

**The Development of Constitution between China and
Visegrad states during Communist Period:
A Comparative Perspective**

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The Development of Constitution between China and Visegrad

States during 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 mainly 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, 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 very late of 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 gave a detailed introduction of communist party in each state and mainly focuses on China and Hungary, since at that moment, the communist party had a very valuable experience of soviet republic, even the provisional constitutional documents had been introduced to public. Even though both constitutional documents never entered into force.

The author spent lots of 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 of this par, a comparative analysis has been given.

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 are happened in the reform period, the author exercised restraint by not spending too many

space to describe and analyze these significant events. The mainly focus always on constitutional development, by examining the changes of concrete provisions in different version of Constitution in each state. In this part, a comparative work has been done on the highest organ of state power in each state.

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. 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, 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 constitutional amendment. Constitution should not be only existed on paper, it should be followed by everyone and every institution in the state. Therefore, a constitutional review system had established in many countries. In this part, the author also gave a comparative analysis on this system.

This dissertation also conducted by a comparative constitutional law approach. Three methods are employed by the author. Firstly, 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's more, the 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 scholar 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.

At the end, as everyone know, currently, China and Visegrad states have different road to develop, at the last part of the dissertation, the author also gave 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 Constitution. Secondly, 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, Constitution in each state should reflect its own condition.

Chapter one: Introduction

1. Brief Introduction of Comparative Constitutional Law

It is easy to notice that this is a research 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 The History of Comparative Constitutional Law

In Michel Rosenfeld and Andras Sajó'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 focus on private law field. It is believed that the existence of comparative constitutional law as 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.¹

In Ran Hirschl's introduction, several books on comparative constitutional law were published in the late of 19th century in United States. However, at that time, the narrative of this topic was political domain. Shared the similar idea with Rosenfeld and Sajó, 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.²

¹ Michel Rosenfeld and Andras Sajó, 'Introduction' in Michel Rosenfeld and Andras Sajó (eds), *The Oxford Handbook of Comparative Constitution Law* (Oxford University Press 2012).

² Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (1st edn, Oxford University Press 2014).

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 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.³

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 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 notably.⁴

In conclusion, the studies of comparative constitutional law have a long history, at least it could be traced back to the antient 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 and it mainly focus 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.⁵ Until now, this subject is still developing and become more and more popular.

1.2 Concept of Comparative Constitutional Law

Relatively, comparative constitutional law is still a very new subject even in legal field.⁶ What is the mean of comparative constitutional law and how is the scope of 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

³ Rosalind Dixon and Tom Ginsburg, 'Introduction' in Rosalind Dixon and Tom Ginsburg (eds), *Comparative Constitutional Law* (Edward Elgar Publishing Ltd. 2011).

⁴ Grunter Frankenberg, 'Comparative Constitutional Law' in Mauro Bussani and Ugo Mattei (eds), *The Cambridge Companion to Comparative Law* (Cambridge University Press 2012).

⁵ Ibid, Rosalind Dixon and Tom Ginsburg.

⁶ As introduced above, most scholars agreed that comparative constitutional law as an academic discipline appeared in the late of 1940s and 1950s.

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.⁷ 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.⁸ 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.⁹ 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 of the different legal systems of the world."¹⁰ Therefore, it may be possible to consider that comparative constitutional law is the comparison of the constitution in different legal systems of the world.

⁷ 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).

⁸ Andrew Harding and Peter Leyland 'Comparative Law in Constitutional Contexts' in Esin Orucu and David Nelken (eds), *Comparative Law: A handbook* (Hart Publishing 2007).

⁹ Grunter Frankenberg, 'Comparative Constitutional Law' in Mauro Bussani and Ugo Mattei (eds), *The Cambridge Companion to Comparative Law* (Cambridge University Press 2012).

¹⁰ Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Oxford University Press 1998).

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 country. Secondly, the world is become "smaller", Constitutions in different states are much more interdependent, and Constitution may across 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.¹¹ 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.¹²

Bright this question to my PhD research, which is to compare the development of Constitution between China and Visegrad states during the communist period, why should we compare the Constitutional development in these countries? In order to answer this question, I did a quick research to figure out is there any studies on this topic, the result is somehow shocked. There is no single research work only focus on the constitutional development between China and Visegrad states. 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..."¹³ 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,

¹¹ Norman Dorsen et al., *Comparative Constitutionalism: Cases and Materials* (2nd edn, West, 2010).

¹² Durga Das Basu, *Comparative Constitutional Law* (3rd edn, LexisNexis, 2014).

¹³ Rosalind Dixon and Tom Ginsburg, 'Introduction' in Rosalind Dixon and Tom Ginsburg (eds), *Comparative Constitutional Law* (Edward Elgar Publishing Ltd. 2011).

Hungarian, Czech, Slovakia and Polish are not familiar at all. The same situation for scholars who live in Visegrad states, Chinese is also very exotic language. The worse condition 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.¹⁴ The distance between China and Visegrad states may intensify this unfamiliar.

Therefore, here I bring the first reason to answer the question why I conduct my PhD research. There is little scholarship on this topic, I hope my 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 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 similar system. After the Second World War, China and Visegrad states entered the communist period, and established 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 difficulty to find a standard methodology for comparative legal research, since as an academic discipline, it is still new.¹⁵ Referring to comparative constitutional law, it is still “maturing”.¹⁶ 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.¹⁷ More specific methodologies for comparative constitutional law were

¹⁴ Language Difficulty Ranking, it is a ranking based on English speaker’s perspective.

<<http://www.effectivelearning.com/language-guide/language-difficulty>>, accessed 18 December 2017.

¹⁵ Comparatives 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 Kötz, *Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Oxford University Press 1998).

¹⁶ Rosalind Dixon and Tom Ginsburg, ‘Introduction’ in Rosalind Dixon and Tom Ginsburg (eds), *Comparative Constitutional Law* (Edward Elgar Publishing Ltd. 2011).

¹⁷ Mark Van Hoecke, ‘Methodology of Comparative Legal Research’ (2015) *Law and Method*
<<https://biblio.ugent.be/publication/7145504>>, accessed 18 December 2017.

introduced by Jackson and Venter. In Jackson's article, the following methods are presented. Classificatory work, historical work, universalist research, functionalism and contextualism.¹⁸ Venter provided his view on methodology of comparative constitutional law. He concluded the following five methods: functionalism and neo-functionalism, transplantation, dialogical interpretation, contextualism and the observance of difference.¹⁹

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, the 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. 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 scholar 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.²⁰

3. Terminology

In this part, the author will explicitly address what is the meaning of the term of Visegrad states in this research work.

3.1 The Brief Introduction of Visegrad and Visegrad Group

¹⁸ Vicki C. Jackson, 'Comparative Constitutional Law: Methodologies' in Michel Rosenfeld and Andras Sajó (eds), *The Oxford Handbook of Comparative Constitution Law* (Oxford University Press 2012).

¹⁹ Francois Venter, *Global Features of Constitutional Law* (1st edn, Wolf Legal Publishers 2010).

²⁰ More detailed information of functionalism in comparative law see 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).

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 February 1991, three states leader 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.²¹ 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.²² 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.²³

3.3 The Definition of Visegrad States in This 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

²¹ About the Visegrad Group <<http://www.visegradgroup.eu/about>>, accessed 19 December 2017.

²² 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).

²³ A very common example 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.

author defined the meaning of Visegrad states. More specifically, in this work, Visegrad states means Hungary, Czechoslovakia and Poland during the communist period.

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 rest 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 103 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 focused 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 Chinese case, three different versions 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 1954 Constitution. The second part introduced the constitutional development in Visegrad states. In Hungarian case, the author paid a special attention on 1972 Constitutional Amendment. In Czechoslovakia case, two constitutional documents were examined. 1960 Constitution announced Czechoslovakia became a socialist state, 1968 Constitution declared Czechoslovakia is federal state. In 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 introduced 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 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 last part, a conclusion of the research work is presented.

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 notice that China and the Visegrad countries shared a common history of socialist experiences and social system since the very late of 1940s.²⁴ However, the socialist experiences in the partial 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.²⁵ In Hungary, the Hungarian Soviet Republic was considered as the second Soviet Republic in the world, although, it just lasted for only 133 days.²⁶ In Poland, the activities of Communist Party even can be traced back to 19 century.²⁷ 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.²⁸

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 present in one 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

²⁴ 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 situation 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 1st January 1993, Czechoslovakia divided into two countries, Czech Republic and Slovakia.

²⁵ 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).

²⁶ Tibor Hajdu, *The Hungarian Soviet Republic* (1st edn, Akademiai Kiado, 1979)

²⁷ 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.

²⁸ The digital archive of Lenin, see the website <<https://www.marxists.org/archive/lenin/works/1921/jul/17b.htm>>, accessed 18 October 2016.

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.²⁹ In Hungarian Communist Party's exercises, the main attention will be paid on the Constitution of Hungarian Soviet Republic³⁰ 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.

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,³¹ Chinese suffered the colonization and had numerous attempts to get rid of their unpleasant situation.³² 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, and did not reach its goal, became an independent country again.³³ Since the failure of Paris Peace Conference, May Fourth Movement broken out in Beijing, Chinese scholars and the young generation started to find a new road to leading the independence of China.³⁴

The new method is socialism. The Chinese scholar noticed what happened in Russia since 1917, the great change of Russia and its outcome, Marxism-Leninism were

²⁹ The Constitution of Chinese Soviet Republic, Chinese version, <<http://cpc.people.com.cn/GB/64184/64186/66640/4489884.html>>, accessed 18 October 2016.

³⁰ Constitution of Hungarian Soviet Republic, Hungarian version, <https://hu.wikisource.org/wiki/A_Magyarorsz%C3%A1gi_Szocialista_Sz%C3%B6vets%C3%A9ges_Tan%C3%A1csk%C3%B6zt%C3%A1rsas%C3%A1g_alkotm%C3%A1nya>, accessed 18 October 2016.

³¹ 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 Liu Cunkuan, '试论英国发动第一次鸦片战争的双重动因 [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.

³² 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>, accessed 18 October 2016.

³³ China requested return of sovereignty over Shandong, however, this request was refused by the Conference.

³⁴ 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).

brought to China. Chen Duxiu and Li Dazhao and their followers consisted of the first Marxism-Leninism group in China, the New Youth Magazine also introduced numerous articles of Marxism-Leninism and the translated books and original books full of the library and bookshop³⁵

In the summer of 1921, the Communist Party of China established in Shanghai and South Lake in Jiaxing with the help of Communist International.³⁶ There were 12 delegates who represent 57 members of the Communist Party of China, Delegate Mao Zedong represent the Hunan Communist cell. However, the pioneer of Communist Party of China, Chen Duxiu and Li Dazhao did not attend the meeting.³⁷

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.³⁸ Since then, the First United Front played a very important role during the whole revolutionary history in 1920s.

Before the Manifesto, with the guiding of Communist International, Communist Party of China made the decision to cooperate with Kuomintang during the West Lake Meeting in August 1922. According to the decision the Party members shall join Kuomintang individually, and spread the communism.³⁹ In response, during the First

³⁵ Ibid, p. 569, 570, 576.

³⁶ The original plan was the inaugurating meeting will be hold in a girl school in Shanghai with these 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).

³⁷ 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.

³⁸ 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 stared 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>, 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*.

³⁹ 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>, accessed 19 October 2016. And according to the Communist International's directive to Communist Party of China in May 1923,

National Congress of Kuomintang which held in January 1924, made the determination to 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 Central Committee of Kuomintang, there offered some special high ranked positions for Communist Party of China member.⁴⁰ 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.⁴¹

During the First United Front, Communist Party of China and Kuomintang made a great progress of 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 revolutionary experiences, Sun Yat-Sen realized the importance of army, in May 1924, the Republic of China Military Academy opened to its nearly 500 new students from the whole land.⁴² 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.⁴³ This military academy was considered as the most important military school in China, not only numerous generals of Republic of China came from this school, but also lots of Communist military leader graduated from this

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.

⁴⁰ 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.

⁴¹ 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.

⁴² Ibid, p. 607.

⁴³ 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.

school.

In the mass movement part, Communist Party of China did a lot of work with the work class and peasants.⁴⁴ It is said that there were around 1,241,000 members in the Labor Union in 1926. Also the Communist Party was very focus on the young generation, the Communist Youth Corps, enlarged more than five times in less than two years.⁴⁵ In countryside, the Communist Party developed the Farmers' Association a lot. Only in Guangdong, there were 626,457 members in the year of 1926.⁴⁶ On 30 May 1925, the foreign policeman shot Chinese people because of protest, it caused 8 Chinese people dead, and some protesters got injured. Finally, it settled with the leading of the First United Front, it also inspired the Chinese Patriotic.⁴⁷

1.3 The End of First United Front and White Terror

However, the ending of Frist United Front was definitely not happy. In 1927, Chiang Kai-shek launched his anti-communist policy with violence.⁴⁸ On 12 April, the Commander in Chief of Shanghai Garrison Command with the local gang⁴⁹ 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.⁵⁰ The cooperation between Kuomintang and Communist Party of China was officially finished, Kuomintang, the party which ruled by Chiang Kai-Shek and started its counterrevolution policy in China,

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ Ibid.

⁴⁷ Ibid, p. 547-579.

⁴⁸ On 12 March 1925, 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 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.

⁴⁹ 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 executor of 12th 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.

⁵⁰ 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.

Communist Party of China realized the importance of 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 12th April Counterrevolution Incident, Chiang Kai-Shek published a Post of Purge the Party. In this Post, it mentioned the Communist Party and its member have to be inspected on suspicion of betraying. What's more, Chiang order the army force arrest the leaders of Communist Party even published a wanted order.⁵¹

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 be disarmed, since the government believed that there was a strong influence by Communist Party, about 200 cadets were arrested, just because they were considered as member of Communist Party of China.⁵² Until 27 April, this tragedy finally finished, according to the report, there are around 2000 suspected communists had been arrested, about 20 people died in this massacre, most of them were young students, even there were two female students.⁵³

In other part of China, the purge was also happened, it weakened Communist Party of China's Influence and its power. In response, In Wuhan and Changsha, the radical Communist Party member killed so called enemies.⁵⁴

1.4 The Reason of Breakup of the First United Front

From Intimate cooperation to brutal repression, from an independent local government to ruling the whole country, it seemed to show how important the First United Front is. However, with the triumph of Northern Expedition, the friendship between Kuomintang and Communist Party of China fade away.

Nevertheless, if we back to the beginning time of the cooperation and examine the

⁵¹ 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.

⁵² 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.

⁵³ Ibid.

⁵⁴ Ibid, p. 638.

whole background of the First United Front, the conflict of interest among Kuomintang, Communist Party of China and Communist International (or Soviet Union) has existed already.

In the early of 1920s, when Communist International emissary Maring helped Chen Duxiu and Li Dazhao to organize 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 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.⁵⁵ However, at that moment, Sun Yat-Sen did not show a great interest in cooperating with Communist Party, he believed that Kuomintang will be success with his ideology. He even talked with Zhang Tailei, Maring’s interpreter, “Why the young people want to find the medicine (means solution to solve Chinese problem) from Marx, you can find the basic thoughts of Marxism from the Chines ancient books, don’t you?”⁵⁶

However, the reality makes Sun has to reconsider the offer from Communist International. At that time, Sun faced the following problems: the financial difficulty, the military difficulty and the orderless 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 Jiongming betrayed Kuomintang and seems cooperated with Sun’s enemy Wu Peifu. In Party’s organization, since Chen betrayed the Party, Party member lost the connection with Kuomintang.⁵⁷

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 helping of Soviet Union, especially, when Soviet Union promise the financial and military

⁵⁵ 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>, accessed 21 October 2016.

⁵⁶ Ibid, p. 5.

⁵⁷ 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.

support,⁵⁸ the relationship between Kuomintang and Soviet Union or Communist International became more and more close.

In Communist Party of China's side, the proposal of cooperate with Kuomintang seems to be a directive from higher position, Communist International,⁵⁹ the only thing what this still young and vulnerable Party can do is perform it.⁶⁰

Because of the coordination of Communist International and Soviet Union, finally, the First United Front established. However, the wish of cooperation between two parties were not generated by themselves, it is much more like a decision made by Communist International and Soviet Union, when the conflict of interest between Kuomintang and Communist Party of China more and more serious, the unbalanced cooperation will be finished easily.

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

⁵⁸ 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.ccphistory.org.cn/images/thumbnailimg/month_1408/201408251856451932.pdf>, accessed 21 October 2016.

⁵⁹ Communist Party of China was a Party branch of Communist International. Ibid, p. 14.

⁶⁰ 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>, accessed 21 October 2016. p.175.

of 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 Zuoling⁶¹ and Japan... and the task of Communist Party is...to split up Kuomintang.”⁶² It is very clearly with such kind of attitude to make the partnership with Kuomintang doomed the unhappy ending of the First United Front.⁶³

Time back to 1927, the second year of Northern Expedition, Kuomintang is much stronger than the beginning time of the cooperation, Communist Party of China had a great development not only in Party member but also in 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 expedition went well, which got a strong support by the masses.⁶⁴ In Shanghai, the Communist Party organized a few “uprising” with Workers’ Inspections Corps and work, these gunmen caused a big chaos in the city, at the same time, thousands workers had a strike and came out for a demonstration.⁶⁵ In Nanjing, the quite similar events happened as well, even worse.⁶⁶ In Chiang’s opinion, this is Communist Party tried to control these very important city, and made such a chaos in cities will harm the Northern Expedition, he decided to finish this circus and punish Communist Party.⁶⁷

All in all, the main reason of breakup between Kuomintang and Communist Party of China is there existed fundamentally conflict of interest between these two parties, and this whole cooperation is more likely the parents asked their kids must live together, however, with the passage of time, more and more differences appearance, the brotherhood finally will end with unhappiness.

⁶¹ The biggest warlord in Northeast China.

⁶² 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.

⁶³ However, this idea or thinking of Chen Duxiu did not get any critics from Communist International, *ibid*.

⁶⁴ 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.

⁶⁵ *Ibid*.

⁶⁶ 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.

⁶⁷ 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.

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 army and started to establish its own controlled territory.⁶⁸ From the middle of 1927 to the end of 1937, the beginning of the Second United Front, Communist Party of China had a lot of experiences on revolution and organized peasant movements.⁶⁹ The Party not only had its own controlled territory, but also became a mature Party.

From the failure of the First United Front to the establishment of Chinese Soviet Republic, 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 ended with failures.⁷⁰ These failures caused Communist Party to find another way to survive, in Hunan, the future People's Republic's leader, Mao Zedong had a very rich experience to deal with peasants in the rural area, after the failure of Autumn Harvest Uprising, Mao Zedong with his army came to Jinggang Mountains, and tried to establish a rural soviet here.⁷¹ 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 Communist Party of

⁶⁸ In 7th 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>, 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.

⁶⁹ 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.

⁷⁰ The Communist Party organized a few of uprisings in Nanchang, Guangzhou and Wuhan, on 1 August of 1927, there was an uprising happened in Nanchang, although, it was failed, it is considered as the beginning of Communist Party of China started to have 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.

