EVOLUTION
OF CONSTITUTIONALISM
IN THE SELECTED
STATES
OF CENTRAL
AND EASTERN EUROPE

Edited by
Jarosław Matwiejuk
Krzysztof Prokop

lemida2
Białystok
Contents

Introduction 9

PART IV

PART IV LEGAL PROBLEMS OF THE REPUBLIC OF BELARUS

VALERII V. KOLESNIKOV, IRINA A. BELOVA, IRINA C MELESHKO
Modern Problems of Constitutionalism: Sources, Development and the Present ................................................................. 275

AKSANA SHUPITSKAYA
Constitutional Development of the Belarusian State ................................................................. 285

LIUA J. ABRAMCHIK
Payment of Taxes and Tax Collections as a Constitutional Duty of the Citizens of Belarus: the Past and the Present ................................................................. 294

ANNA G. AVDEY, EJENA N. DULIYA
The Right of the Citizens of the Republic of Belarus to the Favourable Environment: Stages Formation and Development ................................................................. 312

SVETLANA AIHYEVETS
Amenability of Medical Personnel for Causing Harm to Life and Health of the Patient According to the Legislation of the Republic of Belarus ................................................................. 322

IGOR A. LEICHONOK
The Activity of Medical-Rehabilitation Commissions of the Republic of Belarus on Determination of Disability ................................................................. 328

NATALIJA A. RAMULT
Protection of the Violated Rights in the Area of Provision of Pensions ................................................................. 334

IRENA Y. KIRVEL
Formation of the Principles of Civil Procedure Law as Indispensable Values of Belarusian Constitutionalism ................................................................. 339

Aksana Shupitskaya'}
The state Constitution is not only the country's principle law, but also the ker-
of the whole legal system. The constitution defines that legislation, heading
archy of standard legal acts, forms a basis for law enforcement expert. The
principle law is an essential element of the legal ideology of state.

The constitution of the state adoption, as a rule, is connected with important
anges occurring in the economic relations of a society, in political and social sys-
ms, with transformation forms of the state and changes to the legal status of the
son.

The history of formation and functioning of constitutions of the Belarusian sta-
is highly ambiguous. At different stages of existence of the Belarusian statehood
& role of the organic law was played by various standard legal acts - from «The
ussian Truth» adopted by the Great Prince of Kiev Yaroslav the Wise, Kazimir' s
udenik of 1468, Statutes of the Grand Lithuanian Duchy 1529, 1566 and 1588 -
the current Constitution of Belarus accepted on March 15th, 1994.

It is hard to call «The Russian Truth» that operated on Belarusian lands in lie
Middle Ages a constitution, however, it was a constitutional act. «The Russian
[truth] comprised norms providing protection of life and property of the nobility
and also regulating feudal dependence of peasants. Fixing legal status of individu-
als belonging to various social strata, the mentioned legal document was the major
among statutory acts of the state of the discussed epoch.

Statutes of the Grand Lithuanian Duchy represented standard documents pos-
sessing the higher validity and fixing the existing system of political relations and
the economic system. The Statutes of the Grand Lithuanian Duchy regulated prin-
ciples of the organization and activity of the supreme state bodies, and also funda-
mental laws, freedom and duties of citizens which allows to consider them as
constitutional acts of the state to which territory they extended the action.

1 Aksana Shupitskaya, Yanka Kupala State University of Grodno.
Aksana Shupitskaya

The 20th century became a key epoch of creating and adopting constitutions of the Belarusian state as a sovereign country. Belarus in the conditions of the Soviet period of its development functioned on the basis of the Constitution - the principle law of the state defining, first of all, principles of the organization of the government and mutual relations of the person, society and the state.

On January 1st, 1919 the Time Workers' and Peasants' Government published the Manifesto on Declaration of the Belarusian Soviet socialist Republic which proclaimed creation of the independent state on the Belarusian lands. In the mentioned Manifesto the power of the Councils of workers, country, farm-labourer's and Red Army deputies on all the territory of republic was proclaimed and state borders were defined. All means of production were proclaimed public property. The Manifesto declared equality of workers of all nationalities on the territory of Belarus. It cancelled orders of occupational authorities.

