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Interrelationship Between Constitutionalism and Political Parties in Uzbekistan:

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Abstract

This study investigates the interrelationship between constitutionalism and political parties in Uzbekistan. The constitutionalism is the regime where all citizens and associations are using their rights and freedoms, and can protect them through the mechanism of constitutional checking, reviewing by the court. Citizens of Uzbekistan have the right to form political parties on the basis of diversity of political institutions, ideologies and opinions, but with restrictions to political parties based on national and religious principles.

To identify their constitutionality, they need to pass two stages: the first, registration process by the Ministry of Justice and second, the party activities checking process by the Supreme Court. The supervision by the Ministry of Justice creates difficult conditions for realization of the freedom of associations by political parties. These conditions affect the principles of equality, interference by public authorities, pluralism. I studied these limits to see how they could be relaxed in future. My aim was to find out how to ensure Uzbekistan remains a stable society, but also guarantees the freedom of association.

This research work focuses on political parties and ecological movement in Uzbekistan and their development in the process of democratization and liberalization of the legal system. The basic principles and regulations for political parties were established in such legal document as 1992 Uzbekistan *Constitution*, the 1996 *Law on Political Parties* and the *Law on Strengthening the Role of Political Parties*. The need of establishing mentioned above legislation was a start line for multiparty system, which replaced old system to the new one. The reasons why people in Uzbekistan supported the idea of independency were different, but main and more powerful was the tendency to nationalism. Uzbekistan was known in the Soviet period as a cotton-growing republic of twenty million people, but subsequent to its declaration of independence in September 1, 1991 was one of five republics where parliament struggle for secession. Uzbekistan had a popular movement *Birlik* in the region and it was a center for Muslims in Central Asian. These two factors motivated people in the parliament to declare independence.

New Uzbekistan with its new project to build a democracy in the country where the consciousness of post-soviet people working in the government position still predominated the consciousness of people thinking about democracy or at least had any kind of real imagination about democracy. They understood that one political organization can change the whole history of the country like Communist Party, but how use such kind of tools like political parties in the democratic country was unclear. Political parties are still under the control of the central and local government (regulations of the Cabinet of Ministers, Ministry of Justice).

The knowledge of what is political party and what for it exists still unclear from the point of view of the constitutional law (Article 57). The position of the constitutionalists is – first, to keep

security in the country between particular risky associations. The second is to keep a sustained dominant position of one political party then an unstable position of two or more. However, at the same time legislator creates more conditions for opposition by drawing some frame inside of which they should exist as opposition. This research draws up the picture of how legal construction of political parties follows the main principles of the democratization realizing by current government and what kind of gaps between them.

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List of Abbreviations and Shortened Words

art.	Article
Const.	Constitution
BGBL	*Bundesgesetzblatt* [Federal Law Gazette]
BVerfGE	*Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts* [Official Collection of Decisions of the Federal Constitutional Court]
BVerfGG	*Gesetz über das Bunderverfassunggsgericht* [*Law on Federal Constitutional Court*]
CPSU	Communist Party of Soviet Union
CC	Constitutional Court
CDU	*Christlich-Demokratische Union* (Christian-Democratic Union)
CEC	Central Election Committee
CIS	Commonwealth of Independent States
ECHR	European Convention on Human Rights
Eur.Ct.HR	European Court of Human Rights
FCC	Federal Constitutional Court
FCL	Federal Constitutional Law
FRG	Federal Republic of Germany
GFR	German Federal Republic
GDR	Germany Democratic Republic
GG	*Grundgesetz* (Basic Law) of May 23, 1949
Ibid.	*Ibidem* (the same place)
ICCPR	International Covenant on Civil and Political Rights of December 16, 1966 (Resolution 2200A, XXI)
KPD	*Kommunistische Partei Deutschlands* (Communist Party of Germany)
Konstitut. RUz	*Конституция Республики Узбекистан* [Constitution of the Republic of Uzbekistan]
MoJ	Ministry of Justice
NPD	*Nationaldemokratische Partei Deutschlands* (National Democratic Party of Germany)
OSCE	Organization for Security and Cooperation in Europe
O'zXDP	*O'zbekiston Xalq Demokratik Partiyasi* (People's Democratic Party of Uzbekistan)
RSFSR	Russian Soviet Federative Socialist Republic
RF	Russian Federation
RV	*Reichsverfassung* [Constitution of the *Reich*]
sect.	Section
USSR	Union of Soviet Socialist Republics
WRV	*Weimar Reichsverfassung* (Weimar Constitution)
Zakon o PP	*Закон РУз о полититеческих партиях* [Law on Political Parties]
Zakon RUz o Fin. PP	Закон РУз от финансировании политических партий [Law on Financing Political Parties]

Chapter I: Introduction

1.1 Background

Researchers in Uzbekistan[1] are now concentrating their attention to the studies of political system from the historical, political and economical perspectives. Mainly, they describe political system within constitutional development in two periods: 1) the Soviet period from 1989 until 1991, also know as *perestroika* period; 2) and the post-Soviet period. Moreover, the main attention in both periods has been devoted to the key political reformer in both periods – Karimov, President of Uzbekistan.[2]

Some scholars call Uzbekistan government designed as supervised democracy.[3] Another scholars name political system focused on a form of dual rule of law – soviet and something called transitional law, which makes difficulties in communication with government on legal problems.[4] Uzbek scholars unconditionally string along with idea that political system of Uzbekistan has its own special feature constructed on the reliable legislation base.

After independence in 1992, significant principles of western democracy such as separation of power, rule of law were formally promulgated in Constitution. Democratic institutions like parliament, courts, and cabinet of ministries were established. In spite of this fact, the president apparatus and all subordinated ministries are the main initiators, commentators of all new laws.

This research examines the problems in the regulations of political parties. This paper found past works to be using textual formulas, too focused on the past, looking mainly at history, politics and economics. For this reason, it is a huge need for very detailed legal examination of political parties, which is the focus of this paper.

The erosion of civil and political rights in recent years makes necessary to engage in research on the political party system. This work differs from the above-mentioned work with its

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[1] "Население Узбекистана превысило 30 миллионов человек" (The Population of Uzbekistan has Increasing 30 Million People) in *Gazeta.uz*, May 8, 2013, http://www.gazeta.uz/2013/05/08/population/ (accessed December 25, 2013), (Uzbek1istan – is the most populous of the Central Asian countries with population around thirty million inhabitants).

[2] Каримов, Ислам Абдуганиевич (Karimov, Islam Abduganievich), former Minister of Finance of Uzbekistan in 1983; former Vice-Chairman of the Council of Ministers; Deputy Head of Government and Chairman of the State Planning Committee in 1986; former Chairman of Communist Party in Uzbekistan in 1989; president of Uzbek Soviet Socialist Republic in 1990; President of Uzbekistan from 1990 up today. He was elected twise on popular elections in 1991 and 2007. The presidential term office was changed from 5 to 7 years under 2002 referendum, and from 7 to 5 years under the 2012 *Constitutional Law on Amendments.*

[3] Aydin, Gülşen. *Authoritarianism vs. Democracy in Uzbekistan: Domestic and International Factors* 116 (Master's Thesis, Middle East Technical University, January 2004).

[4] Commission on Security and Cooperation in Europe (CSCE), *Government-Opposition Relations in Uzbekistan*, Report (Washington, март 1, 1997), Washington, http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewDetail&ContentRecord_id=163&ContentType=G&ContentRecordType=G&UserGroup_id=53&region_id=53&year=0&month=0&Subaction=ByDate&CFID=653736&CFTOKEN=32135696 (accessed July 26, 2013), 15.

step-by-step historical analyses of the development of the political party system. This paper examines all significant documents regulating political party system and proposes the introduction of a legal model, which will reverse the trend of previous research. Moreover, there is a legal examination of all procedures necessary to pass for a group of people to pass who would like to form a political party in Uzbekistan, and stop or discontinue party activities. This paper shows all barriers that the group faces during the procedures. It includes the detailed review of all legislation starting from 1978, post-Soviet period and continuing until 2013. This legal analysis will provide the core answers of the current effectiveness of current political system in Uzbekistan from a civil rights perspective and propose the introduction of a legal model, which will reverse the erosion of civil and political rights.