⁷¹ Mao Zedong had a lot of experience with peasants, he grew 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 he chose Jinggang Mountains, according to Sun Jiang's article, this area is far away from 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.

China was Jiangxi-Fujian Soviet.⁷²

However, at the beginning, because of the Soviet influence, 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 is a superior to the rural soviet.⁷³ The success of communism revolution should depend on proletariat not the peasant, just like its big brother, Soviet Union.

Kuomintang will 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 the drafting of this special law. The so called Provisional Counter-Revolution Penalty Regulation was published on 9 March 1928. 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 sentence to death. Three Principles of the People was also considered as the fundamental in this country, anyone who want to break this principle and had an uprising shall also be sentence to death. Even there was an article regulated that the activists in the organization or gathering with a counter-revolution goal shall be sentence to imprisonment, and the organization or gathering shall be disbanded.⁷⁴ What's more, there are a few of Decisions also made by the nationalist government, it even had collective punishment.⁷⁵

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 area. 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.

⁷² 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.

⁷³ Ibid, p. 188.

⁷⁴ 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.

⁷⁵ 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.

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".⁷⁶ In order to make the land reform legitimate, Land law was published in different rural soviets.⁷⁷ It helped Communist Party to establish its own controlled area, and communism became popular among the peasants, more and more poor peasants send their son joined 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 established⁷⁸ 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 pretty much territories in rural area,⁷⁹ and had 15 rural soviets, there were more than 100000 Chinese joined the Red Army, however, there was not a central government ruled the communist controlled China.⁸⁰ Since the strong influence among mass and its territory,

⁷⁶ 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.

⁷⁷ 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, 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>, accessed 25 October 2016.

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ Ibid.

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, Communist Party of China decided to establish Chinese Soviet Republic and published the Constitution of Chinese Soviet Republic.⁸¹ Finally, from 7th November to 20th 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 meeting, and passed Constitution of Chinese Soviet Republic, Land Law and Labor Law.⁸² After the election, Mao Zedong was elected as the leader in the new government.⁸³

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 1918.⁸⁴ Although the Constitution had an amendment after the Second National Congress of the Chinese Soviet, however the main idea was not changed.⁸⁵ The Constitution was consisted of preamble and 17 Articles, it stipulated the form of state, basic political system, the task of government and the right and duty of people.⁸⁶ 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

⁸¹ 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.

⁸² 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.

⁸³ 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.

⁸⁴ 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.

⁸⁵ 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.

⁸⁶ 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.

influence of Soviet Union and the characteristics of communist state, 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 the workers, peasants, Red Army soldiers and the entire toiling population...”⁸⁷

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 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.”⁸⁸ 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 Soviet Union's Constitution.⁸⁹

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.”⁹⁰ 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 Constitution of Chinese Soviet Republic.⁹¹

⁸⁷ 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.

⁸⁸ 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 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.

⁸⁹ 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.

⁹⁰ Ibid 64.

⁹¹ 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.

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.

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 guarantees 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.”⁹²

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 is not independent in its foreign policy and economics, the most 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 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 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”.⁹³ 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

⁹² Ibid 64.

⁹³ Ibid 64.

rights and duties. According to these regulations, people lived in Chinese Soviet Republic without distinction of sex, religion, or nationality shall enjoy the freedom of 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.⁹⁴

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 Soviet Union’s Constitution, the most regulation of People’s rights and duties was a copy of Constitution of Soviet Union, included Article 14.⁹⁵

From the birth of Communist Party of China in 1921 to the establishment of Chinese Soviet Republic in 1931, Communist Party spent 10 years to exploring its own path, the rich experiences of rural soviet helped Communist Party of China from weak to strong, from a regional regime to the ruler of whole of China. It is the triumph of mass line, thanks to sacrifice of proletariats and peasants, Communist Party of China established the People’s Republic of China in 1949.

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

2.1 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 establish in four months.⁹⁶

In this part, the author will mainly deal with three questions: the first one is the

⁹⁴ 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

⁹⁵ 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.

⁹⁶ 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.

formation or birth of Communist Party of Hungary, the second one is the establishment of Hungarian Soviet Republic and its Constitution. Especially how Soviet Union's Constitution's influence on this Constitution, the last question will be the failure of Hungarian Soviet Union.

2.1.1 The Socialism in Hungary before First World War

The History of socialism in Hungary is much longer than the history of 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 1868.⁹⁷ Since 1867, the Austria and Hungary signed the Compromise between these two major nationalities in this land, so called Austro-Hungarian Monarchy had established, and it helped a lot to develop the economics in Hungarian part. The industrialization happened in Hungary, more and more factories was 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 for 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.⁹⁸

The Socialist group leading the working class mainly in Budapest had five failure 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.⁹⁹

In the end of 19 century, there was a new trend of socialist activities. With the industrialization in Hungary, there were more and more educated scholars and middle-class existed in the big cities in Hungary, they asked more and more legal

⁹⁷ 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.

⁹⁸ 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.

⁹⁹ 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.

recognition from the Monarchy to ensure their rights.¹⁰⁰

Just like there was a socialist journal which called New Youth in China,¹⁰¹ there was also had a journal in Hungary which spread socialism among young students and scholars. With the help of his rich friends, 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 publication in Hungary, since its prestigious subscribers.¹⁰²

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 1915.¹⁰³ 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 severely. Numerous people, especially working class became dissatisfied with the government, counter-government activists and antiwar program were organized by the socialist group.¹⁰⁴

2.1.2 Bela Kun and the Birth of Communist Party of Hungary

Bela Kun was the definitely leader in the early period of Communist Party of Hungary. He and his comrades established the Communist Party in Hungary in 1918, in the next year, his Party had the chance to build a Soviet Republic and exercised some socialist policies, even though this Soviet Republic had only 113 days "life".

Bela Kun was born in a small village in Transylvania (now one part of Romania) in 1886. In his early year worked as a journalist in Romanian and joined the socialist party, Hungarian Social Democratic Party in his 16 years old.¹⁰⁵ Because of the First World

¹⁰⁰ Ibid, p. 16.

¹⁰¹ 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.

¹⁰² 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.

¹⁰³ Ibid, p. 26-27, see also <http://encyclopedia.1914-1918-online.net/article/labour_labour_movements_trade_unions_and_strikes_austria-hungary>, accessed 17 November 2016.

¹⁰⁴ Ibid.

¹⁰⁵ 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.

War was breakout in 1914, Bela Kun joined the army and fought for Austro-Hungarian Monarchy, however during the war time Bela Kun was captured by 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 socialist group with his socialist comrades as well.¹⁰⁶

In the prisoned period, Bela Kun and his comrades accepted the new trend of Russian Revolution. They became Bolshevik Party's member in 1917, and even had the privilege to live outside of prison camp.¹⁰⁷

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.¹⁰⁸

Almost at the same time, the socialist war prisoner joined the Bolshevik happened in other parts of war prison camp in Russia.¹⁰⁹ More and more former Hungarian soldiers accepted the new Socialism trend, Bolshevism or Leninism and got the inspiration from Russian Revolution, even took part in the Revolution.¹¹⁰

Since Kun's mainly contribution in the establishment of Communist Party of Hungary and his leadership in the Hungarian Soviet Republic, let's focus on Kun's activities in Tomsk, the place which he was prisoned. After the breakout of Russian Revolution, Kun seemed found a new method to save his own country, and became a Bolshevism. Because of his journalist career in Austro-Hungarian Monarchy, he got a chance to publish his thought in local newspaper, in his first article, he showed us his ideology change "I too absorbed the air of the West, Where the great idea of social democracy was born. Now, in the light of the new Great Russian Revolution, I understand: Ex oriente lux."¹¹¹ Because of his article and his willing to learn more

6, 53-54.

¹⁰⁶ 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>, accessed 18 November 2016.

¹⁰⁷ Ibid

¹⁰⁸ Sijing Gan, Kunyu Gong and Hongchen Li Translated, *匈牙利史 [The History of Hungary]*, Original Version is, Magyarország története, Unger Mátyás, Szabolcs Ottó, (1st edn, Heilongjiang People's Publishing, 1982) p. 284.

¹⁰⁹ 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.

¹¹⁰ Ibid, p. 60.

¹¹¹ This article was published at "A Hungarian Social Democrat on the Russian Revolution", Novaia Zhizn (Tomsk), 22 April 1917, cited in ibid p. 58.

Bolshevism, Bela Kun became one of the leaders in the war prison camp, even in the Hungarian Group of the Communist (Bolshevik) Party of Russia. What's more, he also fought for the new but weak regime.¹¹² Because of Bela Kun's article and his talent, Kun got a chance to meet the leader of Communist Party of Russia, Lenin in Petrograd in December 1917. In the period of Petrograd, Bela Kun had lots of chances to serve this new country. He became an editor for Hungarian version International Socialist, a Russian political publication, even had the chance to join the Brest-Litovsk program.¹¹³

During Kun's serving time in Petrograd, he not only made a friendship with the leaders of Communist Party of Russia, but also tried to form a Hungarian communist group in Russia. After his hardworking, a Hungarian communist group was organized in Moscow, and Bela Kun was elected as the chairman in this Group because of his reputation.¹¹⁴

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.¹¹⁵ Bela Kun became the definitely leader of communist group among the Hungarian in Russia.

After the Brest-Litovsk agreement, Russia, the new socialist country finally had a time to have a breath, and even think about spread 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 develop level of economy and political structure of Hungary, even Germany and Italy lost the First World War as well, Hungary was still the most possible place to outbreak a socialist revolution.¹¹⁶

Under this situation, Bela Kun and his Bolshevism Comrades were been sent back to Hungary by the Communist Party of Russia and started to practice socialism revolution

¹¹² See <http://encyclopedia.1914-1918-online.net/article/kun_bela>, accessed 18 November 2016.

¹¹³ 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. 61-62.

¹¹⁴ Ibid, p. 68.

¹¹⁵ Ibid, p. 71.

¹¹⁶ 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.

in Hungary.¹¹⁷ 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 First World War, the Austro-Hungarian Monarchy became much weaker state, more and more former nationalities in this country started to establish their own states, the territory of Monarchy has Shrunk, the great power was not had the enough military strength to control the whole country, depression among these pessimistic Hungarians.¹¹⁸ 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 had the power to entitle its own sovereignty.¹¹⁹ However, the Karolyi cabinet could not control the whole situation in Hungary. This new country retained in a chaos 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 Bolshevism Bela Kun.¹²⁰

2.1.3 The First Hungarian Republic

The Hungarian Soviet Republic only lasted for 113 days. It is short period in the history of Hungary. However, it is also 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.¹²¹

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.

Hungary established its own government in 1918, Mihaly Karolyi became the first Prime Minister of Hungary, during his governing, the Parliament of Hungary could be

¹¹⁷ 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.

¹¹⁸ Alfred D. Low, *The Soviet Hungarian Republic and The Paris Peace Conference* (1st edn, American Philosophical Society, 1963) p. 6-17.

¹¹⁹ 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.

¹²⁰ *Ibid*, p. 93.

¹²¹ <<https://theorangefiles.hu/the-hungarian-soviet-republic/>>, accessed 20 November 2016.

divided into three parts: Karolyi's political group, Jaszi's Radical Bourgeois Party and the socialist party, Hungarian Social Democratic Party.¹²² Even though, the supporting Karolyi's group in Parliament was stronger than the socialist party, however, the socialist party apparently had much more experiences on the term of connecting with common people, especially in the rural area.

In November of 1918, only one month later Karolyi was appointed as Prime Minister in Hungary by King Karl IV, Hungarian decided to finish the Compromise relation with Austria, also got rid of their Austro-Hungarian King as well, under such kind of condition, there was an Aster Revolution breakout in Hungary. After the Revolution, King Karl IV had to make a statement and separate the Monarchy, therefore the First Hungarian Republic was appeared. Karolyi, the widely-respected Politician was elected as the first President in the Republic. Dénes Berinkey was appointed as the Prime Minister in this youth Republic.¹²³

Nevertheless, the First Hungarian Republic existed only four and half month, after Berinkey's two-month service for this new Republic, the Social Democratic Party gained the power in the Parliament.¹²⁴ 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.¹²⁵

2.1.3.1 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 its territory to the Allied Powers, on 20 March 1919, when Lieutenant send his famous Vix-memorandum to President Karolyi, and request First Hungarian Republic to give

¹²² 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.

¹²³ <<https://theorangefiles.hu/the-first-hungarian-republic/>>, accessed 20 November 2016.

¹²⁴ Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 11.

¹²⁵ Ibid, p. 9.

away its territory of West Transylvania and one part of the Great Hungarian Plain,¹²⁶ when the memorandum published, the national pride was seriously hurt among Hungarians, most of them hope their government will do something to change this situation, some of them even want 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 Parliament refused to take the responsibility, and after a long-time discussion in 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 a cooperation with the Communist Party.¹²⁷

Nevertheless, the Communist Party of Hungary was under the suppression by First Hungarian Republic, as we known, 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 angrily working class had a big conflict with the policemen, sooner it became a riot, four policemen even died in the riot, the government decided to show their strong willing in the public, the organizer 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 became the evidences of their violently 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.¹²⁸

Although, the Social Democratic Party had some unhappy experiences with Communist Party,¹²⁹ this socialist Party realized that the bourgeois dictatorship of the

¹²⁶ Ibid. See also <<https://theorangefiles.hu/the-first-hungarian-republic/>>, accessed 20 November 2016.

¹²⁷ Ibid, p. 15-16.

¹²⁸ 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.

¹²⁹ For example, the riot on 20 February was happened in front of the office of *Nepszava*, the official newspaper of

present government was unfavorable among the masses, the idea of forming a proletarian 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,¹³⁰ a new Soviet Republic born in Hungary.

Therefore, on 21 March 1919 the government decided to hand over its power and Social Democratic Party shared its power with Communist Party of Hungary.¹³¹ Also the First Hungarian Republic changed its Form of State to Soviet Republic.¹³² 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 leader in the Party had to stay in the prison. Nevertheless, the political victim became the ruler in the state, the former prisoner became the leadership in the new government.¹³³

This bloodless dramatic change in Hungary 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.

2.1.3. 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, "The Hungarian Soviet Republic 'created what our people's democracy, which also has the function of the dictatorship of the proletariat...',"¹³⁴ Soviet Russia, as the only successful Soviet Republic in the world,

Social Democratic Party, because of the fear of violence, socialists called the policemen and asked for protecting. Then the riot happened. Ibid, p. 122.

¹³⁰ 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.

¹³¹ 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.

¹³² Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 11-22.

¹³³ 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.

¹³⁴ Peter Apor, 'Praefigurat: Exemplary History and Temporal Order in the Thirtieth Anniversary of the First

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."¹³⁵ When the new government established, they send 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 willing, follow Russian Soviet model.¹³⁶

Also, 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 do not passed too many new laws in that period, in most time, the new Soviet Republic was busying to fight with his enemy, not only from abroad, but also in the country.¹³⁷

Under such condition, the legal exercises in Hungarian Soviet Republic had a strong influenced by Soviet Russia. The most administration was 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.¹³⁸ The short ruling period and the obstacles and hostility from neighboring countries and Szeged deemed there was not too many chances left to exercise Soviet legal practices in Hungary.¹³⁹ 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 of Hungarian Soviet Republic, the Governing Council passed some basic rules which related to the agrarian policy and nationalization the private

Hungarian Soviet Republic of 1919' (2011) Vol. 12 *Politics, Religion & Ideology*, p. 129.

¹³⁵ Ibid.

¹³⁶ 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*.

¹³⁷ 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.

¹³⁸ Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 67.

¹³⁹ 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.

estates.¹⁴⁰ In rural area, like later in Chinese Soviet Republic, the widely land reform just happened. Before Hungary became a Soviet Republic, the Land Reform Law had passed in February 1919,¹⁴¹ during the land reform, the landlord lost their lands and poor peasants had their own land.¹⁴² In city, the working class also had the chance to improve their working conditions. The eight-hour-day policy was introduced by decree.¹⁴³ The workers also enjoyed their higher payment, on 17 April 1919, the government published a regulation on general wages, workers had a better paying.¹⁴⁴

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,¹⁴⁵ it was the first Soviet Constitution in Hungary, and had a strong influence by Soviet Russia as well.

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 soviet; 5. the suffrage; 6. The budgetary law and the last one, 7. The rights of nationalities in Hungarian Soviet Republic.¹⁴⁶

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.¹⁴⁷

Also, the Constitution ensured the suffrage among the masses, most people had the

¹⁴⁰ Ibid, p. 55.

¹⁴¹ 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.

¹⁴² Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 47-48.

¹⁴³ Ibid, p. 63.

¹⁴⁴ Ibid, p. 62.

¹⁴⁵ Ibid, p. 64.

¹⁴⁶ 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%A1rsas%C3%B6zt%C3%A1rsas%C3%A1g_alkotm%C3%A1nya>, accessed 28 November 2016.

¹⁴⁷ Article 1-3, Chapter 1, Ibid.

right to vote, however, there were several groups whose suffrage were deprived.¹⁴⁸ 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.”¹⁴⁹

The new Constitution was modeled after Soviet Union’s Constitution, it broke the Hungarian Constitution tradition, however since the Soviet Republic’s “life” was too short, its Constitution did not put into enforced.¹⁵⁰

2.1.4 The Counter-Revolution and White Terror

2.1.4.1 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 remained capitalists gathered in south Hungary.¹⁵¹

The attack from Romania 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.¹⁵² With the support of Allied Powers, the attack had a progress. In Hungary side, the attack raised the proletariats enthusiastic 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.¹⁵³ However, the superior of Romania army destroyed the Communist exercises in Hungary, and in a few day 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

¹⁴⁸ Article 68, Ibid.

¹⁴⁹ Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 64.

¹⁵⁰ Marta Dezso and Bernadette Somody, *Constitutional Law in Hungary*, (1st edn, Kluwer Law International, 2010) p. 28.

¹⁵¹ 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.

¹⁵² Peter F. Sugar, Peter Hanak, Tibor Frank (ed.), *A History of Hungary*, (1st edn, Indiana University Press, 1990) p. 304.

¹⁵³ Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p.96.

Republic was endangered.¹⁵⁴ 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 part of May, Salgotarjan was saved, and Miskolc was in charged by Red Army, the threat from north was relieved, even Hungarian Red Army occupied part territory of Czechoslovak. The danger from neighboring states seems gone.¹⁵⁵ 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.¹⁵⁶ The Soviet government took a consideration of Clemenceau's note and tried to reach an agreement with these Great Powers.¹⁵⁷

After a short peaceful period in July, the Red Army decided to break the "silence" and tried to cross Tisza, this military movement failed at last, on 30 July, Romanian army broke the defense and heading 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 government.¹⁵⁸

2.1.4.2 The Counter-Revolution and white Terror

When Romanian and Czechoslovakia army attack 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 government. Soon, he was appointed as the Commander-in-Chief of the counter-revolutionary army.¹⁵⁹ When the Romanian army conquered Hungarian Soviet Republic and entered in Budapest, the counter-revolutionary army got the support from the Allied Powers. On

¹⁵⁴ Peter F. Sugar, Peter Hanak, Tibor Frank (ed.), *A History of Hungary*, (1st edn, Indiana University Press, 1990) p. 306.