On February 3rd, 1919, at the First All-Belarusian congress of Councils the Constitution of Socialist Soviet Republic of Belarus was accepted. According to the state principle law its territory was defined as a part of the Minsk and Grodno areas. At the Second All-Belarusian congress of the Councils which took place on December 14-17th, 1920, Additions to the Constitution of Socialist Soviet Republic of Belarus were accepted. Acceptance of the specified additions was caused by the changes which occurred in the republic at that time. At the First All-Belarusian congress of Councils the Declaration of association of Lithuania and Belarus was accepted. On February 27th, 1919 in the city of Vilna a solemn incorporated session of the supreme bodies of power of Belarus and Lithuania on which the Soviet Socialist republic of Lithuania and Belarus was formed took place. But in July of the same year the territory of the specified republics was occupied by Poland, and the Soviet Socialist republic of Lithuania and Belarus ceased to exist. On July 31st, 1920, the Declaration on the announcement of independent Soviet Socialist Belarus which legally issued restoration of the Soviet power in Belarus was published. (Lithuania remained a bourgeois state).

Constitution of the Socialist Soviet Republic of Belarus of 1919 structurally consisted of the Declaration of the Rights of the Workers and the Maintained people of Belarus and three sections including 32 articles.

Belarus was declared the Republic of Councils of working, soldier's and country deputies. All local authorities passed to Councils. The constitution cancelled private property on land, declared woods, bowels, waters, and all live and dead stock, exemplary estates and agricultural enterprises of national property.

In the first section «Constitution - General provisions» the establishment on the territory of Belarusian state of «city and rural proletariat and the poorest pea-
santry dictatorship» was fixed. It was also ascertained that the Belarus state is a free socialist society of all workers of Belarus. According to the principle law article 3 «the Supreme power in Socialist Soviet Republic of Belarus» belonged to congress of Councils of Belarus, and during the period between congresses - to the Central Executive Committee.

In the same section the legal status of citizens of the Belarus state was defined. The Socialist Soviet Republic of Belarus recognized equal rights for citizens. With a view of maintenance for workers of freedom of worship the church separated from the state and school from church. Freedom of religious and antireligious propagation was admitted for all citizens. Freedom of expression of opinions, the right of citizens to freely arrange meetings, processions and freedom of the unions were fixed by the Constitutional act. Article 11 of the Constitution as a state problem specified granting to workers and to peasants a full and all-round free education. A duty to work and protection of gains of Great Workers' and Peasants' revolution were fixed as constitutional duties.

The second section of the Constitution of 1919 defined the construction of the Soviet power including the system of Congress of Councils of Belarus and the Central Executive Committee of Belarus. According to article 23 of the Constitution of Socialist Soviet Republic of Belarus the Central Executive Committee of Belarus was the highest legislative, administrative and supervisory body of SSRB. The Central Electoral Committee gave the general direction of activity of the Workers' and Peasants' Government and all bodies of the Soviet power in the country, united and coordinated workers under the legislation and management, observed of implementation of the Soviet Constitution, decisions of congresses of Councils of Belarus and the central bodies of the Soviet power. The Central Electoral Committee had the right to publish its own decrees and orders. Small and Big Presidiums were formed for the general administrative office of republic and for management of separate branches of management of the Central Electoral Committee.

The Council of Public Committee was created instead of the Big and Small Presidiums according to the Additions to the Constitution. It also regulated the structure and powers of congress of Councils of Belarus, the Central Electoral Committee, Central Electoral Committee’s Presidium, the Council of Public Committee.

The analysis of the constitutional positions of 1919 shows that that principle of division of the government in the conditions of the Soviet Belarus state at the given stage did not operate. The system of statutory acts was indistinct. Legislative powers of state structures were defined rather formally.
The third section of the Constitution of Socialist Soviet Republic of Belarus of 1919 was called «About the coat of arms and flag» and contained the description of the state symbols.

The Union of the Soviet Socialist Republic created in December, 1922, demanded acceptance of the new constitutional act of the integrated state which became the Constitution of the USSR of 1924. Thereupon it was entrusted to the Central Executive Committee of the BSSR to prepare the project of the BSSR Constitution. On April 11th, 1927, the VHIth All-Belarusian congress of Councils of workers, country and Red Army deputies accepted the next Constitution of the Belarusian state.

The new Principle law of the Belarusian Socialist Soviet Republic consisted of 13 sections uniting 76 articles. A standard basis of the Constitution of 1927 it agree article 1 made positions of the Declaration of the Rights of the Worker and the Maintained people, the Manifesto of the Time Workers’ and Peasants’ Soviet government of Belarus from January, 1st, 1919, the basic beginnings of Constitution of Socialist Soviet Republic of Belarus accepted by the First All-Belarusian congress of Councils, the Declaration on declaration of independence of Socialist Soviet Republic of Belarus from August, 1st, 1920.