There are a number of ways in which this paper could measure the effectiveness of present political system in Uzbekistan. However, the start point for analyses should be identification the legality of government actions within constitutionalism. The clearer the legal guarantees of fair political policy the stronger trust and stability in center and regions will be guaranteed to the people.

Although previous studies have addressed the relations between the center-peripheral relations in Uzbekistan,[5] regional opposition,[6] Islamic movement,[7] formation and activities of nongovernmental organizations.[8] None of them have researched political parties in the context of constitutionalism. The present study investigates the political and legal effects of political parties on the society and its development after the collapse of the Soviet Union. Political parties faced different periodical effects by Karimov.

Karimov consolidated his power by the centralization of power as it was in the USSR period. There are fourteen administrative areas but all decisions are taken in Tashkent. Under his authority numerous of legislations were adopted, systematic replacement of regional representatives helped to concentrate his loyal supporters there. Administrative and legal reforms established a new party system that replaced gradually former members of the Communist party of Uzbek SSR with new representatives, drawn from his supporters.

With the collapse of the Soviet Union, Karimov worked as government, used his power and connections in the government to change constitutionally the Marxist ideology guiding the

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[5] Ilkhamov, Alisher. "The Limits of Centralization: Regional Challenges in Uzbekistan," in *Transformation of Central Asia* (Cornell University Press, 2004), 159.
[6] Kangas, Roger. "Problems of State-Building in the Central Asian Republics," in *JSTOR* (1994), 157 No. 1, 29-37.
[7] Zeyno Baran, Frederick S. Starr & Svante E. Cornel. "Islamic Radicalism in Central Asia and the Caucasus: Implication for the EU," in *Central Asia-Caucasus Institute & Silk Road Program* (2006), 55; Naumkin, Vitaly. "Militant Islam in Central Asia: The Case of the Islamic Movement of Uzbekistan." *University of California* (BPS, 2003), 69.
[8] Асьянов, Шамиль (Asyanov, Shamil). *Пособие по регистрации и организации деятельности негосударственных некоммерческих организаций* (*The Manual on Registration and Activities of Nongovernmental and Nonprofit Organizations*) (Центр Изучения Правовых Проблем, 2009) (The Research Center of Legal Problems, 2009), 479.

Communist Party with his own version called national ideology. The ideological vacuum brings to insufficiency of nation building as a core motivator later. Even though Uzbekistan in 1991 came to embrace nationalism and engage "in nation building" to fill this ideological vacuum, it was not easy to create the legal architecture needed to fill all the gaps left by the Russian collapse. Karimov initiated to form different political parties, such as People's Democratic Party of Uzbekistan (O'zbekiston Xalq Demokratik Partiyasi – O'zXDP),[9] which could assist in this problem. The transition to a multi-party system proved to be a much more complicated process than the legislature initially expected in 1991. Particularly, 1992 change to constitution regulated formation of political parties.

The national parliament (*Oliy Majlis*) was established in 1993 with a new electoral law. It was a unicameral parliament. It took long negotiation between different leaders. The law provided the right of political parties to nominate candidates to the 250-deputy seats. According to the list of deputies' names who took the seats in the parliament, most of them were the representatives from local administrative bodies (*khokims*). The local representatives won a majority of seats (67%) in the first parliamentary elections in December 1994. This is because the political parties were not popular among the people than local representatives.

Democratization process by Karimov opened some doors to regional authoritative in the parliament of Uzbekistan in 1999. Karimov took the view that it was necessary to re-centralize parliament and provide more seats for political parties and their candidates to ensure the protection of the constitutional rights to associate and right for equal participation in the elections. In December 1999 new parliamentary elections were held where new political parties could participate there. This means the majority of parliamentary seats were occupied by party representatives and less by local administrative body representatives. At the same time, the administrative bodies such as Ministry of Justice (MoJ) were granted such function as registration of political parties and authorized the Supreme Court with the competence to ban any kind of unconstitutional political parties.

By 2002 the increase in repressive controls meant that regional authorities and regional religious groups radicalized in their actions against the government. The massacre of hundreds of protesters on May 13, 2005 in the town Andijan shed some lights on the perils of citizen opinions against the Karimov government. But, this was not big deal in front of a police garrison in hands of the centralized government. In 2008 Karimov introduced further changes to the nomination of candidates by political parties, which gave him increased control. This change, along with many before acted to weaken the supremacy of the 1992 Uzbek *Constitution*. And although these 2008 reforms apparently invited radical political groups opposing his administration to become legitimate opposition parties, in reality it was impossible for them to meet the registration criteria.

[9] O'zbekiston Xalq Demokratik Partiyasi (O'zXDP) (People's Democratic Party of Uzbekistan), http://www.xdp.uz/ru/meet/ (accessed September 16, 2013).

The political regime or constitutionalism under the 1992 *Constitution* concentrated the supervised power on the executive branch. While other two are working under the subordination position. This means even the constitution recognized the fundamental rights and freedoms of the person and signed international laws to ensure their protection the reality is different. The reality of life shows that people ready always to be under the control for the peace life. This is very comfortable position for those who would like to use power and rule under their own policy creating comfortable conditions for monopoly of the power. However, this path is quite questionable from the context of constitutionalism where the control must be over the public authorities than over the people. Political parties through the parliamentary representation and referendum must fulfill this control where they must take the most active position, than it happening now.

On reflection, this thesis assesses the work done to build a multi-party system by recognizing political parties after 1991 in Uzbekistan. Although the Uzbek political system has given much-needed stability to the country in the tumultuous years since the Soviet collapse. However the gradual tightening of controls on the existence and activities of political parties has meant the silencing of dissent.

The study identifies three legal measures that will address this lack of dissent. Firstly, the paper demonstrates a need to review disputes on the constitutionality of political parties by the Constitutional Court of Uzbekistan, which is a relatively independent institution. Secondly, as a measure complementary to the first, the Ministry of Justice should no longer be permitted to personally review the constitutionality of political parties. Thirdly, Article 57 of the *Constitution* should be revised to increase transparency in the standards political parties must meet to achieve registration.

1.2 Purpose Statement

In Uzbekistan today there are strict limits on the formation of political parties. These limits in effect are a limitation on the freedom of association. This paper studies these limits to see how they could be relaxed in future. The aim of the study is to identify constitutional means for ensuring Uzbekistan remains a stable society, which also guarantees the freedom of association.

This paper builds logical argumentation how to achieve better rule of law and not slide back into Stalinist mode of governance. Radical dissent is undesirable and could derail the progress in Uzbekistan has made so far – how to ensure a more open market for political ideas while maintaining constitutional order is an significant question. The instrument to organize this order can be the constitution with clear provisions.

The biggest interest to this paper is the constitutional provisions about public associations, mainly about political parties that regulated by Uzbek government through specific methods and procedures of the Constitution and other legislations. These provisions of the *Constitution* fix the

functions of the Ministry of Justice and Supreme Court in the relationship to the political parties. This means, they show the principle of formation political parties, including their registration; principle of existing of political parties before and during elections and principles of work of political system with existing controlling mechanisms.

1.3 Statement of the Problem

A political party that wished to form a new political party in Uzbekistan today would have to register with the Ministry of Justice facing several barriers before their freedoms. Some technical criteria must be met for all political parties at the first stage – registration of political party as legal entity. This procedures require at least: 1) 50 initiators; 2) 20,000 physical signatures from eight territorial entities (*regions*) (the origin number in 1993 was 5000); 3) structural organization (organizational committee); 4) party's charter, program; 5) ten times the minimum wage (around 380 US dollars) of the government duty (fee)[10] for registration of charters. However, above-mentioned criteria sometimes disincentives for applicants in that there are no refunds for failed registration attempts and no appeals allowed to Constitutional Court. All disputes regarding the decision of the Ministry of Justice must be reviewed in the Supreme Court. There is no another way to file a constitutional complaint to the Constitutional Court, which must ensure Article 62 of the 1992 Uzbekistan Constitution.