¹⁵⁵ Ibid, p. 307.

¹⁵⁶ Tibor Hajdu, *The Hungarian Soviet Republic*, (1st edn, Akademiai Kiado, 1979) p. 133.

¹⁵⁷ Ibid, p. 150-151.

¹⁵⁸ 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.

¹⁵⁹ Miklos Szinai, Laszlo Szucs(ed.), *The Confidential Papers of Admiral Horthy*, (1st edn, Corvina Press, 1965) p. xii.

1 August 1919, the Hungarian Soviet Republic was disestablished, Romanian army occupied the most territory of Hungary, even the capital. The occupation last 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 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.¹⁶⁰

With the ruling of 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,¹⁶¹ the Communist Party of Hungary remained an illegal status, and most Communist Party member had to move to other countries, included Bela Kun. The Communist activities became a secret movement.

2.2 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, 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 section of the socialist parties in the Monarchy.¹⁶² In Poland, the communist party, Polish Socialist Party was founded in Paris in 1892.¹⁶³ 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.

¹⁶⁰ Ibid, p. xiii.

¹⁶¹ Bela Bodo, 'Hungarian Aristocracy and White Terror' (2010) Vol. 45, No. 4 *Journal of Contemporary History* p. 718-719.

¹⁶² Take an example, The Social Democratic Czechoslovakian 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.

¹⁶³ 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), <<http://www.jewishvirtuallibrary.org/pps-polska-partia-socjalistyczna>>, accessed 1 February 2017.

2.2.1 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.¹⁶⁴

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 1878.¹⁶⁵

Before regaining the independence of the country, the Czechoslovakia was under the control of Austro-Hungarian Monarchy, however, Czech part had a much closer relation with Austria, and 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 ruled Czech made the development of Socialist movement more rapid.¹⁶⁶ Nevertheless, in Slovakia, there was only 19 percent population worked in the industrial field.¹⁶⁷ 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, after the Paris Peace Conference, the independence of Czechoslovakia was supported by the Allied countries in First World War.¹⁶⁸

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

¹⁶⁴ Paul E. Zinner, *Communist strategy and tactics in Czechoslovakia, 1918-48* (1st edn, Pall Mall Press, 1963) p. 25.

¹⁶⁵ Ibid.

¹⁶⁶ Zdenek L. Suda, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 2.

¹⁶⁷ Paul E. Zinner, *Communist strategy and tactics in Czechoslovakia, 1918-48* (1st edn, Pall Mall Press, 1963) p. 11.

¹⁶⁸ 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.

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”.¹⁶⁹ It was 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 1921.¹⁷⁰

2.2.2 Early exercises of Communist Party of Czechoslovakia

From the year which the Party existence to the broken out 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 Hungarian 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.¹⁷¹ However, the new Soviet Republic was not popular by its neighbors. Also the most Hungarian 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 the Clause 88 of Hungarian Soviet Constitution”¹⁷²

Nevertheless, the Slovak Soviet Republic only existed for three weeks and it was

¹⁶⁹ 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>, accessed 10 February 2017.

¹⁷⁰ Ibid, p. 248.

¹⁷¹ 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.

¹⁷² Zdenek L. Suda, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 30.

considered as a puppet regime, the Czechs and Slovaks were played a very important role in the Slovak Soviet Republic, the leader of the government of the Republic was a Czech Communist Janousek, also before the establishment of Slovak Soviet Republic, Janousek promote a communist revolution in Czechoslovakia and establish a Soviet Republic peacefully.¹⁷³ What's more, the failure of Slovak Soviet Republic was treated as a symbol of Communist movement in Czechoslovakia and encouraged the solidarity of Czechs and Slovaks during the Communist movement after 1945.¹⁷⁴

2.2.3 The Birth of Communist Party in Poland

Before 1918 the Poles gained its independence from Russia, the majority territory of Poland was one part of Russian Empire.¹⁷⁵ However, with the spread of Socialism in the middle of the 19 Centaury and later the Marxism¹⁷⁶ in the late of 19 Centaury in the land of Poland, and the development of the economic and industry in Poland,¹⁷⁷ there were already had some radical Socialist Parties among the land of Poland. Among these Socialist Parties, there were two Parties was considered as the parents of the Communist Party of Poland, the Social Democracy of the Kingdom of Poland and Lithuania (SDKPIL) and the left wing of the Polish Socialist Party (the PPS-Leftist).¹⁷⁸

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

¹⁷³ 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>, accessed 14 February 2017.

¹⁷⁴ Zdenek L. Suda, *Zealots and Rebels: A History of the Communist Party of Czechoslovakia*, (1st edn, Hoover Institution Press, 1980) p. 30-31.

¹⁷⁵ 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.

¹⁷⁶ 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.

¹⁷⁷ 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.

¹⁷⁸ Ibid, p.b. see also <<http://encyclopedia2.thefreedictionary.com/Communist+Party+of+Poland>>, accessed 2 February 2017.

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.¹⁷⁹ 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.¹⁸⁰ Under the leadership of Dzierzynski and Luxemburg, the Party had the fighting exercises with the ruler in Poland at that time, Russia.¹⁸¹ 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.¹⁸² 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 the 1918.¹⁸³ And one year later, the Communist Party joined the Communist International.¹⁸⁴ 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 1925.¹⁸⁵

2.2.4 Early exercises of Communist Party of Poland (KPP)

During the early history of Communist Party of Poland, the Russian Communist had

¹⁷⁹ 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.

¹⁸⁰ Robert Blobaum, *Feliks Dzierzynski and the SDKPiL: A Study of the Origins of Polish Communism* (1st edn, East European Monographs, 1984) p.1.

¹⁸¹ Ibid, p. 148.

¹⁸² 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.

¹⁸³ Social Democracy of the Kingdom of Poland and Lithuania, is available at website of Virtual Shtetl, <<http://www.sztetl.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.

¹⁸⁴ Ibid.

¹⁸⁵ Donald F. Busky, *Communism in History and Theory: the European Experience* (1st edn, Praeger, 2002) p. 3.

a very strong influence not only among the Party member, 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.”¹⁸⁶

In the early period of the history of Communist Party of Poland, the most impressive exercise was happened during the Russia-Poland War. After the First World War, the Poland reestablished, however, there was a dispute of the Poland territory between Poland and Soviet Russia, the conflict caused a war between Poland and Soviet Russia, 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, this Jewish town witness the establishment of Provisional Polish Revolutionary Committee.¹⁸⁷ It was supported by the Soviet Russia (10 million Roubles was collected by the orgburo) however the Provisional Committee was not support by most Poles and was considered as an outsider invader.¹⁸⁸ Therefore the Committee only existed 23 days, and it is not possible to adopt a Constitution¹⁸⁹. However, there was a Manifesto of this socialist revolution which prepared by the Committee. And the issue of economic, agriculture and the rule of working class were presented.¹⁹⁰ With the failure of Red Army and the Soviet-Polish peace treaty was signed in Riga in 1921¹⁹¹, 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 acted a military coup in Poland, and at that time Communist Party

¹⁸⁶ 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.

¹⁸⁷ 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.

¹⁸⁸ 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.

¹⁸⁹ Ibid, p. 148.

¹⁹⁰ Ibid, p. 140-141.

¹⁹¹ Donald F. Busky, *Communism in History and Theory: the European Experience* (1st edn, Praeger, 2002) p. 3

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.¹⁹²

There is also has a special phenomenon in Communist Party of Poland, the Jewish had a significant contribution in the Polish communist movement.¹⁹³ During the Provisional Polish Revolutionary Committee in Bialystok, it was also obtained a great support by the Jewish.¹⁹⁴

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, communist party finally established in each state. Communist Party of Hungary was the earliest one among these countries. Bela Kun, the former prisoner of war learnt his communist ideology and gained his fames in the campus, the Hungarian Group of the Communist Party of Russia was organized in March of 1918, in the same year, Bela Kun and his Hungarian comrades were sent back to Hungary in November, Communist Party of Hungary was also established in the same month.¹⁹⁵ The communist activities in Poland could 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 1925.¹⁹⁶ The rest two countries established their communist party in the beginning of 1920s. Czechoslovakia found its

¹⁹² Ibid.

¹⁹³ Jaff Schatz, *The Generation: The Rise and Fall of the Jewish Communists of Poland*, (1st edn, University of California Press, 1991) p. 95.

¹⁹⁴ 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.

¹⁹⁵ 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).

¹⁹⁶ Jan B. de Weydenthal, *The Communists of Poland: an historical outline* (1st edn, Hoover Institution Press, 1986).

Communist Party in 1921,¹⁹⁷ in the same year, Chinese communists established their communist organization in the July of 1921.¹⁹⁸ All of these communist parties were the member of Third International, which 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 specially 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 leant from those activities finally made it came true, namely, the establishment of communist regime in Visegrad region and China.

¹⁹⁷ 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).

¹⁹⁸ 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 Visegrad states

In last Chapter, the author described a general picture of the born of Communist Party between China 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 noticed that Communist party born with a “red” spoon in its mouth.¹⁹⁹ It is doomed to fight with capitalist and even sacrifice in most time. From the early of 20th Century to the Second World War, there was only one successful socialist country in the world, Soviet Union. After the Second World War, since the weakness of capitalist in Europe, Soviet Union had the chance to develop its Sphere of influence in Central and Eastern Europe. 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.²⁰⁰ After the nationwide election, the first National People’s Congress was formed. After a long-term discussion on the 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.²⁰¹

¹⁹⁹ “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.

²⁰⁰ An Chen, *Restructuring Political Power in China: Alliances and Opposition, 1978-1998*. (1st edn, Lynne Rienner Publishers, 1999) p. 65.

²⁰¹ The Results of Hungarian Parliamentary Election, 1949.

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.²⁰² In Polish People's Republic, after a nationwide discussion, the Constitution of 1952 was adopted by Sejm.²⁰³

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. First Communist Constitution in China

In this part, the main focus will be paid on how Chinese abolished old legal system and how Chinese Communist Party established a new country in China and set up a communist regime in this land and tried to introduce a new Constitution which mainly followed on Soviet Union 1936 Constitution, also how the Chinese legislative organ which is considered as the supreme organ of the State works, it will mainly give a introduction of the first election of National People's Congress.

1.1 Adoption of Constitution of People's Republic of China

People's Republic of China was established on 1st October 1949, before the new China was founded, Chinese Communist Party abolished the legal system of Republic of China, and tried to set up its own legal system. In the following part, the author will

<http://www.gutenberg.us/articles/hungarian_parliamentary_election,_1949>, accessed 1 April 2017.

²⁰² 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.

²⁰³ 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*, a doctoral degree thesis <http://etheses.lse.ac.uk/112/1/Lasok_The_Polish_Constitutions_of_1947_and_1952.pdf>, accessed 3 April 2017.

introduce how Chinese Communist Party abolishing 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, 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 published by 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.²⁰⁴ However, after the publishing of “Abrogation of the Six Codes”, Chinese Communist Party had a very big fight with Kuomintang. Before the establishment of People’s Republic of China, Chinese Communist Party had occupied the majority part of China, only the south and west part of this country were not controlled by the Communist Party.²⁰⁵ 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 was considered as the best form for Chinese political life at that time,²⁰⁶ as a provisional Constitution, Common Program was published in 1949, in this regulation, it was also mentioned 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.

²⁰⁴ 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>, accessed 4 April 2017.

²⁰⁵ 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 2*, (1st edn, Cambridge University Press, 1986) p. 783.

²⁰⁶ 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.

Laws and decrees protecting the people shall be enacted and the people's judicial system shall be established.”²⁰⁷

1.1.2 Establishment of People's Republic of China

On 1 October 1949, after eight-year anti-Japanese war and four-year civil war between Chinese Communist Party and Chinese Nationalist Party (Kuomintang), Chinese Communist Party had the chance to exercise their Communist theory in the whole country.²⁰⁸ Before the establishment, Chinese Communist Party and other democratic parties hold the preparatory meeting of Chinese People's Political Consultative Conference (hereinafter CPPCC) in Beijing from 15 June to 19 June 1949.²⁰⁹ Three month later, the first plenary meeting of CPPCC was held in Beijing, 622 representatives attend this meeting.²¹⁰ On 29 September, the CPPCC passed the Common Program of CPPCC (hereinafter Common Program), 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.²¹¹ Before the Constitution of People's Republic of China in 1954 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 (hereinafter Electoral Law) and the first Constitution Law in China stipulated the inheritance of Common Program.²¹²

The new government ruled the whole country with the guidance of Common Program. It should be noticed that from the foundation of People's Republic of China to 1954, before the Constitution of People's Republic of China was adopted, in these period,

²⁰⁷ 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.

²⁰⁸ 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.

²⁰⁹ Ibid, p. 26-27. The first session was mainly preliminary period.

²¹⁰ 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.

²¹¹ Ibid, p. 66.

²¹² 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.

China was a new democratic country. According to the Common Program, the people's democratic dictatorship of China not only including the worker class and peasant class, but also bourgeoisie.²¹³

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 last 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 counterrevolutionaries 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).²¹⁴ In the legal field, the new government abolished the legal system of Republic of China, and tried to build a socialist legal system in China.²¹⁵

During the four years socialist transformation, the country more and more stable, and the government made a good progress in the economy and political fields.²¹⁶

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.²¹⁷

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

²¹³ 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.

²¹⁴ Ibid, p. 163. 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.

²¹⁵ Ibid.

²¹⁶ Ibid, p. 165-166.

²¹⁷ 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. I, no.1, (1st edn, Contemporary China Publishing House, 1999) p. 102-103.

registration were happened in China.²¹⁸ 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, the most people who 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.”²¹⁹ In 1953, with the guidance of Electoral Law and people’s enthusiasm, a nationwide grassroots election was operated in China. In this election, nearly 278 million people were participated in the election procedure, it took up 85.88 % of the total voter,²²⁰ and 5,669,144 deputies of county lever People’s Congress were elected.²²¹

Since Electoral Law regulated that the higher lever’s People’s Congress were elected indirectly.²²² 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 lever 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.²²³

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

²¹⁸ 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.

²¹⁹ 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.

²²⁰ Jinfan Zhang, Xianyi Zeng, *中国宪法史略* [History of the Constitution of China], (1st edn, Beijing Publishing House, 1979) p. 249.

²²¹ 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.

²²² 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.

²²³ 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.

first election of National People's Congress, the Communist Party had an open mind in this election. It ensured the diversity of united front.²²⁴

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 Constitution of People's Republic of China

Even though, when 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 realised a Constitution should be adopted soon.²²⁵ 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 visit 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.²²⁶ 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 China, and this time he gave his advice to the second powerful person in Chinese

²²⁴ 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.

²²⁵ 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.

²²⁶ 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.

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 won this election and dominated the in the Government. With the consideration of Stalin's suggestion, Chinese Communist Party decided to operate a nationwide election and prepared a new Constitution.²²⁷

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.²²⁸ 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 for Hangzhou, after two months' hard working, a draft version Constitution was accomplished.²²⁹

From 23 March of 1954 to 11 June 1954, there were seven meeting held by the Constitution Drafting Committee. At the same time, a more widely discussion on the first Constitution was held by the Committee. The Constitution Drafting Committee organized 17 discussion groups, there were nearly 8000 persons 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 million Chinese participated in this unprecedented discussion. There were even organized Constitution propaganda teams by the local government.²³⁰

²²⁷ Ibid, p. 55-56.

²²⁸ 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.

²²⁹ 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.

²³⁰ 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.

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. In the next day, the draft Constitution was passed by the Central People's Government Committee, and submitted to the National People's Congress.²³¹

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 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 deleted this four words.²³²

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 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

²³¹ Ibid, p. 236-237.

²³² 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.

announced, there were 1197 affirmative votes that also means 100% Deputies agreed to adopted the Constitution.²³³

After the adoption of 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 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 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 People's Congress should follow the guide of Constitution.

1.2 Analysis of the Text and structure of Constitution of People's Republic of China

It is very interesting to analysis the text and structure of Chinese Constitution, since Chinese Constitution was 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 leaderships 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...;
3. The Constitution of Romania, Poland, Germany (German Democratic Republic) and Czechoslovakia, etc...”²³⁴

²³³ Ibid, p. 393-394.

²³⁴ Ibid, p. 68-70.

Liu Shaoqi and the rest part of the leaderships who stayed in Beijing replied this telegraph, and studied the Constitution not only the Soviet Union one, but also the Constitution from the Eastern Bloc. Therefore, Constitution of People's Republic of China unavoidable 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.²³⁵ 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 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.²³⁶

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 was not existed in every Communist Constitution, in 1936 Soviet Union Constitution and Hungarian Constitution of 1949, there were not Preamble, however in Czechoslovakia Constitution of 1948²³⁷ and Constitution of the Polish People's Republic in 1952, like Chinese

²³⁵ As introduced in the Chapter One, the methodology part, contextualism is a very important method in comparative research.

²³⁶ 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.

²³⁷ 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 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.

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 Soviet Russian's Constitution documents.²³⁸

1.2.1.1 The Preamble of 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 Common Program and 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 focus 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.²³⁹

1.2.1.2 The General Principles of 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.

²³⁸ 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.

²³⁹ 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.

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."²⁴⁰ 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".²⁴¹ 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, the socialism has not been realized in China, and the next mainly task was realized the 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.²⁴²

1.2.1.3 The State Structure of Constitution of 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

²⁴⁰ 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.

²⁴¹ Jinfan Zhang, Xianyi Zeng, *中国宪法史略 [History of the Constitution of China]*, (1st edn, Beijing Publishing House, 1979) p. 252.

²⁴² 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.

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 mainly 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 discussed by the members of the Group, and it should be noticed that almost each Article under the discussion had to compared with the similar Articles in the Soviet Union Constitution, what's more, some Articles had the influences from the Common Program as well.²⁴³ National People's Congress was the "sole organ exercising the legislative power of the state". and 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 position was Chairman.²⁴⁴ 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."²⁴⁵ Also the Chairman in China was entitled to governing the state with other central organs. Especially, in Article 42, it

²⁴³ 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.

²⁴⁴ 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>, accessed 25 April 2017.

²⁴⁵ Ibid, p. 229.

stated that the Chairman “commands the armed forces of the state, and is Chairman of the Council of National Defense.”²⁴⁶

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.²⁴⁷

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 municipality. In county level, there were autonomous zhou, counties, autonomous counties, and cities.²⁴⁸

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

²⁴⁶ 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.

²⁴⁷ 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.

²⁴⁸ 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.

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."²⁴⁹ 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 six Section of Chapter 2 mainly 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 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."²⁵⁰ 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

²⁴⁹ 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/ARTI1315304517625199.shtml>>, accessed 27 April 2017.