The Belarusian Socialist Soviet Republic was proclaimed the socialist state of dictatorship of proletariat, decided the problems on the basis of the union of workers and peasants. The Constitution of 1927 defined mutual relations of the USSR and the BSSR, having fixed the sovereign rights of republic independently to solve ethnic questions, to accept the constitution, to change borders, to create the power and management of supreme bodies. For the first time in the BSSR dual citizenship was fixed in the Constitution of 1927.

The legal status of citizens of the Belarusian Socialist Soviet Republic provided the list of fundamental laws, freedoms and duties with which individuals were allocated. Freedom of unions, the right to meetings, processions and demonstrations, freedom of expression of opinions were among them. Work was proclaimed as a duty of citizens. Protection of socialist motherland became the major constitutional duty. For all citizens of the Belarusian Socialist Soviet Republic a native language at congresses, the right of free use of admitted court, management and public life were adopted. As state languages the Constitution of 1927 defined four languages: Belarus, Jewish, Russian and Polish.

The constitutional norms of 1927 in majority were devoted to the questions of the organization of the power in the conditions of the Belarusian state. They established the following system of state structures. The government's supreme body was All-Belarusian Congress of Councils, which consisted of representatives of
Constitutional development of the Belarusian State

city councils. During the period between All-Belarusian Congresses of Councils the Central Executive Committee of the Belarus Socialist Soviet Republic was the supreme authority. All-Belarusian Congress of Councils confirmed the BSSR codes of laws. All decrees and the decisions defining the general norms of political and economic life of the BSSR, and also bringing basic changes in existing practice of state structures of the BSSR, were subject of consideration of the Central Electoral Committee of the BSSR. The Council of National Commissioners was established for the general management of the Belarusian Socialist Soviet Republic, exercising power through national commissariats, executive committees and Councils. BSSR Constitution of 1927 also defined a system of local authorities on the territory of the Belarusian state.

For the first time in practice of the Soviet constitutional construction of the state the principle law contained the section «About the suffrage». According to article 70 of BSSR Constitution the right to elect and to be elected in councils for BSSR of 18 years of age and older citizens of both sexes was accepted. The person lost the suffrage, «resorting to wage labour for the purpose of profit extraction». Living on the unearned income (percent from the capital incomes from the enterprises, receipts from property, etc.) private dealers, trading and commercial intermediaries, monks and spiritual attendants of religious cults of all confessions and rumours, employees and agents of the former police, gendarmes, and also persons declared as mentally-sick or mad both condemned for mercenary and discrediting crimes were deprived of the right to elect and to be elected. The Constitution fixed the unequal suffrage for urban and agricultural population (article 57 of BSSR Constitution).

The changes which occurred in the republic in all spheres of public, economic, social and spiritual life for next ten years demanded introducing serious changes into the state principle law. In the economy the socialist way began to dominate. The uniform Marxism-Leninism ideology was introduced.

On February 19th, 1937 XII Extreme congress of Councils BSSR accepted the new Constitution of the Belarusian state. Structurally the above-mentioned Constitution consisted of 11 sections and 122 articles.

Article 1 of the principle law proclaimed the Belarusian Soviet Socialist Republic as the socialist state of workers and peasants. Somewhat class character of the constitutional positions began to be shaded. Councils of deputies of workers made the political base in the BSSR. The socialist property of tools and means of production in the form of the state and collective-farm property made the economic base of the state. For the first time in history of the Soviet Belarusian state the right to a collective-farm court yard and the right of a personal property of citizens to labour incomes and savings, on an apartment house and subsidiary hou-
Aksana Shupitskaya

Housekeeping, on housekeeping and use subjects, on subjects of personal consumption and convenience was regulated, the same as the right of succession of personal property of citizens.

For the Soviet economy positions of article 11 of BSSR Constitution according to which BSSR economic life was defined by the state economic plan had a great value. Sections 2-7 of principle laws of 1937 were devoted to the state system of the BSSR.

The supreme body of BSSR government was Supreme Body selected for a period of 4 years on the base of such norm - 1 deputy for 20 000 of population. The Supreme Body according to article 23 of Constitution was established as unique legislature of BSSR. Council of National Commissioners BSSR was the highest executive and governing administrative organ.

The principle value had the position fixed in article 34 of the Constitution according to which the deputy of the Supreme Council of the BSSR could not be involved injudicial responsibility or arrested without the consent of the Supreme Council of the BSSR, and during the period between sessions of the Supreme Council - without consent of the Presidium of Supreme Council of the BSSR. But this norm didn't work. Mass repressions of soviet people proved it.