Another problem is the questioning the constitutionality of the political party. According to Article 57 of the 1992 Uzbekistan *Constitution*, if political parties abuse the right and freedoms of other people, abuse the protection of the principles of sovereignty, security and integrity in order to fight the constitutional order then they must be prohibited. Moreover, the more risky public associations from the constitutional prospective were recognized political parties with ethnical, religious and professional features. These types of political parties are prohibited in order to keep the political stability in the country.

According to Article 9 of the 1996 *Law on Political Parties*, the function to file about the constitutionality of political parties and their activities belongs to the Ministry of Justice, the Supreme Court. It can file a request on banning or suspending the registered political parties to the Supreme Court. However, the functions of the Supreme Court are limited with the Constitution in the matter of interpretation of the constitutional wordings. This function was vested to the Constitutional Court. The 1992 *Constitution* says that Constitutional Court must do constitutional review and interpretation with all laws and these review and interpretation must have the force of law.

[10] Приложение № 1 к постановлению Кабинета Министров от 11 марта 2009 года № 63 "Изменения, вносимые в некоторые постановления Правительства Республики Узбекистан" [Decree of the Cabinet of Ministers, March 11, 2009 No. 63, Appendix 1].

The practice seemed some complicated ways to make the Constitutional Court to be effective in the case of reviewing the constitutionality of political parties. Because, when the Supreme Court has an issue to review the constitutionality of political parties then it asks the Constitutional Court to give some recommendations within the case. The Constitutional Court may do two decisions. The first is to give a recommendation in the oral form, which has no legal value and can be used at the discretion of the Supreme Court. The second is the recommendation in the form of decision, which after publication must have the force of law. However, the written recommendations or decisions by the Constitutional Court is more complicated way, which can lead the constitutional judges to compulsory retiring because of "incompetence," or be shifted to another position. This means that the constitutional review process with Constitutional Court is both inappropriate and undesirable. The constitutional provisions must be amended in that way allowing more subjects to file request and even more constitutional complaints by public associations to increase the protection of the rights and freedoms ensured by the constitution. In addition, the provisions on must be relaxed and decentralized to make constitutional justice to be more independent in their decisions and have confidence and knowledge to make a constitutional review on political issues too.

1.4 Methodology

This study addresses the legal problems identified in the registration of political parties in Uzbekistan through a comparative analysis of the legislation of Uzbekistan, Germany and Russia from the perspective of constitutional law, using the method of archival research. Germany and Russia was chosen because of their shared political history, and current political similarities but different ways of restricting the formation of political parties to maintain social stability.

Germany and Russia were selected as examples of how political parties can be legally controlled and be free at the same time in a more flexible way. These comparative countries went through the same historical trend towards the monopolization of power that is now confronting Uzbekistan.

This paper analyses the period starting from 1949, when Germany was divided into two parts. This focus assists in discovering the reasons why the German model of constitutionalism, in particularly related to political parties, was implemented in Uzbekistan and Russia after the collapse of the Soviet Union. The German system was used because of several factors. The first is that detailed provisions in the 1949 Basic Law (BL, *Constitution, Grundgesentz)* and legislation that regulate political parties were easily available in English. The second is that the German 1949 *Constitution* concentrates significant attention on the functions of the Federal Constitutional Court (FCC), and gives a detailed explanation of fundamental rights, such as German constitutional principles like "militant democracy" and "free democratic basic order," which comes from the

period of Weimar Republic. The third is that German legislator drafted concise procedures for determining constitutionality, where only the Federal Constitutional Court (FCC) may declare political parties unconstitutional. This means that it is fruitful to study the German experience with the aim of adopting aspects of this functional mechanism of constitutional review of statutes, and the agenda of political parties by the FCC in Uzbekistan.

A significant question in this paper is about the import of the numerous amendments to the constitutional text, including those relating to political parties. Does this document really reflect the needs of society and express a real change in Germany to constitutional democracy? To answer to this question, it is not enough to look at the amendments only, but also normative changes in society, which are reflected in German laws. Another significant point, this paper a deal with is the need to observe the role of the FCC in the constitutional change process.[11] As a contribution to constitutional history from a critical perspective, this paper discusses Article 21 of the 1949 *Constitution* and finds positive aspects that may be useful in countries with constitutions that use a similar model for regulating the formation of political parties like Uzbekistan. This paper uses a socio-legal analysis to show the social and political changes in Germany, and how they have been reflected in the Constitution and other legislation.

Russia was selected because it shares the same 70-year historical background as Uzbekistan. Legislative design and bureaucratic thinking have similar roots, but different development. These common roots with differences in development protection instruments of the freedoms of speech by the political parties, freedom of research by university professors, freedom of associations by people who are not indifferent to the values and traditions make Russia a highly relevant jurisdiction for comparative analysis in this study.

In particular, the central question of this thesis is, what legal measures would be needed to transfer the right of the constitutional review of political parties to the Constitutional Court of Uzbekistan? This process is guided by the German theory of constitutional review[12] and the Russian approach to the independence of Russian FCC and the relatively clear protections given to political parties under the Russian 1993 *Constitution*. The development of this paper required using archival materials from government organizations, stenographic reports of parliamentary debates, statistical information, presidential decrees and legislative acts of the parliament, past dissertations and articles in domestic and international journals. The extent of similarities and differences between the three legal regimes determined the focal points for theoretical analysis. This means the comparative method was applied to investigate constitutional review in Germany and adapt insights gained from that system to develop a model for legal change suited to the Uzbek situation that will better achieve

[11] Grimm, Dieter. "Does Europe need a constitution?" *European Law Journal* 1, No. 3 (1995), 282-302.
[12] Kommers, Donald P. & Russell A. Miller. *The Constitutional Jurisprudence of the Federal Republic of Germany* 25161 (Duke University Press, 2012), 388.

a balance between social stability and constitutionalism.

1.5 Literature Review

This literature review summarizes previous research on political parties in Uzbekistan and identifies the need for a constitutional analysis that will help protect fragile freedoms established under the post-Soviet regime. During the Soviet period, the Communist Party of Soviet Union (CPSU), ruled Uzbekistan under a single dominant ideology. After Uzbekistan's independence, Uzbek citizens were initially confused – not knowing what opinions, ideas or goals they should now adopt after 70 years of Soviet rule.[13] However, the diversity of political institutions, ideologies and opinions rapidly increased after independence in 1991. The constitutionalism must to be analyzed in the content of the political parties. The constitutionalism in this paper means the of the Constitutions and other regulations that reflects the all fundamental rights and freedoms in the relatively the same level, which includes a mechanism of controlling them through the democratic institutions. The examination of the historical development show the traditions and values of the constitutionalism in all three countries to protect peaceful life with respect to the fundamental rights and freedoms of the people.

Among different political groups increased during the short period after independence, generally, could be noted two main of them: first, former-communists with democratic views or new Uzbek democrats; and second, traditional Islamists with relatively democratic views. Both of them were raised from different class of groups, social positions, authority in the society and level of power. It was the strike more for the positions and power than for democracy in the state.

Diversity of researches published since 1991 identify the role of judicial, parliamentary and administrative institutions in building the democracy in Uzbekistan. Works by Uzbek scholars, mainly supporters of the old school (communists) argues about political system in the independent Uzbekistan very positively, completely supporting the leadership under the strong administrative power with diversity of political parties. While to the contrast to them, supporters of traditional school (Islamists) always keep numerous of arguments and facts against the government and their policy that contradicting to all principles of constitutional democracy, which in reality is difficult to prove. West scholars and International organizations on human rights give more critical and political views to whole rule of law in Uzbekistan. This means that polemics around constitutional issues gradually leads to the political issues not only on the national level, but international. Combining some strong and significant ideas around important principles for building a constitutional democracy in Uzbekistan, this paper collected necessary arguments about constitutional and political changes of the system, which in turn brings the analyses into new list of arguments and thoughts.

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[13] *Файзиев, Ш.Х.* (Fayziev, Sh.X.). Политические партии в процессе модернизации страны (Political Parties in the Modernization Process of the Country), (Tashkent, 2009), 192.

In 2002 a judge on the Constitutional Court handed down a judgment in which he supported the idea that the Constitutional Court should have greater power and independence. He resigned and some journalists have alleged that President Karimov unofficially removed him from his position.