²⁵⁰ Ibid. Article 78, Constitution of People's Republic of China.

interference by local organs of state.”²⁵¹ 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 Fundamental Rights and Duties of Citizens of 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.²⁵²

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...”²⁵³ “Citizen” is more 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 person 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

²⁵¹ Ibid, Article 83.

²⁵² Ibid, Article 85-102.

²⁵³ Mao Zedong, On the People’s Democratic Dictatorship, a speech which given on 30 June 1949, is available <https://www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4_65.htm>, accessed 2 May 2017.

persons and persons deprived by law of the right to vote and stand for election” also didn’t have the right of voting.²⁵⁴

1.2.1.5 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 national anthem which regulated in the Constitution.²⁵⁵

1.2.2 Analysis of the Structure of 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 work of the similarities and differences of the structure of 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

²⁵⁴ 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.

²⁵⁵ Ibid, Article 104, 105 and 106.

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.²⁵⁶

2. First Communist Constitution in Visegrad States

As mentioned before, there were only 3 countries in the Visegrad Group, 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 Constitution of Hungarian People's Republic in 1949

Hungary, a great power located in Central-Eastern Europe in the history, especially after the Austro-Hungarian Compromise of 1867, the Monarchy was generally considered as a great power in the World.²⁵⁷ However, Hungary never had its own effective written Constitution²⁵⁸ until the National Assembly of Hungary adopted the Constitution of Hungarian People's Republic in 1949.²⁵⁹

There is a very famous ancient saying in China that "Take history as a mirror and you will understand why dynasties rise and fall."²⁶⁰ It could also apply the history of Hungary. Hungary had a very short experience of Soviet Republic, after the First World

²⁵⁶ Constitution of People's Republic of China in 1954 is available

<<http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>>, accessed 11 August 2017.

²⁵⁷ Samuel R. Williamson Jr, *Austria-Hungary and the Origins of the First World War* (1st edn, Palgrave Macmillan, 1991) p. 4.

²⁵⁸ 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.

²⁵⁹ William Sólyom-Fekete, 'Hungary' in William B. Simons (ed.) *The Constitutions of the Communist World* (1st edn, Springer, 1980) p. 192.

²⁶⁰ "Take history as a mirror and you will understand why dynasties rise and fall." [以史为鉴, 可以知兴替], Liu Xu, *An Old Book of Tang, Wei Zheng Zhuan*, is available at <http://www.guoxue.com/shibu/24shi/oldtangsu/jts_075.htm>, accessed 21 June 2017.

War, with the “help” of Soviet Russia, Hungarian Communist Party founded the Hungarian Soviet Republic in Hungary, however, the Soviet Republic only lasted 133 days.²⁶¹

History always presents the similar plot to the audience. After the Second World War, Hungary was liberated by the Red Army in 1945.²⁶² 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 in total.²⁶³ Nevertheless, with the national wide propaganda, the Communist Party of Hungary gradually won the support from masses. During the Parliamentary election in 1949, the Hungarian Working People's Party won 285 seats.²⁶⁴

By controlling the Parliament, Hungarian Working Party started its socialist transformation in the whole country. In the same year, 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. Sooner, 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, Hungarian 1949 Constitution had a very strong influence from the 1936 Soviet Constitution.²⁶⁵ Like William Sólyom-Fekete wrote in his article, “1949 Constitution was a slavish imitation

²⁶¹ Apor Peter, *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> accessed 21 June 2017.

²⁶² Bela Zhelitski, ‘Postwar Hungary, 1944-194’ in Norman Naimark, Leonid Gibianskii (eds.), *The Establishment of Communist Regimes in Eastern Europe, 1944-1949*, (1st edn, Westview Press, 1997) p. 73-74.

²⁶³ Ibid, P. 76-78.

²⁶⁴ 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>, accessed 21 June 2017.

²⁶⁵ IBP USA, *Hungary Country Study Guide, Volume 1 Strategic Information and Developments*, (2013 edition, International Business Publications, 2013) p. 65-66.

of the Soviet-type constitutions, with some variations resulting from the historical and political differences between the Soviet Union and Hungary.”²⁶⁶

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, the Constitution invalidated until 2012.²⁶⁷

2.1.2 Analysis of the Text and Structure of 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 Constitution was Preamble. It also could found in the Communist Constitution in the rest Visegrad Countries and People’s Republic of China, even the

²⁶⁶ William Sólyom-Fekete, ‘Hungary’ in William B. Simons (ed.) *The Constitutions of the Communist World* (1st edn, Springer, 1980) p. 192.

²⁶⁷ Even after the Revolutions of 1989, the Hungarian Constitution had a serious of crucial amendments, the socialist system had been abandoned, and in the content, a western standard Constitution had been adopted. However, the new version Constitution was adopted in 2011.

Preamble was quite short (compared with the other four States' Preamble in the Constitution), it reviewed how the Soviet "helped" Hungarian defeated 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.²⁶⁸

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 was 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 people, and pointed out the task, it was built socialist economic system instead of capitalist economic system. In the Article Five, it showed the importance of the state national-economic plan. In the next Article, it regulated that the all the natural and public resources were belonged to the 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.²⁶⁹

²⁶⁸ Preamble of Constitution of the Hungarian People's Republic, published in Budapest 1953, supplied by Ministry of Foreign Affairs, 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.

²⁶⁹ Ibid, p.185-186.

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 parts, the first part was central power, the second part was local power and the last part was judiciary power.

The first part in third part is central power which includes Chapter Three and Chapter Four, the first Chapter 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 was four years. Besides the Parliament, Presidential 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 was 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 organs 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 empowered to annual or modify the regulations which made by the lower state power.²⁷⁰

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, and the term of the council was four years. Executive Committee was the executive organ of the local council.

Related to the judiciary part, 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 and Constitutional Court was not regulated in the 1949 Constitution. All the judges should be elected. In according with communist system, the court of Hungarian People's Republic bore the task of "punish the enemies of the working people".²⁷¹ 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

²⁷⁰ Ibid, p. 187-191.

²⁷¹ Ibid. p. 191-193.

workers and assists them in the event of sickness or disability”. Even the freedom of speech, press and assembly should be “in according with the interests of the workers”.²⁷²

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 regulated in the Paragraph 2, Article 63, so called “Enemies of the working people ...are excluded from the suffrage by law”.²⁷³

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.²⁷⁴

2.2 Czechoslovak Republic

2.2.1 Adoption of 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.²⁷⁵ 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 “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, Red Army, the military force of Soviet Union

²⁷² Paragraph 1, Article 55 of the Constitution of Hungarian People’s Republic in 1949, *ibid*, p. 194-195.

²⁷³ Paragraph 2, Article 63 of the Constitution of Hungarian People’s Republic in 1949, *ibid*, p. 196.

²⁷⁴ *Ibid*, p. 196.

²⁷⁵ 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.

crossed the eastern border if the Slovakia, later, in May of 1945, with the help of masses in Prague, Red Army liberated the city of Prague, Czechoslovakia officially sunk into Soviet Union's sphere of influence, despite United States forces was entered the western border of Bohemia earlier than Soviet Union forces.²⁷⁶

The liberated Czechoslovakia did not completely voluntary joined the Soviet orbit at the very beginning. Benes and the most Ministers in the government were not a big fan of communist, on the contrary, they were much preferred into the Western orbit,²⁷⁷ 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 Soviet Union, communist politician, 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 the 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 May 9, 1948, with a 100 percentage affirmative votes,²⁷⁸ 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 called as "Ninth of May Constitution", however, this Constitution was not an entirely copy of the 1936 Soviet Union Constitution, it was "an elaborate hybrid, a combination of Western parliamentarism with sovietism"²⁷⁹ 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 was based on the "achievement of national and

²⁷⁶ Ibid, p.101-109.

²⁷⁷ 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.

²⁷⁸ There were 246 representatives attended the Parliament meeting, 54 representatives were absence. Ibid, p. 154.

²⁷⁹ Edward Taborsky, *Communism in Czechoslovakia, 1948-1960* (Princeton University Press, 1961) p. 167.

democratic revolution of 1944 and 1945”²⁸⁰ even though in this official commentary it wasn’t mentioned the influence from Soviet Union, we could easily find some elements from the 1936 Soviet Union Constitution by examining the text and structure of the Ninth of May Constitution.

2.2.2 Analysis of the Text and Structure of 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 Visegrade States and China, Czechoslovakia Constitution had its own characters, even though all of these Constitutions had a strong influence by 1936 Soviet Union Constitution.

Ninth of May Constitution consisted of three parts, the first one is Declaration or 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 this 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.²⁸¹ At the very beginning of the Czechoslovakia, the leaders of the State “invent” the nation-Czechoslovakia, and ensured it in the 1920 Constitution,²⁸² 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.²⁸³

²⁸⁰ Ibid, p. 167.

²⁸¹ 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.

²⁸² 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.

²⁸³ Constitution of the Czechoslovak Republic in 1948 (Czechoslovak Ministry of Information, 1948)

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 the next section, "we" reviewed the history of Czechoslovakia, it started a thousand years ago, and then it reviewed how the Czechs and Slovaks fought with German Hapsburg Dynasty and established the State, and how Czechs and Slovaks against Nazi Germany with the help from Allies, especially how Soviet Union liberated the Prague in 9th 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 noticed, which I 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..."²⁸⁴ 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 left Czechoslovakia.

As the last section of 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, 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 were existed in the same article.

²⁸⁴ Kurt Glaser, *Czechoslovakia: A Critical History* (1st edn, The Caxton Printers, Ltd., 1961) p. 2.

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 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, concluding and transitional provisions.

Not like other Constitutions which 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.²⁸⁵ 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 realized their rights. What’s more, in order to ensure citizens realization of their rights in a “right” way, Article 37, Paragraph 1 regulated the

²⁸⁵ 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.

following provision, “Statements and acts that constitute a threat to the independence, entirely and unity of the State, the Constitution, the Republican form of government and the People's Democratic Order, are punishable according to law”²⁸⁶

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 session, Spring Session and Autumn Session which 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.²⁸⁷ The Government of the Republic was leaded 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 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 against the Constitution or other laws.²⁸⁸ In the local level, the govern organ was National Committee, lower level National Committee shall be subordinate to a higher one.²⁸⁹

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

²⁸⁶ 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.

²⁸⁷ 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.

²⁸⁸ Article 109, Constitution of Czechoslovak Republic in 1948, published by Czechoslovak Ministry of Information, 1948.

²⁸⁹ Paragraph 2, Article 131, *ibid*.

judges exercise their power, shall not only abide by the law, but also so called “People’s Democratic Order”²⁹⁰.

Economic system also specific 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.²⁹¹

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 out of valid.

2.3 Polish People’s Republic

2.3.1 Adoption of Constitution of the 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.²⁹²

After the First World War, Poland was shortly independent. In 1935, in favor of the President Pilsudski, Poland adopted a new Constitution, a presidential system was introduced in the Polish political life, parliamentary system was limited. However, one month after the Constitution was adopted, President Pilsudski passed away. The rest leaderships wanted to pursue the highest position in Poland, the only thing should be noticed is, there was no such charismatic politician in the Poland, therefore the 1935

²⁹⁰ Article 143, *ibid*.

²⁹¹ More detailed analysis is available in Edward Taborsky, *Communism in Czechoslovakia, 1948-1960* (Princeton University Press, 1961) p.173.

²⁹² 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.

Constitution in Poland was not performed very well.²⁹³ Four years after the 1935 Constitution in Poland was adopted, Second World War broke out, sooner Poland was controlled by German Nazi, Polish government in exile moved to France and finally operated in Great Britain.²⁹⁴

Finally, with the help of the Allies, Poland 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 located in the east of Poland, a Soviet Union sponsored organization was formed, Polish Committee of National Liberation (Polska Komitet Wyzwolenia Narodowego— PKWN) 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.²⁹⁵

Sooner, 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 determine their fate of State by themselves totally. With the victory of Second World War, Great powers in the Allies held several meeting and divided the sphere of influence, Visegrad States had no choice from themselves, Potsdam and Yalta Agreements "regulated" the area doomed to choose the way of Socialist.

²⁹³ Mark Brzezinski, *The struggle for constitutionalism in Poland* (1st edn, St. Martin's Press, 1998) p. 56-57.

²⁹⁴ Ibid.

²⁹⁵ 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.

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 1952.²⁹⁶

2.3.2 Analysis of the Text and Structure of Constitution of the 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."²⁹⁷

In this part, the author will give a very detailed examine 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 1952 Constitution in Poland therefore had no obviously difference compared with the 1949 Constitution in Hungarian People's Republic and Ninth of May Constitution in Czechoslovak Republic. 1952 Constitution in Poland consisted of one Preamble and ten Chapters. Preamble is the 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

²⁹⁶ 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 (LSE), p. 257-258 < <http://etheses.lse.ac.uk/112/>>, accessed 12 September 2017.

²⁹⁷ Ibid, p. 63.

Soviet style of State power organization, 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 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 Preamble of 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. Preamble of Constitution in this region were followed the rule of "review the fighting history of Communist Party in the Revolution period". In 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 reviewed 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. 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.²⁹⁸

The next part of 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.²⁹⁹ Working people was the nominally leader 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 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 “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.

²⁹⁸ 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.

²⁹⁹ Mark Brzezinski, *The struggle for constitutionalism in Poland* (1st edn, St. Martin’s Press, 1998) p. 63.

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 Seym) 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.³⁰⁰

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 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 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

³⁰⁰ 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.

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 of law...” Public prosecutor was the supervision role of the law, Public Prosecutor General was the highest organ and appointed recalled by the Council of State.³⁰¹

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.”³⁰²

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 performance suffrage. Insane persons and the persons who were deprived by Court decision of public rights were lost their suffrage rights.

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

³⁰¹ 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 (LSE), p. 272-273 <<http://etheses.lse.ac.uk/112/>>, accessed 19 September 2017.

³⁰² 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.

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.³⁰³

3. Comparative Analysis of the Structure and Text of First Communist Constitution between China and 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 arrange the structure of 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 Constitution in the whole communist period in each State.

3.1 Comparative Analysis of Structure of First Communist Constitution between China and Visegrad States

After the destructive Second World War, newly independent State 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. People who lived in Visegrad States was attracted by the lure of local Communist Party's propaganda, coalition of socialist group gradually won the leading position in each States, socialist road was nationwide spread in the State, meanwhile a communist Constitution was adopted by the legislature. Almost in the same time, in East Asia, Chinese 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

³⁰³ Ibid, Article 89, 90, 91.

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 Socialist Regime and adopted 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 Visegrad States seemed more “willing” to follow 1936 Constitution's pattern, except the Union Republic part.³⁰⁴ There were 13 Chapters in 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.³⁰⁵

Constitution in Visegrad States almost followed this structure. Taking an example, Constitution of Polish People's Republic in 1952 honestly “copied” this pattern, except the Chapters which related to the Union Republic. The structure of Constitution of People's Republic in 1954 was much simply 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 simply or crude than the Constitution in Visegrad States, Chapter Two, State Structure in Chinese Constitution included the structure of central and local level State power, judiciary system, even one Section which dealt with the organs of self-government of national autonomous areas.³⁰⁶ However, the Constitution of People's Republic of China missed

³⁰⁴ 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.

³⁰⁵ 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.

³⁰⁶ 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.

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 popular of “democratic centralism” in Socialist States, the leadership of the States more prefers a group of leadership. Therefore in 1936 Soviet Union Constitution and most socialist Constitution, there wasn't the position of President of Republic, however, in Ninth of May Constitution of Czechoslovak Republic and Constitution of People's Republic of China in 1954 there were provisions of President of Republic.³⁰⁷ In Czechoslovakia's consideration, Czechoslovakia had a more influence of capitalism and the personal high political reputation of President Masaryk and Benes made the President position in Czechoslovakia was more important than his neighbors.³⁰⁸ In Chinese case, Chinese was the major group which against the Axis Powers in China battlefield in Second World War, even in the end of the War, United States military and Soviet Union's Red Army came to the China. 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.³⁰⁹

³⁰⁷ 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.

³⁰⁸ 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

³⁰⁹ 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 [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.

3.2 Comparative Analysis of Text of First Communist Constitution between China and 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 First Communist Constitution between China and Visegrad States

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 the Constitution of Hungarian People's Republic, the rest three Constitutions spent lots of space 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.

However, in 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 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...”³¹⁰

Since the different level of “importance” of 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, Soviet Union was a savior; however, for China, Soviet Union was liked a truly friend. Because of such differences of the relationship between Visegrad States and Soviet Union and between China and Soviet Union, Soviet Union always supervised the reforms in Visegrad States, and China split up with Soviet Union in 1960s.

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

Stipulated 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 into account, and published their Constitution with the provision of fundamental rights and duties of citizens.³¹¹

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.

³¹⁰ 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.

³¹¹ 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.

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 were 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, assist in sickness and disability 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 defense 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 States, 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..."³¹² Similarly, Constitutions in Visegrad States also regulated this 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 important role in the history of People's Republic of China compared with his brother States in Visegrad.³¹³ Also, since Constitution of People's Republic of China didn't set one Chapter on electoral system, universal suffrage was regulated in the Chapter of fundamental rights and duties of citizens.

³¹² 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.

³¹³ 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.

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 in economic, in the year of adoption of Ninth of May Constitution, Czechoslovakia was already an industrialized country.³¹⁴ What's more, 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.³¹⁵

3.2.3 Comparative Analysis of the Supreme Organ of State Power of First Communist Constitution between China and 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.³¹⁶ 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 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...."³¹⁷

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

³¹⁴ Martin Myant, *The Czechoslovak Economy 1948-1988: The Battle for Economic Reform* (Cambridge University Press 1989) p. 1.

³¹⁵ Constitution of the Czechoslovak Republic (1920), English version is available < <https://archive.org/details/cu31924014118222> > accessed 20 September 2017.

³¹⁶ 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".

³¹⁷ V.I. Lenin, *State and Revolution* (first published 1932, International Publishers 1932) p. 39.

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 "Národního 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 were 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,³¹⁸ the first time for "National People's Congress" this phrase was in Constitution of Chinese Soviet Republic, a regional government in China in 1930s. Since Visegrad States exercised Parliamentary system for long time, however in China, the history of exercise Parliament was short than Visegrad States and it always interrupted by the brutal wars in China.

In spite of 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 officer in different committees, etc. Since the supreme organ of State power in each State only held the short sessions per year,³¹⁹ therefore a resident organization was needed for the daily political life. This resident organization almost entitled the 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

³¹⁸ National Assembly was officially regulated in 1947 Constitution of Republic of China, Constitution of Republic of China 1947.

³¹⁹ In Visegrad States, it was usually twice per year, in China, it was once per year.

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..."³²⁰ 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 regulation seems 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 %.³²¹ Most working class lived in urban area and in Constitution, "The People's Republic of China is a people's democratic state led by the working class"³²² In order to guarantee the leadership of working class, the Electoral Law in China regulated such odd provisions.

³²⁰ Electoral Law of People's Republic of China 1953.