For the first time the principle law of the Belarusian state contained a section including norms, regulating system and powers of local public authorities. Public authorities in districts, areas, cities and villages, places, villages and settlements were the Councils of deputies of workers supervising cultural-political economic building on the territory. Administrative organs of Councils of deputies of workers executive committees selected them as, a part of chairmen, their assistants, secretaries and members were executive. The system of the supreme bodies of the government founded by the principle law, and also their powers, as well as introduction in the Belarusian Constitution of the separate section devoted to the court and the Office of Public Prosecutor, allows to assert that the Constitution of 1937 tried to fix a principle of division of the government into the legislative, executive and judicial.

The electoral system of the Belarusian state cardinally changed. Elections of deputies to all Councils of deputies of workers were held on the basis of general, equal, a direct suffrage by secret ballot. All citizens of the BSSR who reached 18 years of age, irrespective of racial and national identity, creed, educational qualification, settled way of life, social origin, property status and last activity had the right to participate in elections of deputies and to be the elite, except for the mentally-ill and the persons condemned by court with deprivation of the suffrage.
Constitutional development of the Belarusian State

The rights, freedoms and duties of citizens of the BSSR were considerably expanded by the Constitution of 1937. However, placing them only in the eighth section of the principle law specifies their minor character for the state in comparison with questions of the organization of the government.

The constitution of 1937 fixed the right to work (according to earlier operating Constitutions work was a duty of citizens), the right to rest, formation, and material maintenance in an old age. Women were balanced in the rights with men. For the first time the personal immunity, inviolability of dwelling, secret of correspondence were fixed. To the number of the constitutional duties a duty to observe the Constitution, to execute laws, to observe discipline of work, to fairly concern a public debt, to respect rules of a socialist hostel, a duty to protect and strengthen the public, socialist property, the conscription were added.

On April 14th, 1978, at IX Extraordinary session of Supreme Body of the BSSR the new Constitution of the Belarusian state in form and in content corresponding to the Constitution of the Union of the Soviet Socialist Republics of October 7th, 1977 was accepted.

172 articles of the next Belarusian Constitution were divided into 10 sections and 19 headings. The named principle law of the state consistently regulated the bases of the social order and policy of the Belarusian Soviet Socialist Republic, i.e. its political, economic system, social development, culture and foreign policy activity; mutual relations of the state and the person, i.e. citizenship questions, fundamental laws, freedoms and duties of citizens of the Belarusian Soviet Socialist Republic; the national-state and administrative-territorial device; the electoral system, system of the higher and local public authorities; questions of the state plan of economic and social development of the Belarusian Soviet Socialist Republic, the state budget; the state symbols and questions of action of the Constitution.

The Belarusian Soviet Socialist Republic was proclaimed the socialist public state, expressed will and interests of workers, peasants and intelligentsia, workers of the republic of all nationalities. The state organic law contained norms about people's sovereignty. Councils of People's Deputies (earlier - Councils of deputies of workers) made political basis of the BSSR. The public socialist property on means of production in the form of the state and collective-farm property was the basis of the economic system of the Belarusian state. The exclusive right of the state to the land, its produce, waters and woods was fixed.

In the Constitution the Supreme Body's organization and activity principles - democratic centralism, one-man management and collective nature, socialist legality - were defined. For the first time in history of the Belarusian Soviet state the
position that the most important questions of the state life can be taken out for national discussion and also put on national voting has been fixed.

Well-known article 6 of the BSSR Constitution of 1978 fixed a supervising and directing role of the Communist Party of the Soviet Union in the state and public life.

In the history of the Soviet Belarusian state the standard legal act, mattering constitutional, though, probably, and not called were accepted. The law on main principles of democracy concerns their number in Belarus, accepted on February 27th, 1991 by the Supreme Body of the BSSR. This law became some kind of systematizing the beginning concerning the revival of the Belarusian state system. The specified statutory act defined the power source, legalized a principle of division of branches of power as the basic principle of division of imperious powers, declared the republic property, delegated imperious powers to the Supreme Body of the BSSR, established hierarchy of the supreme bodies of the power and management, regulated relations of the state and public structures.


The acceptance of the Constitution of Belarus came into force on March 15th, 1994. It was a logical step forward in the further constitutional development of the Belarusian state. The republic of Belarus was proclaimed a unitary democratic social lawful state possessing all completeness of the power on the territory of the country.