The debate on the nature of political parties in Uzbekistan began in 2003 with the publication of a bulletin by the Constitutional Court (CC). The Justices of the Constitutional Court [14] initiated the opinion to the parliament, the first, to give competence to the Constitutional Court to examine disputes on constitutionality of elections and referendums; and the second, to give competence to the Constitutional Court to identify the constitutionality of a political party, social association or other non-governmental organization. However, Uzbek parliament under the Chief of the Legislative Chamber (Lower Chamber) Khalilov did not pay any attention to these two specific questions from the Constitutional Court.[15] Thus, this initiative was met with silence from the legislature. This was due to the contest in Russia between Yeltsin and the Russian Constitutional Court at this time. This led to reluctance in Uzbekistan to give the Constitutional Court more power.

Mukhamedjanov introduced ideas about elections and democracy in Uzbekistan in 2004. He explained the nature of political parties as an integral element of modern democracy, and one of the main participants in election campaigns. He mentions about the political actors comprising not only political parties, but also other initiative groups.[16] At the same time, he does not support the idea that multiparty system necessitates numerous different political parties. In other words, he supports the idea of a two-party system with the government party and the opposition. Mukhamedjanov is a supporter of President Karimov's ideas on building the political party system.

The limits of centralization were described in 2004 by Ilkhamov. His paper is about the relations between the central and regional authorities. In other words this Uzbek author descibes the relations between the centrally-held power of President Karimov and how it deals with regional authorities' power. Ilkhamov examines economical and political development under the new state-building process promoted by President Karimov. He gives practical explanations for the changes that occurred in the political system between 1991 and 2002 such as the introduction and quick abolishing of the post of vice president; the appearance of new pro-government political parties (*Fidokorlar* which in Uzbek means "*Self-sacrificers*"); the 1999 Parliamentary elections, the 2002 Parliamentary reforms and the periodical replacement of regional cadre. The relevance of his work to this paper is that it gives an explanation about systematic changes in Uzbekistan over this period.[17]

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[14] The chief Justice Mustafaev and Justices Mirboboev, Bazarov, Pirjanov and Khakimova.
[15] "Resolution on Introducing Changes and Additions Into the Law on Constitutional Court of the Republic of Uzbekistan," *Bulletin of the CC of the RoUz*, July 1, 2003, 130-133.
[16] *Мухамеджанов, О.* (Mukhamedjanov, O.). Выборы и демократия (Elections and Democracy) (*Pravda Vostoka*, May) 2004.
[17] Ilkhamov (2004), 159-181.

The 2005 research on the need to enhance the grassroots role of initiative groups in fielding independent candidates in elections and the policy-making process.[18] He outlined the difficulties in connecting the dialogue between the state and the people. Elmurodov examined the role of initiative groups in policy-making decisions in Uzbekistan. He mentions the necessity of strengthening the role of not only political parties, but also initiative groups in order to provide democratic elections. He wrote at a time when a range of NGOs involved in human rights were consulting with the government about their ability to freely promote their causes within Uzbekistan, in particular through the freedom of speech, freedom of research, freedom of association. This was before the activities of initiative groups were prohibited in the political stage. Changes recommended by research were actually introduced in the 2007 presidential elections. Before the law changed in 2008, initiative groups were able to participate equally as political parties in both parliamentary and presidential elections. The practice showed only once active participation of the initiative groups and it was the 2007 presidential elections, where one candidate was nominated among other three from political parties.[19]

In 2007 paper by Rabbimov K. wrote from a political science perspective in response to reforms in that year which significantly restricted the formation of new political party. He provides an accurate and highly critical snapshot of the legal landscape at the time.[20] Rabbimov characterized new amendments to the law on political party in December 2003 as unfeasible demands required.[21] He argues about new approach to register political parties with no fewer than twenty thousand signatures introduced to the MoJ as a significant limitation to establish new parties. Rabbimov also examined Law on Financing of Political Parties[22] and introduced the main innovations of this law that makes political parties play under the rules requires to pass minimum barrier that allow them to use state fund during the election campaign.[23] His research is very significant to this paper from the legal side of his argumentations.

From 2008 onwards under the strict limitations introduced on the right of freedom of association, all initiative groups were excluded from the right to nominate candidates.[24] The 2008

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[18] Elmurodov, Eldorjon. "Interest Groups and their Influence on Public Policy and Decision-Making: Comparative Case Analysis of Japan and Uzbekistan," in *Annual Report on Research and Education* (Nagoya University, 2005), 43-68.

[19] "Republic of Uzbekistan: President Elections, 23 December 2007." *OSCE/ODIHR Needs Assessment Mission* (Warsaw, 2007), . Akmal Saidov is one non-partisan candidate to the presidential position in 2007.

[20] Rabbimov, Kamoliddin. "Uzbekistan's Political Parties between the Government and Society" *Central Asia and the Caucasus Press 1 (43)* (2007), 57-72.

[21] Rabbimov (2007), 63-64.

[22] Закон РУз от 30 апреля 2004 года № 617-II "О финансировании политических партий" [Zakon RUz o Fin. PP] [Law on Financing Political Parties, April 30, 2004 No. 617-II].

[23] Rabbimov (2007), 63-64.

[24] OSCE/ODIHR, *Republic of Uzbekistan: Presidential Election 23 December 2007*, Limited Election Observation Mission Final Report (Warsaw: Office for Democratic Institutions and Human Rights,

amendments to the *Law on Political Parties*[25] prevented all initiative groups from fielding candidates, except registered political parties and the "Ecological Movement." This is a new form of political group, drawn mainly from representatives of regional authorities. According to the new election system, it is now not only political parties that can take parliamentary seats, but this Ecological Movement has the right to occupy 15 seats in the Parliament without being elected through the general voting system by the citizens.

These 2008 reforms illustrated the different opinions on the definition of political parties seen between the legislature and the President of Uzbekistan. In fact 2008 represents the key turning point in the contest between ideas in recent Uzbek history about what a political party is and what rights it has. In the *Law on Strengthening the Role of Political Parties*,[26] which was implemented in 2008, the legislature defined the legal status of political party factions, whether a faction of one party holding a majority of the seats in the parliament or a faction made up of several parties each with small number of seats. Also this statute introduced rules on the kind of party that is now labeled an opposition party in the parliament. Any party, which does not agree with the government's policy-making and political system design, is now legally recognized as an opposition party.[27] This has unfavorable consequences of disadvantage leading to narrow and bifurcate the political debates, silencing dissent and reducing pluralism.

In 2008 Sugiura published an article on the Constitutional Court and constitutionalism in Uzbekistan.[28] His work gives a critical view of the role of the Constitutional Court in the Uzbek judicial system of. He argues that the Uzbek legal system has a range of different problems viewed in the light of constitutionalism. Sugiura mentions that even though one part of the current constitutional system of Uzbekistan, the Constitutional Court, adopts the German model, the reality is quite different when the functional side of the Constitutional Court is assessed. In other words, the

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2008), 1-24.

[25] Закон Республики Узбекистан от 26 декабря 1996 года № 337-I "О политических партиях" [Zakon o PP] [Law of RUz on Political Parties, December 26, 1996 No. 337-I].

[26] Конституционный Закон РУз от 11 апреля 2007 года № ЗРУ–88 "Об усилении роли политических партий в обновлении и дальнейшей демократизации государственного управления и модернизации страны" [KZ Ruz ob Usilen. Roli PP] [Constitutional Law on Strengthening the Role of Political Parties in the Renewal and Further Democratization of State Governance and Modernization of the Country, April 11, 2007 No. ZRU-88].

[27] "Комментарии к проектам Конституционного закона об усилении роли политических партий в обновлении и дальнейшей демократизации государственного управления и модернизации страны и Закона о внесении поправок в отдельные статьи (статья 89; п.15 статьи 93; ч.2 статьи 102) Конституции Республики Узбекистан," [Commentary to the Draft of the Constitutional Law on Strengthening the Role of Political Parties in the Renewal and Further Democratization of State Governance and Modernization of the Country] in *Civil Society* (2006), 4, No. 8, 64-68.