³²¹ 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)
<http://www.npc.gov.cn/npc/xinwen/rdlt/rdjs/2007-11/05/content_374368.htm> 26 September 2017.

³²² Constitution of People's Republic of China 1954.

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 20th 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.

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 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 Chinese one, and in fact the Constitution in Visegrad States have performed better than Chinese practice.

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

In last Chapter, the author introduced how the Constitutional draftsman “produced” their work, i.e. 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 firstly introduce the development of Constitution in each state during the reform period, then a comparative analysis of the Constitution s in each state will be presented, besides the Constitution in the paper, the author will also compare how it works of the supreme organ of the State power in each State in practice, and the last part will be a short conclusion.

Before I start the main part of this Chapter, the concept of reform period should be clarified. In this Dissertation, the reform period refers to the period from middle of 1950s to the end 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.” in online Cambridge dictionary online.³²³ Until the collapse of Socialist system in Visegrad States, all the changes in the society and amendments of the Constitutions in each States were taken place in the Socialist framework. No matter the 1956 Revolution in Hungary, Prague Spring and Solidarity in Poland, or the Cultural Revolution in China. All these reforms were happened in the Socialist Regimes.

There were two States which published new Constitutions under the Communist Parties ruling, 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 part, the author will introduce these developments of the 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.

³²³ “Reform”, <<http://dictionary.cambridge.org/dictionary/english/reform>> accessed 27 September 2017.

1. Development of 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.³²⁴ 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 Socialist society; this fever had been simmering for ten years, from 1966 to 1975, with the Culture Revolution, the 1954 Constitution was completely invalid, whole State was ruled by man.³²⁵

1.1 Constitution of People's Republic of China, 1975

Since the different Movements and destructive Cultural Revolution, 1954 Constitution didn’t fulfill its functions. In contrast, the State was functioned without

³²⁴ 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 8th 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.

³²⁵ 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.

law.³²⁶ Under such 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.

During the Cultural Revolution period, Mao came up with the idea of drafting of new Constitution, since the 1954 Constitution was obviously not fit 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 will be promulgated in 1970 when the Fourth National People's Congress was held in the same year, however the real situation wasn't follow the plan, a serious of incidents³²⁷ postponed the convening of the National People's Congress. Therefore, the drafted Constitution was waited 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 (2885 Deputies in total) passed the 1975 Constitution, it was the second Constitution of People's Republic of China.

The 1975 Constitution was much simple 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"³²⁸ and it heavily decided by Mao Zedong.³²⁹

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

³²⁶ 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.

³²⁷ 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 1975 Constitution. The Conflict between Mao and Lin made Lin fled from the Country, Lin died from air crash.

³²⁸ Chin Kim, 'Recent Developments in the Constitutions of Asian Marxist-Socialist States' (1981) 13 Case W. Res. J. Int'l L. p. 483, 485.

³²⁹ 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.

Capital.³³⁰

Preamble was the first part of the Constitution, included with the punctuations, it almost accounted to 20% of the whole Constitution characters. There were 8 paragraphs in the Preamble part, and it could be divided into two parts, the first part was review the revolutionary history of China, and how Chinese Communist Party leading 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.³³¹

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 part decided the 1975 Constitution was not a normal Constitution, it was a political slogan style Constitution.

The first Article declared People's Republic of China is a Socialist State, compared with the 1954 Constitution, "People's Democratic State", 1975 Constitution ensured this Communist Party ruling State official transformed to a Socialist State. After declaration 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, 1975 Constitution not only addressed the leadership of Chinese Communist Party in such important place in the Constitution, but also emphasized it in different places in the Constitution.³³²

Election principle of each level People's Congress was also mentioned in this part, not like 1954 Constitution regulated the voting principles, Article 3 proclaimed the Deputies will be designed by democratic consultation. It destructive 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, the individual working people

³³⁰ Constitution of People's Republic of China, 1975,
<http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4362.htm> accessed 2 October 2017.

³³¹ 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.

³³² Take an example, there were four places in the Preamble mentioned "the leadership of Chinese Communist Party".

ownership and capitalist ownership which listed in the 1954 Constitution were removed.³³³

The third part was State Structure. The structure of this part was similar with 1954 Constitution, only without Chairman of People's Republic of China part. 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 missed.

National People's Congress was still the supreme organ of the State power, however it was led by the Chinese Communist Party.³³⁴ 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 central government.

In local level, an outcome of Cultural Revolution was introduced to us, people's 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 1954 Constitution were deleted, public security bureau took the role of prosecution, and the judiciary should mobilize people to critical the severe anti-revolutionary criminal case. Fundamental rights and duties of citizens part was presented in 1975 Constitution. Compared with 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, 1975 Constitution list a new citizen right, right of strike. What's more, 1975 Constitution put the duties of citizen

³³³ 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> accessed 2 October 2017.

³³⁴ *Ibid*, 15, 16.

part in front of the rights of citizens. It implied citizens performing their duties were more important than enjoy their rights.

The last part of the Constitution was national flag, national emblem and capital. It was similar with 1954 Constitution. Five-star red flag was the National flag, and national emblem in China was “Tian An Men under the light of five stars, framed with ears of grain, and with a cogwheel at the base.” Capital was Beijing.³³⁵

1.2 Constitution of People’s Republic of China, 1978

In 1976, Cultural Revolution was finished, Gang of Four was captured and prosecuted by the judiciary.³³⁶ 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 1975 Constitution, in contrast, the 1978 Constitution continued the mistakes which regulated in 1975 Constitution.

1978 Constitution was not drafted by Constitutional drafting committee, it 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.³³⁷

1978 Constitution was a compromise between 1954 Constitution and 1975 Constitution. 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.

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

³³⁵ Article 30, Constitution of People’s Republic of China, 1975.

³³⁶ Gang of Four was considered as the leadership of Cultural Revolution, included Jiang Qing, wife of Mao Zedong, Zhang Chunqiao, Wang Hongwen and Yao Wenyan.

³³⁷ 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.

as 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 should be noticed, the first one was Chairman Mao was declared as the funder of the State, the second one was Cultural Revolution was considered as achievement of the Party, the last part was “liberate Taiwan, united the State” became a main task for the State.³³⁸

The first Chapter in the Constitution was General Principles, which consisted of 19 Articles, compared with the preceding Constitution, the most parts were not changed. However, there were still some significant changes should be mentioned. Firstly, 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 used a lot during the debate of whether we need reform and opening-up or not.³³⁹ Thirdly, in social economic Articles, 1978 Constitution has restored the expression of “The State protects the rights of citizens to own lawfully-earned incomes...” which regulated in 1954 Constitution.³⁴⁰ Fourthly, in cultural and education Articles, 1978 Constitution deleted the “Speaking out freely, airing views fully, holding great debates and writing big-character posters” Cultural Revolution style slogan and established “Hundred Flowers Campaign” policy to encourage the flourishing of culture.³⁴¹

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 didn’t restore.

National People’s Congress was considered as the supreme organ of State power, and

³³⁸ 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/rsl4&div=36&g_sent=1&casa_token=&collection=journals> accessed 3 October 2017.

³³⁹ Ibid.

³⁴⁰ In 1975 Constitution, it was regulated as “The State protects the rights of citizens to own lawfully-labor incomes...”

³⁴¹ 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.

“under the leadership of Chinese Communist Party” which regulated in the 1975 Constitution was deleted. However, the election of Deputy was still followed the democratic consultation principle with secret ballot. Related to the power of National People’s Congress, Constitution listed the power which entitled to the National People’s Congress and most of them could be found 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 offer 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.³⁴²

The State Council continued to play its role, executive organ of 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 address.

In the local level People’s Congress and Revolutionary Committee, 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 missed, and township level in the 1954 Constitution became commune level in 1978 Constitution instead. Revolutionary Committee was one of the vestiges of the Cultural Revolution. It shows again 1978 Constitution didn’t overcome the harm of Cultural Revolution, therefore this Constitution wasn’t successful.

Government in minority area, self-government of national autonomous area entitled two powers in the 1978 Constitution: making regulation and using their own language. Compared with 1954 Constitution, two powers still missed: arranging the public finance and organizing public security bureau.

In Judiciary part, people's procuratorate system reestablished in 1978 Constitution, however the relationship between higher level procuratorate and inferior one was different compared with the regulation in 1954 Constitution. In this Constitution, higher procuratorate supervised the inferior one instead of leadership.

People enjoyed more rights in the 1978 Constitution, compared with 1975

³⁴² Ibid.

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 1978 Constitution on the national flag, emblem and capital remained the same Article in 1954 Constitution.

1.3 Constitution of People’s Republic of China, 1982

Hua’s³⁴³ ruling in China didn’t last too long, Deng Xiaoping gained his highly reputation among the core leadership in China. The debate of should China continue the vestiges of Cultural Revolution was openly took in media. In May of 1978, an article titled as “Practice is the Sole Criterion for Testing Truth” firstly published in Theoretical Trends which is an internal journal of the Party. In second day, a national newspaper, Guang Ming Daily reproduced the whole article and caused a national attention.³⁴⁴ In the same year, 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 Communist Party turned its attitude of Cultural Revolution. Deng Xiaoping, latter 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 favour, 0 opposed, and 3 abstained.³⁴⁵

Before the 1982 Constitution was adopted, 1978 Constitution already revised. There

³⁴³ Hua Guofeng, former Chairman of Chinese Communist Party and former Prime Minister of State Council.

³⁴⁴ 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.

³⁴⁵ 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.

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 mainly abolished the influence from Cultural Revolution. The process how the Constitution revised also interesting, take 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, Central Committee of Chinese Communist Party wasn't entitle the power to submit a bill. 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.³⁴⁶

1982 Constitution finally back on the rails, and according to Chiu's opinion, "On paper, the 1982 Constitution is far better than any of its predecessors in establishing a certain degree of 'rule of law' in China."³⁴⁷

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 slice of 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 unitary 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

³⁴⁶ 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.

³⁴⁷ Hungdah Chiu, 'The 1982 Constitution of People's Republic of China and the Rule of Law' (1985) *Review of Socialist Law* p. 155.

paragraph in the Preamble emphasized we should respect the Constitution.³⁴⁸

Chapter One of the 1982 Constitution was General Principles, which consisted of 32 Articles, compared with 1975 Constitution only provided 30 Articles in total, 1982 Constitution was more detailed. Apparently, first Article of the Constitution was very important. It ensured People's Republic of China is socialist State, which was ensured since the 1975 Constitution. Besides, it was first time that 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 political field, there were not significant changes, however, in 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 interest will be protected by the law, since 1978, reform and open-up policy was established in the State, attract foreign investment and develop Chinese economy became a State policy. In cultural and education field, "building of a socialist society with an advanced culture and ideology" was a new term in the Constitution.³⁴⁹ One of potential bad influences of reform and open-up policy was with the open the door of China, "bad" influence and ideology will also come to China. In order to protect the socialist cultural and ideology, Constitution emphasized the importance of socialist cultural and ideology. What's more, in Article 19, the government promotes the nationwide use of Putonghua,³⁵⁰ 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, special administration 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,

³⁴⁸ 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.

³⁴⁹ Article 24, Constitution of People's Republic of China, 1982.

³⁵⁰ Putonghua, the standard language in People's Republic of China.

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.”³⁵¹

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, 1954 Constitution, however it disappeared in the 1982 Constitution.³⁵² It would be understood with the situation at that time, Hukou system limited the right of residence and movement in China.³⁵³ Also, there were two significant rights of citizens missed in the current Constitution. The first one is right to strike, which regulated in 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 economy. The second change is the right to speaking out freely, airing views fully, holding great debates and writing big-character posters. As mentioned before, this right was regulated in 1978 Constitution and considered as the vestige of Cultural Revolution. It abolished in 1980.

Notwithstanding, 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.³⁵⁴ There were also some new duties to perform. For example, Citizens should defend the honor and interests of motherland.

The third Chapter was State structure, it followed the structure of antecedent

³⁵¹ 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.

³⁵² Hungdah Chiu, ‘The 1982 Constitution of People’s Republic of China and the Rule of Law’ (1985) *Review of Socialist Law* p. 148.

³⁵³ 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, especially from rural area to urban area should get the permission from the government. However, now the regulation of Hukou system is much loose.

³⁵⁴ Red guards were mobilized in the Cultural Revolution period, and usually consisted of students. They insulted the privileged people in the name of revolution.

Constitution. The most significant change was the position of President³⁵⁵ of People's Republic of China restored and a new position provided, The Central Military Commission.³⁵⁶

Compared with the previous Constitution, 1982 Constitution regulated a much detailed provision on each State structure. In Article 64, it provided the procedure how to modify 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 not existed any more, township became the 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 1982 Constitution were much more reasonable, it provided a favorable condition to the development of Chinese economy. The last Chapter in 1982 Constitution was the national flag, national emblem and the capital. It was exactly the same as the regulations of 1954 Constitution.

1.4 Conclusion

In modern country, Constitution is usually considered as the most important legal document in the state. Only after the extremely 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; on the other hand, it also shows the Communist Party treat the Constitution not so seriously in the certain period.

The current Constitution put into force since 1982, along with four amendments. The continuous Constitution implies the stable environment of People's Republic of

³⁵⁵ In Chinese, this position's name is the same, 主席 (Zhu Xi). However, the English version makes the difference. In 1954 Constitution, it translated as chairman, and in 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.

³⁵⁶ William C. Jones, 'The Constitution of the People's Republic of China' (1985) 63 Wash. U. L. Q. p. 707, 730.

China. It is also one of the most important reasons that China can develop so dramatic in economy.

2. Development of Constitution in 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.³⁵⁷

However, this harmonious socialist scenario did not last as longer as its communist leader's thought. In 1953, main designer of 1936 Soviet Union Constitution,³⁵⁸ Stalin passed away, his successor, Nikita Khrushchev obviously did not agree Stalin's ruling policies in Soviet Union. Three year later, the 20th Congress of the Communist Party of Soviet Union held in Moscow, during this meeting, the secret speech of Khrushchev later released, in this speech, Khrushchev gave a crucial criticism on Stalin. This decisive speech sooner spread from east to west, all socialist States and their Communist leaders had to response this shocking news.³⁵⁹

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 blocs had the chances to practice their own socialist road. At that time, there were two ways of socialism, Soviet Union model and Yugoslavia model. In Soviet Union's position, there was no way to allow his Eastern socialist fellows gave up Soviet Union road. However, some spaces finally existed, and States in Visegrad area did some reforms in their society, such experimental reforms not only happened in economic field but also in the legal part, here, the author will present how the

³⁵⁷ 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.

³⁵⁸ 1936 Soviet Union Constitution, also known as the Stalin Constitution. In many articles, authors refer 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.

³⁵⁹ 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. Miklós 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> accessed 10 October 2017.

Constitution developed in Hungary, Czechoslovakia and Poland.³⁶⁰

Since during the whole reform period, which the author defined it from the middle of 1950s to 1988, only Czechoslovakia promulgated new Constitution, the rest two States only published Constitutional amendments. Therefore, the author will present how the Constitutional amendments developed in Hungarian People's Republic and Polish People's Republic and how the development of Czechoslovakia Constitution.

2.1 The Development of Constitutional Amendments of Hungarian People's Republic in Reform Period

Hungary adopted socialist system since 1949 when the communist Constitution promulgated in public. It should be admitted that Soviet Union used more influences to "help" Hungarian chose socialist road compared with Hungarian neighbor, Czechoslovakia.³⁶¹ Such differences later came up with the different reactions of the ruling parties in different State with the issue of de-stalinization, or more broadly, during the whole reform period.

In Hungarian People's Republic, there were several Constitutional amendments were adopted by the National Assembly during the reform period. Among the 20 amendments, the amendments in 1950, 1953, 1954, 1972 and 1983 were notably by their significant change, and the most important one was the 1972 Amendment.³⁶²

Before the author started his introduction of the 1974 Constitutional amendment, a fact should be noticed here. Act 1 of 1972 which published in Hungarian Gazette on 26 April 1972 should not be considered as the result of 1972 amendment. It's rather to say that Act 1 of 1972 was the results of the all 20 Constitutional amendments together.³⁶³ The 1972 Constitutional amendment consisted of one Preamble and 10 Chapters. It heavily changed the 1949 Hungarian Constitution and most significate change was in

³⁶⁰ Ibid.

³⁶¹ 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.

³⁶² There were 49 Constitutional amendments of 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> accessed 14 October 2017. See also IBP USA, *Hungary Country Study Guide: Volume 1 Strategic Information and Developments* (2013 edn, International Business Republications 2013).

³⁶³ For example, National Flag changed in 1957, and such change continuous effected in the 1972 Constitutional amendment. Article four, Amendment to Constitution of Hungarian People's Republic, 1957.

1972 Constitution amendment it declared that 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 1975, three years later than Hungary.

At that time, Hungarian People's Republic was ruled under the leader of Hungarian Socialist Workers' Party, Janos Kadar since 1956.³⁶⁴ The whole regime was rather stable until Kadar lost his ruling in May 1988.

The 1972 Constitutional amendment was adopted on 26 April 1972.³⁶⁵ Compared with 1949 Hungarian Constitution which heavily "copied" the 1936 Soviet Union Constitution, the new version Constitution contained more Hungarian historical continuity.³⁶⁶ This feature could be found in the Preamble part as well.

1972 version Preamble of Constitution was longer than 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, Soviet Union's "liberated" 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 the establishment of the new state. The history of 1919 Hungarian Soviet Republic was introduced in the third paragraph.³⁶⁷

1972 Constitutional amendment also changed its structure compared with the 1949 Constitution. As mentioned in the last Chapter, 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

³⁶⁴ 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.

³⁶⁵ 1972 Constitutional amendment of Hungarian People's Republic, Hungarian version
<http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/Alk_egyseges_3.pdf> accessed 15 October 2017.

³⁶⁶ Ignac Romsics, *Hungary in the Twentieth Century* (first published in 1999, second edn, Corvina Books Ltd. 2010) 334.

³⁶⁷ 1972 Constitutional amendment of Hungarian People's Republic, Hungarian version
<http://www.sze.hu/~smuk/DoktoriIskola/Alkotm%E1ny/Alk_egyseges_3.pdf> accessed 15 October 2017.

amendment.³⁶⁸ 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 Councils. The Chapter Two, Three and Four in 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 Chapters' title in the 1972 Constitutional amendment followed the title in the 1949 Constitution.

First Chapter of 1972 Constitutional amendment was dramatically changed. There were 18 Articles in this Chapter, some new regulations were also provided. Article 2 officially declared Hungarian People's Republic was socialist state. Another Article should be noticed 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 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.³⁶⁹

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, 1972 Constitutional amendment specified its powers. Local Council was the local state power. In 1949 Constitution, it divided the Hungarian territory into four levels: county, district, city and community. 1972 Constitutional amendment also divided into four levels, however capital became the first level and district level no longer recognized by the state.

³⁶⁸ The first two Chapters in 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.

³⁶⁹ 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.