The constitution of Belarus founded the institution of Presidency and created new public authority - the Constitutional Court.

146 articles of the principle law of the Belarusian state are divided into 9 sections and 8 headings. The norms of the Constitution regulate bases of the constitutional system, mutual relations of the person, society and the state, the electoral system and referendum, the structure and powers of the higher and local public authorities, the state budget and questions of Constitution over amendments and additions.
Constitutional development of the Belarusian State

Twice later in the modern history of the Belarusian state amendments and additions were introduced into the Constitution of Belarus - on November 24\(^{th}\), 1996 and on October 17\(^{th}\), 2004.

Today the economic, political, social and legal systems of the country are developing on the basis of the Constitution. The principle law of Belarus is the central link in hierarchy of the legislation, defining the vector of development of the Belarusian society and the state.

The history of the Belarusian Soviet Constitutions, thus, allows to formulate certain conclusions.

Firstly, for all Soviet Constitutions of the Belarusian state certain common features, as a whole, were characteristic. As until 1922 Belarus had close contacts with the Russian Soviet State, and became part of the Union of the Soviet Socialist Republics in 1922 the Belarusian principle law of the state, its form and also the maintenance were similar to the Constitution of the Russian Federation and to the Soviet Union Constitution.

Secondly, the Soviet Belarusian Constitutions (especially the first) distinguished such qualities as class and party membership character.

Thirdly, display of the tendency connected with perfection of the legal techniques at the formulation of the principle law, perfection of its structure is obvious.

It is necessary to note the tendency to humanization of the Belarusian Constitutions. From one stage to another the norms of the principle law paid more and more attention to the position of the person in the society and the state, to its rights, freedoms and duties.

And, at last, pretentiousness was characteristic for the Soviet Belarusian Constitutions. Standard legal acts, even the most qualitative of them, require realization. Realization of the provisions of the Constitution can be provided in various ways. The constitutional practice of many states testifies that implementation of provisions of the principle law is promoted by various factors: customs, traditions of the specific people, level of the general and legal culture of the population, both state, economic and political traditions, compulsory force of state structures. Thereby, it is represented that the key to effectiveness of legal statutes lies in the heart of the society, in each particular person. To activate the mechanism of action of norms of the Constitution, thus, it is possible and it is necessary by perfection of all elements of the legal system, and as a whole, public institutions, relations, and subjects.
Eastern Europe is the region of the European continent between Western Europe and Asia. There is no consistent definition of the precise area it covers, partly because the term has a wide range of geopolitical, geographical, ethnic, cultural, and socioeconomic connotations. Russia, located in Eastern Europe, is both the largest and most populous country of Europe; spanning roughly 40% of the continent's total landmass, with over 15% of its total population. Eastern Europe is a region that encompasses many different cultures, ethnicities, languages, and histories. Grouping all of these countries under a single designation can sometimes be problematic; experts, scholars, and those living there label parts of the region according to varying sets of criteria, and heated debates have been known to erupt when one party has felt that a certain country has been miscategorized. Central and Eastern Europe is a term encompassing the countries in Central Europe, the Baltics, Eastern Europe, and Southeast Europe (the Balkans), usually meaning former communist states from the Eastern Bloc (Warsaw Pact) in Europe. Scholarly literature often uses the abbreviations CEE or CEEC for this term. The Organisation for Economic Co-operation and Development (OECD) also uses the term "Central and Eastern European Countries (CEECs)" for a group comprising some of these countries. Previous (Eastern Christianity). Next (Ebbinghaus illusion). Eastern Europe, as defined by the United Nations Statistics Division, includes the countries of Bulgaria, Czech Republic, Hungary, Poland, Romania, Russian Federation, and Slovakia, as well as the republics of Belarus, Moldova, and Ukraine. In some sources, Eastern Europe is defined as the nations bordered by the Baltic and Barents seas on the north; the Adriatic, Black, and Caspian seas and the Caucasus Mountains on the south; and the Ural Asking, â€œWhere is Eastern Europe?â€ seems as stupid as asking, â€œWho is buried in Grantâ€™s tomb?â€ . Obviously, Eastern Europe is in the eastern part of Europe. However, where to draw that line is extremely controversial. Indeed, itâ€™s hard to find two people who agree on which countries are in Eastern Europe. Back in the good old Cold War days, defining Eastern Europe was easy: it was made up of all those losers who were on the wrong side of the Iron Curtain (see map).