[28] 杉浦一孝 (Sugiura, Kazutaka).「ウズベキスタン共和国憲法裁判所と立憲主義」(The Constitutional Court of Republic of Uzbekistan and Constitutionalism) (名古屋大学法政論集 224、2008年) (Nagoya University Journal of Law and Politics 224), http://hdl.handle.net/2237/10643 (accessed 25 December 2013), 157-205.

German system was implemented, but it did not work at all. This is an example of a failed legal transplant. Sugiura, compare with Uzbek constitutional scholars, is the only scholar for today that examines the Constitutional Court from the constitutional perspective and gives an objective appraisal of its functions.[29]

An unpublished thesis by Ibragimov in 2009 was again critical of the lack of independence of the Uzbek Constitutional Court.[30] He draws attention to the opaque procedures for nominating Constitutional Court judges, the disparity between the statutory requirement of 9 judges and the number who actually serve, and their short term of office. He identifies problems in judicial independence in that the President to other positions under the Law on Courts of Uzbekistan can nominate judges who make decisions unpopular with the President.

The work of Asyanov, a practising attorney, published in 2009 is a rare description of the activities, and legal rights and role of non-governmental organizations (NGO) generally in Uzbekistan.[31] His paper specifies the MoJ procedures that non-governmental organizations pass through in Uzbekistan. Asyanov firstly gives an academic interpretation of what a legal entity is under Uzbek law and the Uzbek legal requirement for public associations[32] and political parties to register themselves as legal entities. This information helps to fill out the legal framework with additional procedures explained from a practical perspective.

Literature relevant to questions that are peripheral to the core inquiry in this paper include works by central asian studies scholars who examine Islamic movements in Uzbekistan as political opposition forces. Bakker also provides insights into political violence in Uzbekistan. He examines the tense dialogue between the Uzbek governmnet and Islamists who practice their religion in the regions.[33]

The legal framework and practical conditions of political parties in Uzbekistan is covered in comparative detail by recent Organization for Security and Cooperation in Europe (OSCE) reports. In each report starting from 2004 the OSCE examines the political context, the government bodies to be elected, the legal framework, election administration, and the role of the media, and finally offers a summary and reccomendations to the Uzbek government for the future liberalization of the

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[29] Ibragimov, Bunyod (イブラギモフ・ブニョド). “The Independence of the Constitutional Court in Uzbekistan: the Establishment and Stregthening of the Constitutionalism and Independency of the Judicial Power. The Risk of the Subordinated Constitutional Court in a Transitional System”「ウズベキスタンにおける憲法裁判所の独立:立憲主義と独立した司法権の確立・強化 ―体制移行期における従属的な憲法裁判所の危険性―」 [A Master’s Thesis]修士学位論文、(Nagoya University, 2009), 24.

[30] Ibragimov (2009).

[31] Asyanov (2009).

[32] Konstitut. RUz (1992), art. 56 (Public association - this term is used in the broad sense which includes political parties).

[33] Bakker, Edwin. “Repression, political violence and terrorism. The case of Uzbekistan.” *Helsinki Monitor* (2006), 108-118.

political system. The OSCE reports are a background resource that helped to build the argumentation base for this study.

Constitutionalism and liberal democracy have the same features and they can be replaced with each other as the principle concepts. The constitutionalism or political regime may be supervised through the level of democracy and clear judicial process.[34] This reseach would like to make clear the instruments that constitutionalism in Uzbekistan, Russia and Germany. They must to use any democratic institutions as powerful instrument to prevent violation of the values and traditions, fundamental rights of the people by the public authorities in the stage of formal registration and activities, which in particular countries are different.

The literature on political parties makes it clear that Uzbek legislator, during the whole process of liberalization of the political system in Uzbekistan, have been guided mainly by political views rather than legal. For this reason, this study looks at possible ways to reduce the focus on political issues and think from the more constitutional perspective found in developed countries. Also, all discussions above about the restrictions to form of political parties makes this paper to believe that MoJ decisions on registering political parties is a political wish than legal provision. Not only legislature but also the bureaucracy seems to have recently exercised its discretion under heavy political influence rather than under the guidance of constitutional demos. These trends explain the focus of this study on analyzing how to decrease the authority of the MoJ and increase the authority of the Constitutional Court, in spite of its lack of independence, when defining “unconstitutional” political parties.

The distinction between past research and this research is found in the fresh parties in Uzbekistan, and the evidence this paper uses. The ‘fresh approach’ of this paper is in its context where past discussions about constitutional review process reflects directly to the present condition of the constitutionalism in ‘young’ democratic countries like Uzbekistan. Acceptance of the true facts about current regime and constitutionalism leaves open new questions that must be solved in the close future by many Uzbekistani experts who are working and studying abroad. Only those experts in cooperation with public authorities in all branches and political representatives may fulfill the ideas of this research. This true and sincere approach makes this research fresh.

In terms of the evidence used, this paper draws on a groundbreaking comparative examination of the Russian and German approaches to the vexed problem of how to regulate the formation of political parties in post-Soviet states. Past research did no more than discuss the role of political parties in power and in opposition, explaining the legal regulations introduced at various points since the Soviet collapse, and lauding the achievements of Uzbekistan in avoiding Islamic extremism. And academic research into political parties has been meager.

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[34] 愛敬浩二 (Aikyo, Koji)『立憲主義の復権と憲法理論』(Constitutionalsim and Constitutional Theory)（日本評論社、2012年）項27、28、31。

In addition, the legislature intended for political parties to have greater freedoms than they now enjoy in Uzbekistan. This is made clear by the wording of the 2008 *Law on Strengthening the Role of Political Parties*. And there is a pattern of opinions from constitutional judges to the effect that the Constitutional Court should have jurisdiction to decide on constitutional matters, such as the registration of political parties. This study offers the first practical evidence-based proposal for a legal framework in Uzbekistan, which will safeguard the role and, rights of political parties. And it is fitting that this proposal should come from academia, and be apolitical in nature.

1.6 Scope of Research

This research reflects the current reality of the rights of political parties under the 1992 *Constitution* in Uzbekistan. The set of legislations that regulates political parties gives some imagination about party system and leads to the questions about 'simplicities' of the norm, but difficulties of their realization. The simplicity of the laws does not emphasize a quality of protection of the rights from one side. Difficulties of their realization through some procedures make a birth for more confusions and contradictions.

This research builds a legal design that can reduce administrative controls on political parties in Uzbekistan and hands authority to a strengthened Constitutional Court instead. The experience of the Weimar Republic of Germany and its current reflection on the protection of the 1949 *Basic Law* by the Federal Constitutional Court along with the Russian Constitutional Court and its attempts to increase the independence in constitutional review help to make this design effective to the regime. For this purpose, all values and traditions that affected to those models this paper examine and analyse.

This paper also focuses on legal measures that will enhance grassroots participation in an emergent Central Asian democracy, in the interests of regional stability. The regional stability among traditional Islamic viewers, extremis Islamic viewers and new democratic viewers needs to find a balanced legal measures that will not lead to the chaos and makes possible to constructive design for everybody. Legal measures with high limitations to particular type of political viewers; parties increase the stressful discussions that may weaken the constitutionalism and regime, and destroy the whole ideas about democratic country, region forever.

Issues identified during research that could not be dealt with in full due to lack of sources, data, time, space are the constitutionalism, an election system with participation of all political organizations; legal and political aspects of growth of Islamic organizations in Uzbekistan and Islamic society in Europe and Russia. The lack of time and sources made difficult to put all of them in one research paper. These issues needed to be reviewed in the future researches.

1.7 Structure

This dissertation structure includes six chapters. This paper will begin with an acknowledgment followed by an abstract, table of content, an introductory chapter, three body chapters, one analysis chapter and a conclusion chapter. The research has 162 pages, including footnotes and a reference section.

The structure of this paper includes a brief explanation of each chapter. Chapter I present the general structure and explain the key points of the whole paper. The key points are about background, purpose of statement, statement of the problem, methodology used during the writing, literature review that helped to make a "fresh approach,' scope of the research and the structure.

The second chapter is about the legal framework regulating political parties in Uzbekistan. In particular, it contains the sections about historical development from a constitutional perspective, present legislative framework: constitutional and others, implementation of the constitutional review of political parties and summary reflected all ideas of this chapter.