Judicature and Prosecutor's office constituted the judiciary system of Hungarian People's Republic, Courts of Appeal was disappeared in the 1972 Constitutional amendment. 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 part was changed the term "workers" to "citizens". Take an example, in 1949 Constitution, Article 46 regulated "The Hungarian People's Republic guarantees to the workers the right to rest and to enjoy holidays." A similar regulated was addressed by the 1972 Constitutional amendment "The Hungarian People's Republic guarantees to the citizens the right to rest."³⁷⁰ Only entitled certain rights to certain class violated the equality principle, therefore in 1972 Constitutional amendment, it entitled the rights to all Hungarian citizens was a great progress of the history of Hungarian Constitution.

In electoral system part, it abolished the regulation "Enemies of the working people and persons suffering from mental disease are excluded by law from the right to vote."³⁷¹ On paper, every citizen in 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 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."³⁷² By publishing the 1972 Constitutional amendment, not only officially declared Hungarian People's Republic was 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 1972 Constitutional amendment, Hungarian National

³⁷⁰ Constitution of Hungarian People's Republic 1949 and Amendment to 1949 Constitution of Hungarian People's Republic 1972.

³⁷¹ Paragraph 2, Article 63, Constitution of Hungarian People's Republic 1949.

³⁷² IBP USA, *Hungary Country Study Guide: Volume 1 Strategic Information and Developments* (2013 edn, International Business Republications 2013) 66.

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.³⁷³

2.2 The Development of Constitutional documents of Czechoslovakia in 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.³⁷⁴ During the reform period, several amendments adopted, however the most important Constitutional documents in this period was two Constitutions: 1960 Constitution officially declared that Czechoslovakia became a socialist state, the second important Constitution adopted eight years later, Czechoslovakia changed from an unitary state to federal state.

In the following part, the author will introduce these two important Constitutions. 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.³⁷⁵ The significant meaning of this Constitution could be found in the Preamble and the first Chapter. In the Preamble of 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.”³⁷⁶ Therefore, 1948 Czechoslovakia Constitution, as a framework for the transition from capitalism to socialist, finally achieved its historical task and officially abolished. Czechoslovakia became the first country in the region entered the socialist system.

³⁷³ 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)

³⁷⁴ According to the table of Maddison project, GPD per capita among Czechoslovakia, Hungary and 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.

³⁷⁵ 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.

³⁷⁶ Constitution of Czechoslovak Socialist Republic 1960 (English version, third edition was published by Orbis, Prague, 1964)

1960 Constitution consisted of one Preamble and nine Chapters. Compared with 1948 Constitution, socialism was the most significant character of the new Constitution. Like other socialist states, Preamble in the Constitution not only used as a political propaganda, but also set up some goal for the future. Preamble of 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 Czechoslovakia, 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 transited to the socialist state. The last part, it 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.”³⁷⁷

Compared with the Preamble in the previous Constitution, 1960 Constitution abandoned its democratic character, more Marxist-Leninist doctrines were introduced. It seemed like a standard Preamble for a socialist state. In 1948 Constitution, the Preamble started as “We, the Czechoslovak people...” However, in 1960 Constitution it revised as “We, the working people of Czechoslovakia...” What’s more, the classic statement in Marxism-Leninism 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, which cited in the previously paragraph.

In 1948 Constitution, it kept a unique structure compared with other socialist states in the region. 1960 Constitution abandoned this unique character. Therefore, the structure of the 1960 Constitution was much 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 a lot in the 1948 Constitution. For instance, 1960 Constitution regulated all power of the Republic belongs to working people, while in 1948 Constitution state power shall belong to

³⁷⁷ Ibid.

people. Of course, as a socialist state, the most people in Czechoslovakia were “working people”, however it officially announced the minority which 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 still enjoy numerous freedom 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. Notwithstanding, to realize such rights, citizens should in accordance with the socialist interest.

Political Institutions in 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 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 1948 Constitution, President could dissolve the National Assembly, and it disappeared now.³⁷⁸ In 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.”³⁷⁹ Slovakia part was still considered as an autonomy 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, 1960 Constitution strengthened the power of Slovakia National Council. In former Constitution, there were three national organs in Slovakia, however, 1960 Constitution abolished the Board of Commissioners, and Slovakia National Council became the core organ in Slovakia. In the local level, national committee was designed

³⁷⁸ 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.

³⁷⁹ Article 68, Constitution of Czechoslovak Republic 1960.

as administrative organ. Related to the competences of the national committee, the latter Constitution somehow enlarged the power of national committees.³⁸⁰ However, 1960 Constitution as a socialist Constitution, it more focused on its socialist character. Again, 1960 Constitution used the term “working people” instead of “people”.

Judiciary system in Czechoslovakia followed the Soviet pattern. It consisted of two organs, courts and prosecutor office. In 1960 Constitution, judiciary organs should serve socialist system. What’s more, judges in different level 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 1960 Constitution, regulations on national flag and emblem also specific stated.

The 1960 Constitution latterly revised by several amendments until 1992 the split of Czechoslovakia. Among these amendments, the most important one was Act of 143 in 1968 (Hereinafter referred to as 1968 amendment).³⁸¹ 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 introduced to the 1968 amendment.³⁸²

³⁸⁰ 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.

³⁸¹ 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.

³⁸² Lloyd Cutler and Herman Schwartz, ‘Constitutional Reform in Czechoslovakia: E Duobus Unum?’ (1991) *The*

The 1968 amendment consisted of one Declaration and eight Chapters. In the Declaration part, it stated the fact of 50years cooperation of the two nations and the voluntary federate between the two nations. If we follow the history of Czechoslovakia Constitution, it is very interested 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, 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 Czech part was 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 was 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 75 deputies elected in Slovak Republic.

Another Constitutional institution which designed by the 1968 amendment was the Constitutional Court. As the Article 86 of 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, 1968 amendment regulated four judges and two substitutes should be elected among the citizens of Czech Republic and the rest members should be the citizens of Slovakia. Meanwhile, in each Republic should organize Constitutional Court.

Even though, 1968 amendment divided its state power to two Republics. Especially Slovakia enjoyed more power now according to the amendment. Notwithstanding, in practice, the federal government still controlled the whole state by Communist Party. Constitutional Court, which supposed to protect the constitutionality never set up.³⁸³

2.3 The Development of Constitutional Amendments of Polish People's Republic in 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.³⁸⁴ Since 1970s, the amendment to 1952 Constitution slightly enlarged citizens' civil rights, meanwhile, more socialist characters also introduced to the Constitution. Among these significant changes, 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 mainly introduce the 1976 amendment, and how it changed the structure and text in the 1952 Constitution.

1976 amendment did numerous changes on 1952 Constitution. It was believed that nearly one third of the provisions changed after the 1972 amendment.³⁸⁵ This amendment was consisted of one Preamble and 11 Chapters. Compared with the 1952 Constitution, one extra Chapter was presented to public.³⁸⁶ What's more, the new version Constitution included more Articles.

³⁸³ Ibid, 520.

³⁸⁴ 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)

³⁸⁵ Poland, The Constitution of 1952, <<http://www.country-data.com/cgi-bin/query/r-10729.html>>, accessed 20 October 2017.

³⁸⁶ 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.

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 first Chapter, political system in the amendment. In this Chapter, some new elements 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 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, 1976 amendment followed the structure of state power in 1952 Constitution, the highest organ of the state power was Sejm (or Diet), Council of Ministers and its individual members was the highest administration organ in the state, and it 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".³⁸⁷ Supreme Board of Control, the new organ was supposed to supervise the state administration activities and inspect the economic activities in non-socialized and socialize 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 noticed, the right to benefit from natural environment and the duty to protect of it. The environment provision was a creative work from 1976 amendment, it shows the

³⁸⁷ Leszek Garlicki, 'Constitutional Developments in Poland' (1988) 32 St. Louis U. L.J. p. 713, 718.

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 changed. In the coat of arms, colors, national anthem and capital part, national anthem of Polish People's Republic was regulated. Mazurek Dąbrowskiego (Polish is not yet lost) was chosen as the national anthem. What's more, in this part, a provision of respect and special protect of the coat of arms, colors, national anthem was stated.³⁸⁸

Besides the 1976 amendment, there were several amendments were 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 masses, people's ombudsman. What's more, there were several times the provision of martial law was halted and again regulated by the amendments.³⁸⁹

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 level. One trend of the development of Constitution could applied to each state, try to find its own road 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.

³⁸⁸ 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.

³⁸⁹ Poland, the Constitution of 1952, <<http://www.country-data.com/cgi-bin/query/r-10729.html>>, accessed 22 October 2017.

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. Since countries in the region 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 the Development of Constitution between China and Visegrad States in 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.³⁹⁰ 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 different. 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 Revolutions of 1989. Over 30 years constitutional development in each state presented us one trend. That is each state was tried to get rid of the influences from Soviet Union and established its own road to socialist.

In the last Chapter, the author shows how the influence of 1936 Soviet Union Constitution to each state's first communist Constitution. Basically, each state more or

³⁹⁰ People's Republic of China announced it in 1975 Constitution, Czechoslovakia announced it in 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.

less copied the structure and people's democratic style provisions of 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. 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 deeply 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.³⁹¹ In Visegrad states, different grassroots revolutions which against hegemony of Soviet Union took place in the reform period, even some leader of the Party shared different think of develop socialist with Soviet Union.³⁹² 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 controlled by Soviet Union in general, some changes still happened in reform period. In Chinese case, developing its own socialist system unavoidable caused the changes in China. And some of the significant changes finally became Constitutional provisions in each state.

In Chinese case, after the broke up with Soviet Union, a serious of movements were installed by the Chinese Communist Party, among them, Cultural Revolution definitely had the strongest influence. Two Constitutions, 1975 and 1978 Constitution were the result of the Cultural Revolution to some extent. 1975 Constitution totally destroyed the normal political system and civil rights of Chinese citizens, 1978 Constitution recovered some but it still remained the vestiges of Cultural Revolution.

In Visegrad states, developing its own socialist road also caused changes, even

³⁹¹ 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.

³⁹² 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.

though in a different way compared with China. Some democratic traditions came back 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 1968 Constitutional amendment, and similar provision (Constitutional Tribunal) could be found in 1982 Constitutional amendment in Poland.

Another notable similarity was each state recognized it as 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.

1975 Constitution of 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".³⁹³

In Hungarian case, 1972 amendment kept this socialist principle "from each according to his ability, to each according to his work" which exactly took from 1936 Soviet Union Constitution.³⁹⁴

The same situation also happened in the Polish Constitution case, 1952 Polish Constitution regulated the same socialist principle in Article 14, and in 1976 amendment kept this provision.

Czechoslovakia Constitution even moved a little bit further. Constitution of Czechoslovak Republic in 1948 didn't address such socialist principle. However, 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.³⁹⁵

³⁹³ Article 9, Constitution of People's Republic of China, 1975.

³⁹⁴ 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 1972 amendment (Paragraph 4, Article 14).

³⁹⁵ 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>, accessed 26 October 2017.

During the reform period, the ruling Party in each state also legitimated its leading position by regulating its supremacy in the Constitution. In Chinese case, 1975 Constitution ensured “Chinese Communist Party is the leadership core of all Chinese people” in Article 2. In 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. 1960 Czechoslovakia Constitution claimed that Communist Party of Czechoslovakia is the guiding force in the society and the state (Article 4). 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. 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 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 movement initiated by the Communist Party, Great Leap Forward, Cultural Revolution³⁹⁶ has led to political fanaticism in the whole state.

³⁹⁶ 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&recordId=1671693&fileId=1671694>>, accessed 27

This enthusiasm finally had cooled down after the 3rd Plenary Session of the 11th Central Committee of CCP in the end of 1978.³⁹⁷ After this meeting, a new Constitution was adopted in 1982, the road to socialism in China gradually normalized.

Situation in Visegrad states was different. Although there were lots of protests and even revolutions happened during the reform period in each state, Soviet Union still had supremacy in this area. Warsaw Pact established in order to antagonize the threat from NATO.³⁹⁸ 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, Constitutional Council was introduced to the public in Act of 2 in 1983, as an organ to protect the constitutionality in Hungary.³⁹⁹ In Czechoslovakia practice, the organ to protect Constitution was regulated in 1968 amendment to the Constitution of Czechoslovakia in 1960, Chapter Six specified on the Constitutional Court in the Federal Republic.⁴⁰⁰ However, until the Revolutions of 1989, this Constitutional organ never really established in Czechoslovakia, due to the failure of adopting the implementing laws.⁴⁰¹ In Poland, the situation quite similar, the specific organ, Constitutional Tribunal was introduced to the masses in the 1983 amendment to the

October 2017. Cultural Revolution officially initiated in 1966 and it was considered as the 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>, accessed 27 October 2017.

³⁹⁷ 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.

³⁹⁸ 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.

³⁹⁹ 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.

⁴⁰⁰ Act of 143 in 1968, English version is available <<http://czecon.law.muni.cz/content/en/ustavy/1968/>> accessed 18 October 2017.

⁴⁰¹ Maartje de Visser, *Constitutional Review in Europe: A Comparative Analysis* (1st edn, Hart publishing, 2014) p. 70.

Constitution. However, since the implementing law finally adopted in 1985, this Constitutional organ acted its role started from 1985.⁴⁰²

In Chinese case, the development of Constitution was much complicated. After three years of adoption, 1954 Constitution gradually out of valid in the middle of 1950s, since then the state ruled by man for almost 20 years.⁴⁰³ 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. 1982 Constitution restored the political structure which regulated in the 1954 Constitution.⁴⁰⁴ 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 practice capitalism before the states joined the Eastern Bloc. Visegrad states were much tolerant of private property in Constitution. In Hungarian case, 1972 amendment stated "Hungarian People's Republic recognizes and protects private property".⁴⁰⁵ 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..."⁴⁰⁶ 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."⁴⁰⁷ Chinese government treated the private property was more strict. 1975 Constitution and 1978 Constitution regulated the same provision on private property, "The state protects lawful income, saving, house and ownership of other consumer goods." In 1982 Constitution, the term of "consumer goods" was changed to "lawful property". During the reform period, there was a clear boundary between personal's consumer goods and personal's means of

⁴⁰² 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.

⁴⁰³ 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.

⁴⁰⁴ 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, 1982 Constitution reconstructed the political system in China by restoring the 1954 Constitution's political tradition.

⁴⁰⁵ Article 11, Amendment to Constitution of Hungarian People's Republic, 1972.

⁴⁰⁶ Paragraph 1, Article 10, Constitution of Czechoslovakia, 1960.

⁴⁰⁷ Article 17, Amendment to Constitution of Polish People's Republic, 1976.

production. The later one only belonged to the state or group.⁴⁰⁸

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.⁴⁰⁹ 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.⁴¹⁰ However, in the states of Visegrad region, the policies in rural area were more tolerant. There were possibilities for peasant to own land.⁴¹¹

During the reform period, Constitution in each country had changed a lot. 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 more likes an irrational social experiment, finally, it back to the origin, 1954 Constitution. Notwithstanding, the development of Constitution in Visegrad states were inclined towards democracy.

4. Comparative Analysis of Supreme Organ of State Power between China and Visegrad States

As mentioned many times in the previous part, Soviet Union was the big brother in the socialist states, and the political structure in 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

⁴⁰⁸ 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&pdm=1504.htm>> accessed 31 October 2017.

⁴⁰⁹ 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.

⁴¹⁰ 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.

⁴¹¹ 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).

U.S.S.R.”⁴¹² 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 The Development of 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.⁴¹³ “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 National People’s Congress was four years and each year there was one regular meeting. National People’s Congress exercised its power by holding the meeting. During the meeting, National People’s Congress 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 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 Standing Committee. It 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.⁴¹⁴

In 1975 Constitution, because of the influence of Cultural Revolution, the political

⁴¹² 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.

⁴¹³ Paragraph 2, Article 12, Common Program 1949.

⁴¹⁴ Section 1, Chapter 2, Constitution of People’s Republic of China, 1954.

system was dramatically damaged. However, National People's Congress was still considered as the supreme organ of state authority on paper. It should be noticed that the so called "supreme organ of state authority" was under the leadership of Chinese Communist Party. The term of 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. Standing Committee was the permanently acting body of National People's Congress, but the competence of the Standing Committee was shrunk.⁴¹⁵

In 1978 Constitution, it partially restored the competence of National People's Congress and its Standing Committee which regulated in 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.⁴¹⁶

The Current Constitution developed the structure of National People's Congress which regulated in 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 Constitution was transferred to the Standing Committee. What's more, the current Constitution paid more attention on deputies of 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 deputies to fulfill their duties and rights.⁴¹⁷

4.2 The Development of 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

⁴¹⁵ Section 1, Chapter 2, Constitution of People's Republic of China, 1975.

⁴¹⁶ Section 1, Chapter 2, Constitution of People's Republic of China, 1978.

⁴¹⁷ Section 1, Chapter 3, Constitution of People's Republic of China, 1982.

People's Republic was National Assembly.⁴¹⁸ 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 performance its powers: enacts law, elects some officers, decides the war and peace issue and amnesty, in economic part, it supposed to decide the national economic plan and state budget. In the special situation, 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-president, one secretary and 17 members, and it will be elected by National Assembly. Since the National Assembly of Hungarian People's Republic was not a permanently acting body, Presidential Council took a more active role in the political life of the People's Republic, even during the National Assembly was not in session, Presidential Council may exercise the competences of National Assembly, except amending Constitution.⁴¹⁹ 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 Constitution..."

The electoral system of deputy of National Assembly also regulated in the 1949 Constitution, Hungarian citizens entitled to vote and elected as a member of 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.⁴²⁰

4.3 The Development of national Assembly in Czechoslovak Republic

Constitution of Czechoslovak Republic in 1948 was considered as the first

⁴¹⁸ Orszaggyules, 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.

⁴¹⁹ Paragraph 4, Article 20, Constitution of Hungarian People's Republic, 1949.

⁴²⁰ Paragraph 2, Article 63, Constitution of Hungarian People's Republic, 1949.

Communist Constitution in Czechoslovakia. However, as we examined in the previous Chapter, the 1948 Constitution was more like the hybrid of 1920 Constitution and Soviet Union Constitution. Therefore, more Czechoslovakia political traditions kept in the 1948 Constitution.

In 1948 Constitution, National Assembly was only considered as the supreme organ of legislative power,⁴²¹ 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 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 Constitution during 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 National Assembly was adopted the laws, what's more, 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. During the National Assembly was not in session, Presidium of the National Assembly may practice some competences of National Assembly.⁴²²

The 1948 Constitution had a heavily changes in 1960, after the Constitution officially announced Czechoslovakia was socialist state. In 1960 Constitution, National Assembly was considered as “the supreme organ of state power”.⁴²³ 300 Deputies constituted the National Assembly with a term of four years. There were two regular sessions for each year. Compared with the 1948 Constitution, 1960 Constitution endowed more competences to National Assembly, since it was not only the Legislative organ any more. President of Republic shall be elected by National Assembly and take responsibility for National Assembly. National Assembly shall have the power to declare war. Presidium of National Assembly also enlarged, 30 members will be elected by National Assembly. In 1968, Constitution of Czechoslovak Republic heavily changed, since the socialist state became a federal state. In the new Constitution, federal Assembly became “the

⁴²¹ Article 5, Constitution of Czechoslovak Republic, 1948.

