolutions of 1989, People's Republic of China continued the socialist roads and kept the socialist Constitution, in contrast, countries in Visegrad region chose other roads, and abandoned their socialist Constitutions. Why China and Visegrad states chose different road? There are three reasons given by the author, the first one is the social-economic condition in each state are different. The statistics present above showed that the living standard between China and Visegrad states are so different, education, entertainment in Visegrad states is much higher than China, it is easier to form a civil society in Visegrad region. The second reason, culture in each state also played a very important role, the influence of Confucianism made Chinese citizens much easier to accept the centralized government. The third reason, international relationship with Soviet Union also needed to be considered. Hungary, Czechoslovakia and Poland joined the Warsaw Pact and formed so called Eastern Bloc. The Soviet Union definitely need to be considered as the exclusive leadership in the organization, and Soviet troop also stationed in these countries, for normal citizens, the fear of Soviet Union kept in their mind and indelible. Therefore, when Revolutions of 1989 broke out, Visegrad states immediately split with the Soviet Union. In Chinese case, the Sino-Soviet relationship is more equal, the establishment of socialist state was more like chosen by Chinese themselves.

The Chinese old saying "The history mirrors both thriving and calamity". To study

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<sup>579</sup> Mingjiang LI, *Mao's China and the Sino-Soviet Split: Ideological Dilemma* (1st edn, Routledge 2012). See also Austin JERSILD, *The Sino-Soviet Alliance: An International History* (1st edn, The University of North Carolina Press 2014).

the development of Constitution between China and Visegrad states also remind us the importance of rule of law and respect of the fundamental rights, especially in the Chinese case, the disaster of Great Leap Forward and Cultural Revolution also warn us the importance of the implementation of Constitution and the fully enforcement of laws. It is difficult to make a conclusion that what is the best way to develop the Constitution since each state has its own conditions.

However, some lessons and experiences may learn from this research study by comparing the development of Constitution between China and Visegrad states. Firstly, in the modern era, a prosperous country can't exist without a Constitution. The establishment of the People's Republic in each state is always along with the constitutional-making process. Czechoslovakia adopted its communist Constitution in 1948, Hungary, Poland and China adopted the communist Constitution respectively in the late of 1940s and first half of 1950s. Secondly, the Constitution must be respected and fully enforced. The lessons from People's Republic of China in the Cultural Revolution period already showed us the disastrous of disrespecting the law. What the Visegrad states did in the transform period to protect its Constitution is establishing a constitutional review system. It guarantees the Constitution is respected by the people and the government and the provisions in the Constitution are implemented. Last but not least, there are some common grounds in the Constitution around the world. However, the early experience of copying the Soviet Constitution in each state has demonstrated that there is not a model Constitution which every country can follow, the Constitution in each state should reflect its own conditions.

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