The third chapter is the legal framework regulating political parties in Russia.

The fourth chapter is the legal framework regulating political parties in Germany. The structure of the sections inside both chapters is relatively the same only with some difference in the name of the periods.

The fifth chapter is the main part, which includes the information about implications of Russian and German models into the Uzbekistan. The strong and weak sides of those models that make easy to design a constitutionalism base on democratic instruments.

The sixth chapter is conclusion that summaries all ideas of this chapter once again to remind reader what is the role of this doctoral research.

Chapter II: Legal Framework Regulating Political Parties in Uzbekistan

2.1 Historical Development from a Constitutional Perspective

Uzbekistan as a state was established in the Soviet period. Institutional arrangement in Soviet Uzbekistan remembers many struggles between influential people in power mostly from middle class.[35] Any constitutional changes have been passed with territorial changes by somebody establishing communistic or "democratic" regimes with partial supervisors, during the USSR and absolute supervisor, after independency.

The constitutionalism in Uzbekistan may not remember any traditional model that was protected in all regimes in all systems existed until 1991. However, some of those traditions and values began appearing to the people who were declared the only source of the democratic country. People must ensure the protection of their values and principles of life through their active political participation. To check how much it can be real this paper examines a long path of the communism and post communism periods. According to the historical development of Uzbekistan constitutionalism, two periods can be observed: 1) the Soviet period from October 1917 until the second half of the 1980s; and 2) and the post-Soviet period.

This historical waves of political and social change over 250 years with repeated movements in favor of freedom of political association. This is vital contextual information against which modern Russian constitutionalism must be viewed. The attempts of the people in the power and large society to change the old stereotypes about authoritarian regime through the revolutions and destructions of the state, finally, had come to the new approach of constructive and efficient reforms of the state, society and party system. This is the way that this paper understands interrelationships between modern Russian constitutionalism and political parties.

2.1.1 Uzbek Constitutionalism in the Soviet Period from 1917 to the late 1980s

Vulnerable to subversion given that the Uzbek people have a deep Islamic and communist education. Turning firstly to the Islamic tradition in Uzbekistan, Central Asian people (Kazakhs, Kyrgyzs, Tajiks, Turkmens, Uzbeks and Russians from 1876) lived in three khanates – Bukhoro, Khiva and Quqon (Kokand) in XVI-XVIII centuries.[36] Two significant types of law regulated the life of the people. There was an *Adat* (customary law) for nomads and *Sharia* for the settled

[35] Some names of the first Secretaries of the Uzbek Communist Party: Nureddin Mukhitdinov, Sharaf Rashidof, Iurii Andropov, Islam Karimov.

[36] Library of Congress. *Country Profile: Uzbekistan* (February 2007), http://lcweb2.loc.gov/frd/cs/profiles/Uzbekistan.pdf (accessed August 29, 2013); Правовые системы стран мира: Узбекистан (Legal Systems of World Countries), http://kommentarii.org/strani_mira_eciklopediy/uzbekistan.html (accessed August 29, 2013) [Uzbek khanates were incorporated into Russia empire from 1876 untill 1917 when Russian tsar was overthrown under WWI and civil revolution].

population (Islamic law).[37] *Adat* was not codified; it was an oral tradition. *Sharia* was a moral code and law for Muslim people. Both systems of regulations have been transmitted from one generation to another.[38]

After the 1917 revolution, three large republics called Turkistan ASSR,[39] Bukhoro Soviet People's Republic and Khorazm Soviet People's Republic were established in Turkistan. From 1917 until 1924, Jadids movements (Muslim intelligentsia with ambitions to cultivate west thoughts about democratization into Muslim society)[40] have been raised in the first decade of the 20th century.[41] Jadids represented three different ways of their ideas of liberalization: the first, representatives from the right Jadids, Gasprinskii and Ibragimov, had a reform program suggested realization through Muslim schools, with not too deep social and political changes; the second, representatives from the centralized Jadids, Djantyurin, Sirtlanov, Maksudov and others, were ready to establish nationalistic autonomous republics for Muslims and a political party for realization their program on the Parliament level; the third, representatives from the left Jadids, Iskhakov, Tuktarov and others, who bore the ideas of Muslim communism.[42] It seemed that Jadids played a considerable role in the formation of Uzbek intelligentsiya with nationalistic interests.[43]

Looking next at the communist tradition in Uzbekistan, in the fall of 1917, Russia occupied Turkistan and proclaimed Soviet power there.[44] Soviet Turkistan received the status of a republic within the Russian Soviet Federative Socialist Republic (RSFSR). The former authorities that disagreed with the new Soviet regime, often referred to as "nationalists," fled to mountainous

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[37] Brusina, Olga. "The Russian Experience of Reforming Nomadic Courts According to Adat in Turkestan," in *Journal of Legal Pluralism* (2006), 31-90.
[38] Brusina (2006).
[39] Andican, A. Ahat, *Turkestan Struggle Abroad: From Jadidism to Independence*, SOTA, 2007; Paksoy, H.B. & Phill, D. *Essays on Central Asia*, 1999, 160-180.
[40] *See Махмутова, Альта Хазеевна* (Makhmutova, Al'ta Khazeevna). Пора и нам зажечь зарю свободы! Джадидизм и женское движение (It's Time For Us to Light Dawn Freedom! Jadidism and Women Movement), Татарское книжное изд-во, 2006; *Абдуллин, Я.Г.* (Abdullin, Ya.G.). Джадидизм среди татар: возникновение, развитие и историческое место (Jadidism Among Tatars: Origin, Development and Historical Place), Казань: Иман, 1998, 41; *Абдуллин, Я.Г.* (Abdullin, Ya.G.). Джадидизм, его социальная природа и эволюция (Jadidism, Its Social Nature and Evolution), Казань, 1979, 91-117; *Ямаева, Лариса Асхатовна* (Yamaeva, larisa Askhatovna). Мусульманский либерализм начала XX века как общественно-политическое движение (Muslim Liberalism at the Beginning of XX Centuries as Public and Political Movement), Жильем, 2002; *Исхаков, Д* (Iskhakov, D.). Джадидизм как нациестроительство (Jadidism as National Building), Ислам журналы 4 (1996); *Абраров, Саидмухтар Ахбарович* (Abrarov, Saidmukhtar Akhbarovich). История Узбекистана (History of Uzbekistan) Vol. 1, ТГТУ им. Абу Райхана Беруни, 2007; *Аминова, Р.Х.* (Aminova, R.Kh., История Узбекской ССР (Hisotry of Uzbek SSR), Vol. 2. Фан, 1968.
[41] *Койшигарина, Г.М.* (Koishigarina, G.M.). Джадидизм – как этап просветительства национальной интеллигенции XIX – начала XX вв. (Jadidism as a Stage of Enlightenment of the National Intelligentsia in XIX – beginning of XX centuries), (2012), 2; Babak, Vladimir et al, *Political Organization in Central Asia and Azerbaijan* (Frank Cass Publishers, 2004), 358.
[42] Koishigarina (2012), 2.
[43] Babak (2004), 358.
[44] Brusina (2006), 32.

regions. They started a partisan war against the new Soviet regime over the sovereignty of their land. Red Army troops defeated these partisans in 1924, and five new Soviet republics were established in Turkistan territory. Among them was the Uzbek Soviet Socialist Republic (Uzbek SSR),[45] which continued in existence until 1991.

The process of transplanting the Soviet legal system into Central Asia took long and scrupulous work. Soviet scholars carefully studied *Adat* and *Sharia* law to design a new form of Soviet law everybody who lived under Soviet power in Central Asia. The Soviet administration implemented this law in Central Asia as one unified system.[46]

The Union of Soviet Socialist Republics (USSR) had in its territorial administration 15 union republics and 20 autonomous republics (ASSR). 16 ASSR are located in the RSFSR, 2 in the Georgian SSR, 1 in the Azerbaidzhan SSR and 1 in the Uzbek SSR.[47] The Karakalpakstan ASSR is one of 20, which located in Uzbek SSR. With the adoption of the Soviet system in the territory of five Central Asian countries[48] came the process of drafting a constitution for each new state. All Uzbek constitutions during the Soviet period were modeled closely on the central USSR Constitution. The constitutions of Karakalpakstan ASSR contained fewer articles than Uzbek constitutions.