⁴²² Chapter 2, Constitution of Czechoslovak Republic, 1948.

⁴²³ Paragraph 1, Article 39, Constitution of Czechoslovak Republic, 1960.

supreme organ of state power”, and it consisted of two houses, the House of the People and the House of Nations.⁴²⁴ 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 held two regular sessions in spring and autumn. In general, the decisions of Federal Assembly shall get the approval from each House.⁴²⁵ In case of the Federal Assembly was not in session, Presidium of Federal Assembly shall in 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.⁴²⁶

4.4 The Development of 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. Council of State shall interpret laws, appoint officers. Since there wasn’t the position of President of Republic, some competences of the head of state were undertook by Council of State, such as to appoint and recall Polish ambassadors to other states and to receive letters of credence and of recall of diplomats from other states to Polish People’s Republic.⁴²⁷

Regulations on Sejm changed in the Constitution several times. For instance, in the amendment to Constitution of Polish People’s Republic in 1976, one change was the number of deputies to Sejm fixed, in total there were 460 deputies, another change should be noticed was Council of State shall “watch over the constitutionality of laws.”⁴²⁸

⁴²⁴ Article 29, Constitution of Czechoslovak Socialist Republic, 1968.

⁴²⁵ 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.

⁴²⁶ Article 56, Constitution of Czechoslovak Socialist Republic, 1968.

⁴²⁷ Article 25, Constitution of Polish People’s Republic, 1952.

⁴²⁸ Paragraph 3, Article 30, Amendment to Constitution of Polish People’s Republic, 1976.

4.5 The Similarities of the development of Supreme Organ of State Power between China and Visegrad States

The most obvious similarity of the supreme organ of state power between these socialist states was this organ 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...”⁴²⁹ Therefore, the first socialist state abandoned the capitalist parliament and established its own supreme organ of state power.

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.⁴³⁰ 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 previously Constitution regulation, a term for National Assembly was six years, and each year the National Assembly shall hold two regular sessions. Until the 1960 Constitution announced the state became socialist state, it changed its term from six years to four years; in Polish People’s Republic Constitution, 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, National People’s Congress shall “adopt the national economic plans, examine and approve the state budget and the financial report”.⁴³¹ In Visegrad states, Hungarian People’s Republic undertook similar

⁴²⁹ 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.

⁴³⁰ 1952 Constitution regulated the term of National Assembly for four years then it extended to five years since the second Constitution.

⁴³¹ Article 27, Constitution of People’s Republic of China, 1954.

task, a socialist style national economic plan and state budget shall be decided by the National Assembly.⁴³² In Czechoslovakia case, after the state announced itself chose Soviet style system, National Assembly had to bear more task than it used to. Besides to enact the State Budget Act and to audit the state account, National Assembly shall review the reports of Uniform Economic Plan which mainly implemented by the Government.⁴³³ Polish People's Republic also regulated the similar provisions, it stated Sejm shall adopt National economic plan and state budget.⁴³⁴

Since the supreme organ of state power in each state only hold the regular session for one or two times, 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 the development of Supreme Organ of State Power between China and Visegrad States

Even though 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 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 practice parliament system happened in 1910 when Qing Dynasty established the Advisory Council, sooner with the collapsed of Qing Dynasty in 1911, this parliamentary organ not existed any more. Latter, Republic of China summoned its first parliament session in 1913. Then it interrupted since the numerous wars happened in China.⁴³⁵ Notwithstanding, countries in Visegrad region had much

⁴³² Paragraph 3, Article 10, Constitution of Hungarian People's Republic, 1949.

⁴³³ Article 163, Constitution of Czechoslovak Republic, 1948.

⁴³⁴ Article 19, Constitution of Polish People's Republic, 1952.

⁴³⁵ Yufa Zhang, '民国初年的国会 [Parliament in the Early Period of Republic of China]' (1984) 13 *Journal of*

longer history of practicing parliament, especially in Hungarian case, the first representative parliament gathered on 4 of July in 1948 and it almost didn't interrupt.⁴³⁶ 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.⁴³⁷ 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 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 area 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 inhabitants shall elect one deputy to National People's Congress.⁴³⁸ 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

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<http://www.mh.sinica.edu.tw/MHDocument/PublicationDetail/PublicationDetail_997.pdf> accessed 7 November 2017.

⁴³⁶ Norbert 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)

⁴³⁷ 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/zl/qt/jndbdhcllszn/2014-09/17/content_1878887.htm> accessed 8 November 2017.

⁴³⁸ 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.

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 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 1936 Soviet Constitution and 1920 Czechoslovakia Constitution”. Tremendous provisions in Constitution of Czechoslovak Republic in 1948 kept the features of 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 were 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 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, 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 existed, especially between China and the Visegrad states. Because of the country 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 Constitution between China and Visegrad States in the Transform Period

In 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 socialist system in the Constitution, and some similar provisions were regulated in the Constitution in each state as well, the numerous differences caused different result 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 finish time was hardly to define in an exactly time point. Therefore, here the author roughly defined it the second half of 1990s.⁴³⁹ 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. The Development of Constitution in China during 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,

⁴³⁹ 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.

and the results of these turning points still affected each country now.

In this part, 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”⁴⁴⁰ 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 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 it 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.⁴⁴¹ 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 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

⁴⁴⁰ 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.

⁴⁴¹ 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.

public economy. The State protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy.”⁴⁴² 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 rationally. Household-responsibility system was another creative policy in 1980s. It firstly adopted in Xiaogang, a small village in Anhui province.⁴⁴³ Sooner it spread the whole country. In 1987, almost 98% household in countryside adopted this system and it indicated that “rural people's communes, agricultural producers’ co-operatives” became extinct.⁴⁴⁴ 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 Current Constitution in China

Four years later, the second amendment 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 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.⁴⁴⁵ These suggestions had been well taken by the Communist Party. In next 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, it 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 Preamble; five Articles were modified in General Principles; in fundamental rights and duties of citizens part,

⁴⁴² 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> accessed 11 November 2017.

⁴⁴³ Jiang Wu, Yanli Zhang, ‘Looking Back 30 Years: Research on System of Household Contract Responsibility’ (2008) 11 *Economic Theory and Business Management*.

⁴⁴⁴ 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.

⁴⁴⁵ ‘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> 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 public. China started to develop its socialist system with its own features.⁴⁴⁶

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 whole people. However, the state shall not run the state-owned enterprises directly, 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 practices, 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” in order to better practice socialist market economy.

⁴⁴⁶ For instance, in this amendment, it also promulgated that “The state practices 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 gained 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.⁴⁴⁷

1.3 The Third Amendment to 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.⁴⁴⁸

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 modify 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 implement rule of law, to build a socialist legal system was enough. The crucial point for this debate happened in 1997, the Report of 15th National Congress of Communist

⁴⁴⁷ Amendment to Constitution of People’s Republic, 1993
<http://www.npc.gov.cn/englishnpc/Constitution/node_2828.htm> accessed 13 November 2017.

⁴⁴⁸ 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.

Party of China expounded the importance of rule of law, and two years later, rule of law regulated in the Constitution.⁴⁴⁹ It was one of the milestone 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”.⁴⁵⁰

The rest 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 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”, 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 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”.⁴⁵¹

2. Development of Constitution in 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. 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

⁴⁴⁹ Buyun Li, ‘The Historical Process of Governing the Country by Law: Reviewing and Looking Ahead’ (2008) vol. 4 *Legal Forum* <http://pol.cssn.cn/zxx/zgzz_zxx/201408/W020140813372546696917.pdf> accessed 17 November 2017.

⁴⁵⁰ 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.

⁴⁵¹ Amendment to Constitution of People’s Republic of China, 1999.

formed in eastern bloc with Soviet's permission.⁴⁵²

All these facts finally caused a series of significant events in socialist states, including the states in Visegrad area in 1989, which we nowadays called 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 The Development of Constitution in Hungary during 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 modifies were enter into force until the new Constitution was adopted, which at the very beginning, everyone considered this period should not take a long period, however, it turned out the new Constitution was adopted until 2011. After the first four amendments adopted in 1989, there were 25 amendments adopted.⁴⁵³ Here the author will examine the final version of 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 too many, 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, establish a multi-party system, parliamentary democracy and a social market economy"⁴⁵⁴ until the new Constitution adopted by 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

⁴⁵² Ronald D. Asmus, J. F. Brown, Keith Crane, *Soviet Foreign Policy and the Revolutions of 1989 in Eastern Europe* (Rand Corp 1994) Summary.

⁴⁵³ Each amendment of 1949 Hungarian Constitution is available
<<http://www.kozlonyok.hu/nkonline/MKPDPDF/hiteles/MK09150.pdf>> accessed 17 November 2017.

⁴⁵⁴ Act of 31,1949 Hungarian Constitution, final version is available
<http://www.wipo.int/wipolex/en/text.jsp?file_id=190398> accessed 15 November 2017.

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 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 economic system, Hungary adopted 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.

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 foreign policy, Republic of Hungary turned to Western Europe's group, to join and assimilate into European Union became the government's primary diplomatic task.⁴⁵⁵

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, checks and balances system was introduced in to the political system in Hungary. Competences of Parliament were required the cooperation of the President of Republic, who is elected by the Parliament and considered as the head of state. Four other positions were introduced by the amendment, which closely related to the Parliament. Constitutional Court shall watch the implement of the Constitution, 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

⁴⁵⁵ Chapter One, final version of 1949 Hungarian Constitution.

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 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 bore 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 was designed to keep a healthy economic order in the state. National media and information authority shall take the responsibility to facilitate the operation of electronic communication market smoothly.⁴⁵⁶

The third part related to the judiciary system. The highest court in Hungary was Supreme Court. Excepted 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 authorized officer. Judges in the court may not be any Party 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. General Prosecutor was the highest body of prosecution system. The election of General Prosecutor was similar to the election of President of Supreme Court. Public prosecutors shall not be Party member and engage in political activities.⁴⁵⁷

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 of the country smoothly. In general, citizens in Hungary were encouraged and guaranteed to participate in the political and social affairs. It was more

⁴⁵⁶ From Chapter Two to Chapter Nine, which introduced the political system in Republic of Hungary. final version of 1949 Hungarian Constitution.

⁴⁵⁷ Chapter Ten and Chapter Eleven regulated the judiciary system in Hungary, final version of 1949 Hungarian Constitution.

difficult to change the provisions on civil rights, in order to guarantee the protection of civil rights was 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.⁴⁵⁸

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 The Development of Constitution in Czechoslovakia during 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.⁴⁵⁹

The unexpected victorious transform in Czechoslovakia encouraged people, a new Constitution was planning to be drafted by a special Constitutional commission. For the same reason, the newly elected President of Czechoslovakia, Vaclav Havel and the Parliament were planned to serve their term of office for two years instead of the regular one, four years.

As Cutler and Schwartz’s Article indicated,⁴⁶⁰ a Constitutional commission was formed in the Parliament in September 1990. It supposed to prepare a new Constitution and submitted it to the Parliament. Then the new-born country shall develop with its new Constitution.

The following certain parts in the Constitution were required to pay a special attention, in order to have a smoothly Constitution-drafting period.

⁴⁵⁸ Chapter Twelve, final version of 1949 Hungarian Constitution.

⁴⁵⁹ Kevin McDermott, *Communist Czechoslovakia, 1945-89: A Political and Social History* (1st edn, Palgrave 2015).

⁴⁶⁰ This article was the result of the request of President Vaclav Havel, and sponsored by 77-New York Foundation and the Salzburg Seminar. Lloyd Cutler and Herman Schwartz, ‘Constitutional Reform in Czechoslovakia: E Duobus Unum?’ (1991) 58 *University of Chicago Law Review* p. 511, 522.

The first part 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.⁴⁶¹ After collapsed of 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”.⁴⁶² However, Slovaks didn’t satisfy with the new name, several demonstrations happened in Slovakia region. Luckily, the crisis didn’t last too long, in April, shorter than one month a new Constitutional amendment was adopted. It shall to be Czech and Slovak Federative Republic.⁴⁶³ Even the unofficial name Czechoslovakia, which accepted by the world more than 70 years had a slightly change, the new version shall be “Czecho-Slovakia”⁴⁶⁴ It implied that Czechoslovakia as a whole was receiving less and less supporting in Czechoslovakia, especially in Slovakia region.

The second part should be focused was the 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 Freedoms⁴⁶⁵ (hereinafter the Charter) in Czechoslovakia was more like a small Constitution. It included preamble, general provision and entailed Articles.⁴⁶⁶

⁴⁶¹ Constitution of Czechoslovak Federation, 1968 <<http://czecon.law.muni.cz/content/en/ustavy/1968/>> accessed 19 November 2017.

⁴⁶² Act No. 81 of 1990 <<http://www.noveaspi.sk/products/lawText/1/38417/1/2>> accessed 20 November 2017.

⁴⁶³ Act No. 101 of 1990 <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1990/101/>> accessed 20 November 2017.

⁴⁶⁴ 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.

⁴⁶⁵ Act No. 23 of 1991 <https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/23-1991.pdf> accessed 20 November 2017.

⁴⁶⁶ Lloyd Cutler and Herman Schwartz, ‘Constitutional Reform in Czechoslovakia: E Duobus Unum?’ (1991) 58 *University of Chicago Law Review* p. 511, 532.

The Preamble of the Charter addressed the democratic and self-governing traditions in Czechoslovakia, and it 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 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 details, 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.

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. In 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 making 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.⁴⁶⁷

The third part, which the governors particularly concerned, 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 modifies 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 modifies 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 adopted in July 1991. In the Constitutional amendment, judges were required perform his or her duties bound by law only.⁴⁶⁸ 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.⁴⁶⁹

Nevertheless, the expected new Constitution 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 end in 1992 when Czech Republic and Slovak Republic adopted their new Constitutions. Besides the Constitutional amendments which mentioned before, the following amendment should be noticed. The Act No. 135 of 1989 made two very impressive revisions. The first one was 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

⁴⁶⁷ This part was based on the Act No. 23 of 1991 and Lloyd Cutlert and Herman Schwartz’s article.

⁴⁶⁸ Act No. 326 of 1991 <<http://www.zmenyzakonu.cz/zakon.aspx?id=9938>> accessed 21 November 2017.

⁴⁶⁹ Act No. 376 of 1990 <<https://www.zakonyprolidi.cz/cs/1990-376/zneni-19910901?porov=19900920>> accessed 21 November 2017.

accordance with the principles of patriotism, humanity and democracy” instead of “directed in the spirit of the scientific world outlook, Marxism, Leninism...”⁴⁷⁰ Another amendment adopted in 1990, which changed the national symbols in Czechoslovakia.⁴⁷¹

2.3 The Development of Constitution in Poland during Transform Period

During the whole 1980s, Polish People’s Republic was famous of its trade union’s movements, Solidarity which established in August 1980. In 1989, Solidarity reached its climax, it played a crucial role during the transform period in Poland.⁴⁷²

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 adopted in April of 1989 and the second adopted in the same year in December. The last one was so called small Constitution which adopted in 1992. These amendments heavily changed the 1952 Polish Constitution, until the current Polish Constitution adopted in 1997.

The transform period in Poland started in 1989, in the same year, a Constitutional amendment was adopted on April 1989.⁴⁷³

During the transform period, so called round table talk first initiated in Poland between the government and protesters who most came from the Solidarity in 1989, which later followed by Hungary and Czechoslovakia.⁴⁷⁴ The outcome of the round table was a Constitutional amendment which adopted on 7 April of 1989. In the amendment, two major changes had been introduced.

⁴⁷⁰ Act No. 135 of 1989 <<https://www.zakonyprolidi.cz/cs/1989-135>> accessed 21 November 2017.

⁴⁷¹ Act No. 102 of 1990 <<https://www.zakonyprolidi.cz/cs/1990-102>> accessed 21 November 2017.

⁴⁷² 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 Kolegium 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> accessed 22 November 2017.

⁴⁷³ Boguslaw Banaszak, ‘General Introduction’ in Boguslaw Banaszak et al. (eds), *Constitutional Law in Poland* (Wolters Kluwer 2012)

⁴⁷⁴ 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.

The first change was new Parliamentary election had been designed. 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 rest position 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 restored in Poland was the head of state, President of Polish People's Republic, and who was granted widely competences. A new institution was introduced to 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.⁴⁷⁵

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, Communist Party in Poland lost its ruling position.

Two major changes in the 1989 amendment had been made. The first modify was the freedom of political system, multiparty system had been established in Poland. The most significant change was restoring the traditional name of the state, the Republic of Poland replaced the name which 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.⁴⁷⁶ 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 1952 Constitution, and in the first two Articles of the new version Constitution, it announced that "a democratic state of law realizing

⁴⁷⁵ Boguslaw Banaszak, 'General Introduction' in Boguslaw Banaszak et al. (eds), *Constitutional Law in Poland* (Wolters Kluwer 2012) p. 23.

⁴⁷⁶ 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.

the rules of social justice” and “the highest authority belongs to the nation”⁴⁷⁷ The new state was not based on the socialist ideology any more, and 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.⁴⁷⁸

Solidarity continued its victories in political elections, the leader of Solidarity, Lech Walesa won the Presidential election in December of 1990.⁴⁷⁹ 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 of its unofficial name Small Constitution, since it included the preamble, general principles and detailed Chapters for political system in Poland.⁴⁸⁰

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”⁴⁸¹

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.

⁴⁷⁷ Grzegorz Gorski, ‘Constitutional changes in Poland between 1989 and 1997’ (2014) Vol. 1 *The Journal of Kolegium Jagiellonskie Torunska Szkola Wyższa* <<https://www.degruyter.com/downloadpdf/j/lape.2014.1.issue-1/lape-2014-0001/lape-2014-0001.pdf>> accessed 23 November 2017.

⁴⁷⁸ 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 Boguslaw Banaszak, ‘General Introduction’ in Boguslaw Banaszak et al. (eds), *Constitutional Law in Poland* (Wolters Kluwer 2012) p. 24, 25.

⁴⁷⁹ Grzegorz Gorski, ‘Constitutional changes in Poland between 1989 and 1997’ (2014) Vol. 1 *The Journal of Kolegium Jagiellonskie Torunska Szkola Wyższa* <<https://www.degruyter.com/downloadpdf/j/lape.2014.1.issue-1/lape-2014-0001/lape-2014-0001.pdf>> accessed 23 November 2017.

⁴⁸⁰ 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/pl02000_.html> accessed 24 November 2017.

⁴⁸¹ Ibid.

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 was 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 provisioned were regulated in order to guarantee deputy in the Sejm may perform his or her mandates independently. For instance, after the election, deputy in the Sejm shall not follow the instruction from his or her electoral district and even shall not subject to recall. During the Sejm session and after, the performance of deputies shall not be prosecuted unless such activities violating human rights. 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 Marshal of Sejm to 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, President may play the similar role as the same as Senate. The principle of checks and balances has embodied in the Polish Constitutional amendment.

The second part stated the executive power of the Republic of Poland which shared by 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. 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, 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. Even though, 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 an excuse for the deputy or senator who was 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 thought, the 1952 Polish Constitution was crucial changed, adopting a newly democratic Constitution became the desire of the masses. The most significant change in this amendment was citizens in Poland allowed to submit the draft of the Constitution, if there were over 500,000 citizens signed it.⁴⁸²

⁴⁸² 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:

3. Comparative Analysis of the Development of Constitution between China and Visegrad States in Transform Period

Revolutions of 1989 dramatically changed the political environment in Visegrad states even 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 Chinese economy, which now led an economic miracle in recently 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 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 be existed 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 seriously decision 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, 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.⁴⁸³ The revisions which mentioned above showed the creative of Communist Party. It led the 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 inspired by 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 “peaceful transition to a Constitutional state”⁴⁸⁴ Many Constitutional traditions before the Second World war 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

⁴⁸³ 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> 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> accessed 26 November 2017.

⁴⁸⁴ Act 31 of 1989, Amendment to Hungarian 1949 Constitution, 1989. See also Rudolf L. Tokes, ‘Institution Building in Hungary: Analytical Issues and Constitutional Models, 1989-1990’ in Andras Bozoki (ed.) *The Roundtable Talks of 1989: The Genesis of Hungarian Democracy: Analysis and Documents* (Central European University Press 2002)

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.⁴⁸⁵ Deng has a very famous analogy of whether 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.”⁴⁸⁶ 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 Visegrad states, some of the modifications were even quite similar, only the extend of the changing in Visegrad states were much deeper than 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 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

⁴⁸⁵ Li Tieying, 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-纪念中国共产党第十一届三中全会 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*.

⁴⁸⁶ ‘In quotes: Deng Xiaoping’ (*China Daily*, 20 August 2014)
<http://www.chinadaily.com.cn/china/2014-08/20/content_18453523.htm> accessed 27 November 2017.

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 road and Constitution.

In Chinese legal education system, nowadays 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.⁴⁸⁷ Chinese legal system is believed originated 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,⁴⁸⁸ as the major principle in the legislature in Chinese legal system, assimilated into Chinese daily life. In the relation between government and people in antient China, it embodied that masses were considered as the subject of the governor, and they should loyalty to the governor, and governor shall take care of his subjects.⁴⁸⁹ This legal thought practice in antient China until the late

⁴⁸⁷ 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.

⁴⁸⁸ Three cardinal guides: ruler guides subject, father guides son, and husband guides wife and the five constant virtues were benevolence, righteousness, propriety, knowledge, and sincerity.

⁴⁸⁹ 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*.

Qing dynasty forced to adopt the western legal system.⁴⁹⁰ The modern concept of Constitution firstly appeared in China in the end of 19th century, latter, Qing dynasty collapsed, its successor, Republic of China nominally united China. However, warfare was in constant broke out in China, implementation of Constitution became almost impossible.⁴⁹¹ With this consideration, Founding Father of 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.⁴⁹² Which finally enter the third stage when the Constitution of Republic of China published in 1947.

Visegrad states experienced different legal tradition on Constitution in antient time. The most notable example is the 1791 Constitution in Poland, which until now Polish 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.⁴⁹³ Even though, the 1791 Constitution never entered into force,⁴⁹⁴ it shows a totally different legal tradition between antient 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, citizens

⁴⁹⁰ 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.

⁴⁹¹ Qianfan Zhang, *The Constitution of China: A Contextual Analysis* (1st edn, Hart Publishing 2012).

⁴⁹² Ibid.

⁴⁹³ Richard Butterwick, *The Polish Revolution and the Catholic Church, 1788–1792: A Political History* (1st edn, Oxford University Press 2012)

⁴⁹⁴ Anna Gogut and Jerzy Kugler (eds.) *The Polish Road to Democracy: The Constitution of May 3, 1791* (1st edn, The Sejm Publishing House 1991)

enjoyed more rights.⁴⁹⁵ 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.⁴⁹⁶

The different legal tradition led China and Visegrad states chose different road 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 implemented. Most people were preferred to lead by a strong central government like their ancestors did in thousand years ago.

3.2.2 Political Practices

If we only examine the Constitutions from each state, there is no doubt that differences were existed in paper. However, if we examine the constitutional in practice, the gap between China and Visegrad states was 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.⁴⁹⁷ It is 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 legally voting methods in the Electoral Law of 1953. Later, during the Revolution Cultural period, applause became the main voting method.⁴⁹⁸

In Visegrad states, 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.⁴⁹⁹ Act V of 1848 gave the details of the

⁴⁹⁵ 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.

⁴⁹⁶ Jonathan Kwan, *Liberalism and the Habsburg Monarchy, 1861-1895* (1st edn, Palgrave Macmillan 2013) p. 46-64.

⁴⁹⁷ 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.

⁴⁹⁸ 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.

⁴⁹⁹ Tibor Seifert, 'General Elections 1848-1998' in Maria Ormos and Bela K. Kiraly (eds Nora Arato trans.) *Hungary:*

election procedure, the eligible voter shall vote personally, the voting shall be recorded as well in order to make the election fair.⁵⁰⁰

Another difference of election between China and Visegrad states during 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 population than urban area. Later, it amended to 4:1. Each vote entitled same right regardless the voter residents in rural area or urban area realized since a new amendment adopted in 2010.⁵⁰¹ 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.⁵⁰²

In conclusion, the differences of the legal tradition and political practices between China and Visegrad states led the different roads were 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, communist party controlled the nationwide protests which mainly led by students, ruling crisis finally resolved. Nevertheless, several constitutional amendments adopted, and these modifications were mainly focus on economic reform.

4. Comparative Analysis of Constitutional Review System between China and 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 only regarded as the rubber stamp. How to ensure the constitutionality in practice, this is not only the

Governments and Politics 1848-2000 (Atlantic Research and Publications, Inc 2001)

⁵⁰⁰ Act V of 1848, Hungary <<https://1000ev.hu/index.php?a=3¶m=5273>> accessed 7 December 2017.

⁵⁰¹ 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> accessed 7 December 2017.

⁵⁰² 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.

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%.⁵⁰³

In this part, the author will examine the constitutional review between China and Visegrad states.

4.1 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 focus 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.⁵⁰⁴ Since the National People's Congress only gathering once a new for couple of days, 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 supervise 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,

⁵⁰³ 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.

⁵⁰⁴ Article 27, Constitution of People's Republic of China 1954.

Standing Committee of National People's Congress entitled to interpret the Constitution.⁵⁰⁵

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.⁵⁰⁶ It is more logical, since it is a permanent organ, not like 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 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 noticeable.⁵⁰⁷ This case started in 1999, after two years trial, the finally judgment given by Shandong Higher People's Court with the official Reply from Supreme People's Court.⁵⁰⁸ 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."⁵⁰⁹

These cases seemed show a new era of judiciary in China has been arrived, however the dawn of constitutional review in China shall last or turn to dark is still under

⁵⁰⁵ Article 25, Constitution of People's Republic of China 1978.

⁵⁰⁶ Article 67, Constitution of People's Republic of China 1982.

⁵⁰⁷ 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.

⁵⁰⁸ 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.

⁵⁰⁹ 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.

examination. Even though, more and more legal experts asserted the importance of constitutional review and implementation of Constitution in practice.⁵¹⁰ There are still more works need to be done in the future.

4.2 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 the Act XXXII of 1989, this is also one of the critical constitutional amendments which 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.⁵¹¹

Before the establishment of Constitutional Court in Hungary, Hungarian government set up Council of Constitutional Law as the supervisor organ for constitutionality in Hungary. It first introduced in the 1983 Constitutional Amendment.⁵¹² Later, the detailed provisions of Council of Constitutional Law promulgated in Act I of 1984. And it replaced by Act XXXII of 1989 officially.⁵¹³

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 1990.⁵¹⁴ The rest six Constitutional Judges were elected in June of 1990 by the freely new elected National

⁵¹⁰ 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.

⁵¹¹ Act XXXII of 1989, Amendment to 1949 Hungarian Constitution.

⁵¹² Act II of 1983, Amendment to 1949 Hungarian Constitution.

⁵¹³ "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.

⁵¹⁴ Constitutional Court of Hungary, 'Brief history of the Constitutional Court of Hungary' <<http://hunconcourt.hu/history/>> accessed 9 December 2017.

Assembly.⁵¹⁵

4.3 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 established among the Visegrad states.

Czechoslovakia and its neighboring state, Austria almost in the same time created this specialized judiciary organ in the world in 1920.⁵¹⁶ The first Constitution in Czechoslovakia which 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.⁵¹⁷

However, compared with the popular constitutional review system at present, several shortages should be point out. Firstly, 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 of three judges, one of them shall be appointed as President of Constitutional Court by President of the Czechoslovakia. The rest four judges, “two each are taken from the ranks of the judges of the Supreme Court of Justice and the Supreme Administrative Court.”⁵¹⁸ Secondly, Constitutional Court shall decide the constitutionality of the law, only certain bodies

⁵¹⁵ Janos Kis, *Constitutional Democracy* (Zoltan Miklosi tr, 1st edn, CEU Press). However, in the introduction of the official website of Constitutional Court of Hungary, it mentioned only five Judges were elected.

⁵¹⁶ 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.

⁵¹⁷ 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.

⁵¹⁸ Ibid.

entitled to start the motion.⁵¹⁹ In such situation, the constitutional review system in Czechoslovakia rather like an exclusive club only open 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 amendment, Czechoslovakia established federal system. The federal level Constitutional Court shall consist of twelve members, eight judges and four alternates which 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. Individual may initiate constitutional complaint with certain conditions.⁵²⁰ 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 was very similar to the Act 162 of 1920. 12 Constitutional Judges were appointed by President of Republic, not elected by the Federal Assembly. Constitutional Court mainly solve 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.⁵²¹ Constitutional Court as the third part of the state power, it supposed to play an important role of checks and balance in Czechoslovakia.

⁵¹⁹ 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.

⁵²⁰ Act 143 of 1968, Czechoslovakia
<https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/History/Constitutional_act_1948.pdf> accessed 12 December 2017.

⁵²¹ Act 91 of 1991, Czechoslovakia
<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.

However, as we all know that Czechoslovakia was resolved itself into two independent states in the end of 1992. Constitutional review system in Czechoslovakia in the most period only existed on paper.⁵²²

4.4 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 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.⁵²³ 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 concrete 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.⁵²⁴ The 12 judges were elected by the Sejm in November 1985 and Tribunal operated on 1 January 1986. Later, a new constitutional amendment 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.⁵²⁵ Meanwhile several Acts enlarged the scope

⁵²² History, the brief introduction of Constitutional Court of Czechoslovakia <<https://www.usoud.cz/en/history/>> accessed 12 December 2017.

⁵²³ 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).

⁵²⁴ Ibid, Mark Brzezinski. See also Constitutional Tribunal Act of April 29, 1985 <<http://www.asgp.co/sites/default/files/documents/MNTINVDETJUNQQJBKBPJDFGPYDTHMU.pdf>> accessed 13 December 2017.

⁵²⁵ Amendment to Polish Constitution 1989 <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19890750444/T/D19890444L.pdf>> accessed 13 December 2017.

of constitutional review. Firstly, 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 belong to Council of State.⁵²⁶ Before the current Constitution adopted in Poland, legal scholars suggested that Constitutional Tribunal shall review the constitutionality of international agreement.⁵²⁷

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 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 of 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 cross over 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

⁵²⁶ Mark Brzezinski, *The Struggle for Constitutionalism in Poland* (1st edn, St. Martin's Press, 1998).

⁵²⁷ Zdzisław 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.

constitutionality issue in Czechoslovakia was 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 socialist states, at least on paper, the task of constitutional review was assigned to 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 2000,⁵²⁸ 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 was collapsed in Visegrad states. As many scholars noticed the new democracies adopted the constitutional court in the Constitution and constitutional review system (re)established.⁵²⁹ Since then, a relatively common constitutional review system established in Europe.⁵³⁰

In Chinese case, the regime is still governed by Communist Party of China. The limited constitutional review system only applied to the constitutionality of laws and regulations. The power to review Constitution only belongs to National People's Congress and its Standing Committee.

The main difference of constitutional review system between China and Visegrad

⁵²⁸ Legislation Law of People's Republic of China was adopted on 15 March 2000. This Law was modified in 2015.

⁵²⁹ David Robertson, *The Judges as Political Theorist: Contemporary Constitutional Review* (1st edn, Princeton University Press 2010).

⁵³⁰ Benjamin Bricker, *Visions of Judicial Review: A Comparative Examination of Courts and Policy in Democracies* (1st edn, ECPR Press 2016).

states is obvious, the fully western standard constitutional review system had been established in Visegrad states after the collapsed of socialist system.⁵³¹ However, in Chinese side, it is still the state which is ruled by communist party, and constitutional review system still not fully established.

Given this huge gap between China and Visegrad states, several differences are easy to notice. Firstly, the role for reviewing Constitution in Visegrad states are undertook 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 the compare 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 debating. As I mentioned before, the ruling party is much caution on the political and judiciary reform than the economic reform.

5. Conclusion

In this Chapter, the author mainly 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 had 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 Hungary case). A western democratic style Constitution had been established in Visegrad states. Some important constitutional amendments also adopted in China during the transform period. It should be point out that it is doesn't

⁵³¹ Wojciech Sadurski, *Rights Before Court: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (1st edn, Springer 2005).

matter what kind of road for its own development was chose by each country, the most important matter is does they had the best choice for their own good.

In the last part of this Chapter, the author also introduces the constitutional review system in each state and makes a comparative analysis. It is a hard task since the difference is so obviously, there is no space for constitutional court in Chinese Constitution. Therefore, the constitutional review system in Visegrad states which existed since 1980s is still debating should China build 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 learned 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.”

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 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 independent, countries in Visegrad region also “liberated” by Allies military, especially the Soviet Union’s Red Army. Therefore, communist party in each state established the communist regime, newly communist Constitution adopted one by one. In China, Chinese won the Second Sino-Japan War, then four years civil war broke out in the same year. In 1949, Chinese Communist Party established People’s Republic of China, 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, it was a hybrid of Chinese Common Program and 1936 Soviet Union Constitution. In the comparative part of this period between China and Visegrad states, it is worth to draw attention the context and structure of the Constitution in each state. The contexts of the Constitution in each state were similar, since all the Constitutions were strongly influenced by the 1936 Soviet Union Constitution. Three parts of the context are compared in this part, the preamble of the Constitution, the fundamental rights and duties of the citizens and the supreme organ of the state power.

It should be noticed that communist party in Visegrad states and China can’t out of thin air. Therefore, the author gave a detailed examining on the birth of communist party in each state. After the first communist regime established in the world in 1917, especially the operation of Communist International in Moscow,⁵³³ more and more people got the communist ideology and dispatched to the world. Among these

⁵³² Robert Frost, The Road Not Taken <<https://www.poetryfoundation.org/poems/44272/the-road-not-taken>>, accessed 21 December 2017.

⁵³³ 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 December 2017.

communist comrades, Bela Kun,⁵³⁴ the Hungarian communist member was sent back to Hungary, and after his return in Hungary, he sooner 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 last over 100 days. In China, 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 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 sooner abandoned by the leadership, a rule of man approach was employed by the governor and later a ten-year Cultural Revolution movement initiated by the leader of the Party. Under such circumstances, 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 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 Constitution not out of valid immediately, several crucial constitutional amendments were adopted by the legislature in Visegrad states. The most dramatical change was

⁵³⁴ Bela Kun, the founding father of Hungarian Communist Party, he was sent to Hungary in the end of 1918, before the funding of Communist International. <<https://www.marxists.org/archive/kun-bela/index.htm>>, accessed 21 December 2017.

these countries abandoned 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 rulership, 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.

2. Reasons for Different Road

It is also interested to inquire why socialist states chose different road 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 the such a different choice was chosen by China and Visegrad states.

2.1 Social Economic Condition

Carl Marx had a very famous speech on economy and superstructure. Economic changes sooner or later will transform the superstructure.⁵³⁵ Therefore, it is important to study the social-economic 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 was much better than China's one. Here is the brief introduction of economy in Visegrad states. After 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

⁵³⁵ 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.

significant processing facilities.⁵³⁶ In Chinese case, the economic condition was much worse than Visegrad states. The development of industrial 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,⁵³⁷ 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 448.⁵³⁸ 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 1830.⁵³⁹ Therefore, during the nearly 40 years economic development, the economic condition in Visegrad states was much better than China's one.

2.2 Culture

There is no doubt that Visegrad states belong to Europe Continent. 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 was 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 popular than other Slavic lands, the Tabor movement which happened in 1868-70 was supported by over one million masses.⁵⁴⁰

⁵³⁶ Nicolas Spulber, *The State and Economic Development in Eastern Europe* (1st edn, Random House 1966).

⁵³⁷ 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.

⁵³⁸ Maddison Project Database <<http://www.ggdgc.net/maddison/maddison-project/home.htm>>, accessed 22 December 2017.

⁵³⁹ Ibid.

⁵⁴⁰ Robin Okey, *The Habsburg Monarchy 1765-1918: From Enlightenment to Eclipse* (1st edn, Palgrave Macmillan, 2002).

In Chinese case, it should notice the influence of Confucianism. As mentioned in the last Chapter, the legal system in antient 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.⁵⁴¹ 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 study. The relationship between socialist states and Soviet Union especially need to pay extra attention.

The rising of 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 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 funder of Hungarian communist party. Even though this experiment sooner failed, Hungarian communists still operated in local with a low profile. After the War, communists in Hungary used the so called "salami tactics" 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".⁵⁴² After the

⁵⁴¹ 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*.

⁵⁴² Mark Karmer, 'Stalin, Soviet Policy, and the Consolidation of a Communist Bloc in Eastern Europe, 1944-53' in

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 the Prague Spring in Czechoslovakia, went in vain, because of the suppress of Soviet Army or the military of Warsaw Pact.⁵⁴³

Soviet army is also credited with the establishment of People's Republic of 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 took the reaction to China, such as withdrawal the Soviet experts from China.⁵⁴⁴

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 road and kept the socialist Constitution, in contrast, countries in Visegrad region chose other road, and abandoned their socialist Constitutions. Why China and Visegrad states chose different road? There are three reasons are 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 Visegard 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 notice. Hungary, Czechoslovakia and Poland joined the Warsaw Pact and formed so called East Bloc.

Vladimir Tismaneanu (ed.) *Stalinism Revisited: The Establishment of Communist Regimes in East-Central Europe* (CEU Press 2009).

⁵⁴³ Ben Fowkes, *The Rise and Fall of Communism in Eastern Europe* (1st edn, Macmillan Press Ltd, 1993).

⁵⁴⁴ 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).

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 get rid of the control of 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 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 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, a prosperous country can’t exist without Constitution. Secondly, 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, Constitution in each state should reflect its own conditions.

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