In 1927 Uzbekistan adopted the first *Constitution of the Uzbek SSR*. This first version provided detailed descriptions about the new executive system.[49] The only political party in the whole Soviet state was Communist Party of Soviet Union (CPSU). Moscow was at the center controlling all the autonomous republics that made up the Soviet state. The CPSS divisions were opened in all Central Asian republics and all those who wish to take positions in government were expected join the Party. In this way the Party increased its members.

Communist leaders began to eliminate illiteracy and started school construction in the republics. The construction of new schools however destroyed the traditional schools (*maktab*), and

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[45] Declaration on Establishment of Uzbek SSR, Decree on State Emblem and Flag of Uzbek SSR, January 24, 1924.

[46] *Тансыкбаева, Г.М.* (Tansikbaeva, G.M.), Основные вехи развития конституции Узбекистан (Milestones in Constitution Development of Uzbekistan), "Constitutionalism and the Rule of Law" International Symposium, September 16, 2006, 145.

[47] Известия советов депутатов трудящихся СССР [Izvestiya Sov. Dep. Trud. SSSR] [Announcement of the Soviet Deputies of Workers of the USSR], Сборник законов СССР 1938-1967, Vol. 1, 2, 1968.

[48] Stalin J., former leader of the USSR (1927-1953), made a decision on dividing Turkistan ASSR into five soviet autonomous republics by national characteristics. The first reason of this division was to stop spreading of Islam (Ferrero, Carlos Alberto Martìnez. *Module leader for Constitutional Law*, Westminster International University in Tashkent). The second reason was to stop ethnic conflicts for the power in the territory of Turkistan.

[49] Tansikbaeva (2006), 145-147. *See* ネマトフ・ジュラベック（Nematov, Jurabek), 「ウズベキスタンにおける行政訴訟制度の法的諸問題ー旧ソ連における行政に体する司法審査との比較研究ー」(The Legal Problems of Administrative Litigation System in Uzbekistan: Comparative Research with Judicial Review over Administration in Former Soviet Union) (unpublished Ph.D. dissertation, Nagoya University, 2013) (on file with author).

language (*Uzbek*). This brought to colonization of the territories and big reaction by inhabitant of those territories. It was a hard time for Uzbeks who were forced to change their lifestyle and those who refused to comply was suffered from Stalinist repression.[50]

The next significant period of the constitutional development was November 1937 when a new *Constitution* of Uzbek SSR was drafted. The 1937 *Constitution* provided rights and freedoms to residents of Uzbek SSR no matter what kind of ethnicity or nationality they are.[51] Moreover, this new draft was characterized as reconstructing socialism, human rights and social welfare. It was the period of societal tranformation.

The tendency toward legal unification in the whole Soviet area produced new legal reforms in 1977. Cultural and social development issues were discussed broadly in USSR at this time.[52] The new 1977 *Constitution* of the USSR, was once more used as the model for 35 republics' constitutions, provided some chapters related to discussed issues.[53] The 1978 *Constitution* of the Uzbek SSR drew on both 1977 *Constitution* of the USSR and the two previous Uzbek constitutions. The significant change was in the political system. From at least this time the Communist Party was recognized constitutionally as the only legal party in the USSR, as well as in all Soviet republics.[54] The details about USSR's constitutions see in the Chapter 3, Section 3.1.1, 3.1.2 and 3.1.3.

2.1.3 Uzbek Constitutionalism in the Post-Soviet Period

A small preparatory step toward building a constitutional democracy started with bringing in this 1978 *Constitution*, which laid the groundwork for a democratic regime change. The most progressive period of the law reform program in the Soviet Union and other union republics was in 1981.[55] Consequently, legal reforms started with the approval of Uzbekistan's head of state at the time, the Chairman of the Presidium of the Supreme Soviet of the Uzbek SSR.[56] These reforms embraced issues including the state language, which became Uzbek, while Russian language was recognized as the language of communication.

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[50] 須田将（Masaru, Suda）「スターリンの大テロルとウズベキスタン共産党」（The Big Terror by Stalin and Uzbekistan Communist Party), *Slavic and Eurasia Research Report Collection 5* (November 2012), 172−193.

[51] Formation of Karakalpak (Qaraqalpaq) ASSR, http://www.qaraqalpaq.com/stanform.html (accessed February 23, 2013).

[52] Butler, W.E. *Soviet Law*. Butterworths, London, 1983, 137.

[53] Tansikbaeva (2006), 148-149; *Мухамеджанов, О* (Mukhamedjanov, O.), Республика Узбекистан: конституционные изменения на современном этапе (Republic of Uzbekistan: Constitutional Changes in Modernity), "Constitutionalism and the Rule of Law" International Symposium, September 16, 2006, 104-108.

[54] Mukhamedjanov (2006), 109.

[55] Svod Zakonov SSSR [Code of Laws of the USSR], 1981; Butler, W.E, "The Autonomous Republic Constitutions in the USSR," in *Review of Socialist Law* (1981), 335-346.

[56] Закон РУз от 21 октября 1989 № 433-XII "О внесении изменения в статью 107 Конституции (Основного Закона) РУз [Zakon RUz Vnes. Izm. Stat. 107 Konstitut. RUz] [Law on Amendments to Article 107 of the Constitution of RUz, October 21, 1989 No. 433-XII].

Base on the law the judicial system was changed in the next three branches. The reforms to the judicial branch focused on the establishment Constitutional Supervision Committee (CSC),[57] which included 11 members. The term of office was 10 years. The CSC was a judicial body where selected members were constitutionally recognized as independent experts on constitutional law.[58] The CSC was tasked with considering the constitutionality of legal provisions. It was not able to review the constitutionality of draft laws, judicial decisions, or the abuse of power or violation of human rights and freedoms by government officials.[59]

Implementation of the constitutional review was entrusted to the CSC of Uzbek SSR and of Karakalpak ASSR. The basic principles that these bodies should follow were the legality, collegiality and publicity. The election procedures were held by parliament on the proposal of its chairman for 10 years, renewal of a half of the staff every 5 years.[60]

The reform of the executive branch was delivered by constitutional amendments in 1990, particularly: the innovation in the system was the established office of the president[61] and diversified the structure of the executive branch.[62] The office if the president has been exercised the superior executive and administrative power (authority). Moreover, president was the Chairman of the Cabinet of the Ministries.[63] The Cabinet of Ministeries appointed candidates to the position of vice-president,[64] first deputy-ministers, deputy-ministers of the chairman of the Cabinet of Ministers, members of the Cabinet of Ministers of Uzbek SSR.[65] Also, the Cabinet of Ministers selected candidates for the position of Chairman of the People's Control Committee, Supreme Court of

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[57] Закон РУз от 20 июня 1990 года № 93-XII "О Конституционном надзоре в Республике Узбекистан" [Zakon o Konstitut. Nodzore] [Law on Constitutional Review, June 20, 1990 No. 93-XII], The Constitutional Supervision Committee was established on the in June 20, 1990 by the Supreme Soviet.

[58] *Хакимова, С.А.* (Khakimova, S.A.). Деятельность Комитета Конституционного надзора Узбекистана в 1990-1991 гг. (Activities of the Constitutional Supervision Committee), Вестник Конституционного суда РУз (Bulletin of the Constitutional Court of RUz), 1999, №4. Khakimova - a public prosecutor and chief of the General Prosecutor Office in Uzbek SSR (1985-1993), member of the Constitutional Supervision Committee (1990-1993), secretary of the Constitutional Court of RUz (1993-1995), Justice of the Constitutional Court of RUz (1995-2005).

[59] Konstitut. Uzbek SSR (1978), art. 115, art. 116 (amended 1989).

[60] Zakon o Konstitut. Nodzore (1990).

[61] The Supreme Soviet was called for the 1st session in March 24, 1990 and discussed the question on urgent establishment of the institution of the president. After the president institution was established, Karimov was elected to the temporary position of the president.

[62] Закон УзССР о совершенствовании структуры исполнительной и распорядительной власти в Узбекской ССР и внесение изменений и дополнений в Конституцию УзССР от 1 ноября 1990 года № 156-XII [Law of Uzbek SSR on Development of the Structure of Executive and Regulatory Power in Uzbek SSR, November 1, 1990 No.156-XII]. Vedom. Verkh. Sov. RUz, 1990, No. 31-33b, 375.

[63] Konstitut. Uzbek SSR (1978), art. 118-1, part 2.

[64] See Постановление Кабинета Министров при Президенте Республики Узбекистан от 16 декабря 1991 года № 311 [Resolution of the Cabinet of Ministries Under the President Office of the Republic of Uzbekistan] signed by the first and last vice-president of Uzbekistan was Мирсаидов Ш. (Mirsaidov Sh.).

[65] Konstitut. Uzbek SSR (1978), art. 102, part 8, art. 118-4, parts 4, 6-8.

Uzbek SSR, and judges in the region and Tashkent city.[66]

The role of People's Deputies was enlarged and switched from appointment-based selection to an electoral process.[67] The power to initiate legislation have people's deputies of the Supreme Soviet, Chairman of the Supreme Soviet, committees and commissions of the Supreme Soviet; President, Constitutional Supervision Committee, Supreme Body of Karakalpakstan ASSR, People's Control Committee, Supreme Court, Prosecutor, Chief State Arbiter, Chairman of the State Committee on nature Protection.[68]

These biggest changes related to the presidency, and Cabinet members and their appointment.[69] Moreover, the 1978 *Constitution* introduced new provisions about the freedom of association. Even though, it constitutionally recognized rights and the freedom of associations, there were still some conditions restricting those right and freedoms in order to protect the government from associations, including political parties, which were not controlled by the government.[70] The formal content of the constitution was changed; constitutional system was more included instruments of democracy.

Simultaneously, the recognition of the principles of freedom of associations in Uzbekistan made this state a center of Islamic religious activities and lead to taking shape of different Islamic organizations. It was a period of the weakening of the atheist and communist ideology with gradual revival of national and religious values.[71]

Consequently, these institutional and constitutional reforms accompanying and under the 1978 *Constitution*, were adopted during the Soviet period. In this period the people of Uzbekistan were experimenting with constitutional democracy and getting an early taste of concepts like the separation of powers, the contest between ideas in a pluralistic society, and the rule of law. The illusion of the democracy created new hopes for the people who wished a better life in a new system, with new values and traditions.

On August 31, 1991 the Supreme Soviet of Uzbekistan approved the Declaration of Independence.[72] Immediately after the break-up of the USSR, on September 14, 1991, the 23rd

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[66] Konstitut. Uzbek SSR (1978), art. 102, part 9.
[67] After President Karimov started his presidential term, Chairman of the presidium of the Supreme Soviet lost his highest power. Karimov continued the control over whole reforms in the country as the head of the country (Закон РУз от 20 июня 1990 г. № 101-XII "О переименовании постоянных комиссий в комитете Верховного Совета РУз и внесении изменений в Конституцию РУз [Law RUz on Changing Constant Commission in Committees of the Supreme Soviet of RUz and Amendments in Constitution of RUz], http://zakonuz.uzshar.com/?document=5986 (accessed December 25, 2013)).
[68] Konstitut. Uzbek SSR, art. 107, part 1 (1978).
[69] Konstitut. Uzbek SSR, art. 118-5 (1978).
[70] Tansikbaeva (2006), 148-149; Mukhamedjanov (2006), 104-108.
[71] Babak (2004), 359.
[72] Закон РУз от 31 августа 1991 года № 336-XII "Об основах государственной независимости Республики Узбекистан" [Law on Essintials of the State Independency of the Republic of Uzbekistan, August 31, 1991 No. 336-XII].

extraordinary Congress of the Communist Party reviewed the question on dismantling the political system in Uzbekistan. Congress announced withdrawal of the Communist Party in Uzbekistan and its activities in the whole system of the government. The Communist Party was replaced on all central and local levels by activating the role of citizen's groups in such kind of traditional communities based on residence (*makhalla*).[73] In 1991 started the process of *departizatsiya*[74] in Uzbekistan. The formation of political unifications (mainly targeting the Communist Party) was forbidden in state bodies and the educational system.[75]

All decisions by any authorities of state power were adopted and implemented according to the 1978 *Constitution* and othe laws, decrees of the President of Uzbek SSR.[76] On December 29, 1991, a national referendum was held on two issues: the first, on establishing of an independent sovereign state of Uzbekistan and the second, electing of the president of Uzbekistan. The first referendum in Uzbekistan opened a new page for independent state with its own path in a long voyage of transition.[77]

2.2 Present Legislative Framework: Constitutional and Other Regulations

The long and scrupulous work on constitutional development that had begun in 1989, as part of constitutional reforms during the *perestroika*, continued in order to draft a new constitution for an independent Uzbekistan. On April 12, 1991, the first meeting of the Constitutional Supervision Committee (CSC) concerning a new constitution took place under the chairmanship of Karimov. A group composed of 32 persons from among the members of the Constitutional Commission, leading scientists and experts worked on this project. The working group aimed specifically to explore the world constitutional experience, taking into account the achievement of democracy and laws about human rights in countries such as Finland, France, Germany, and Italy.[78]

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[73] Luong, Pauline Jones, *The transformation of Central Asia: States and societies from Soviet rule to independence*, Cornell University Press, 2004;

[74] *Departizatsiya* – dismantling the control of the Communist Party over the whole of government, including secondary schools and tertiary institutions.

[75] Указ Президента РУз от 17 сентября 1991 года № УП-260 "О Департизации Органов Государственной Власти и Управления и Системы Нородного Образования Республики [Decree of the President of RUz on Departization of the State of Power Bodies and Departments and People's Education System of Ruz, September 17, 1991 No. DP-260], Ved. Verkh. Sov. RUz, 1991 No. 11, 241; Указ Президента Узбекской ССР от 27 августа 1991 года № УП-238 "О Департизации творческих союзов, добровольных обществ и фондов" [Decree of the President of Uzbek SSR on Departization of the Creative Unions, Voluntary Associations and Funds, August 27, 1991 No. DP-238].

[76] Указ Президента Узбекской ССР от 21 августа 1991 года № УП-236 [Decree of the President of Uzbek SSR, August 21, 1991 No. DP-236].

[77] This voyage was headed by the capitan Karimov, the President of Uzbekistan since 1991 until March 2015.

[78] *Yuldasheva, Z.A*, O'zbekiston Respublikasi Konstituciyasining yaratilishi va asosiy xususiyatlari, huquqiy-tarixiy tadqiqot (Designing Constitution of RUz and Essentials, Legal and Historical PErspectives), O'zbekiston Respublikasi Ichki Ishlar Vazirligi Akademiyasi (Academy of the Ministry of

The original draft of the *Constitution* was prepared by November 1991, and consisted of 158 articles. On September 26, 1992, a further draft was published for public debate with 127 articles.[79] This draft reflected the idea of presidential powers. It aimed to shape a strong, effective executive branch based on constitutional law. However the draft included a provision allowing the president to govern as an independent during the presidency term, even though he is required to be a member of a political party when standing for election. This means the president can avoid accountability to the political party that helped him be elected. The O'zXDP did not agree with this provision. Despite this disagreement, the project group exemption the president from membership in a political party while serving.[80] It took more than 26 months and two statewide public discussions on September 26 and November 21 to complete this draft of the 1992 *Constitution*. Finally, on December 8, 1992 the *Constitution* of Uzbekistan was adopted.[81]

Uzbekistan is unitary republic, which consists of 12 regions, including Republic of Karakalpakstan and Tashkent city. Karakalpakstan has its own *Constitution* of 1993.[82] According to this document, people of Karakalpakstan may issue the question on separation from Uzbekistan with referendum.[83]

A key role in ensuring the supremacy of the 1992 *Constitution* in Uzbekistan plays Constitutional Court of Uzbekistan. Its main function is to review cases on constitutionality of acts of legislative and executive bodies.[84] In 1992, the *Constitution* was changed to include new provisions regarding constitutional supervision, which was entrusted to the Constitutional Court of Uzbekistan. The 1993 *Law on the Constitutional Court* (LCC)[85] regulates the functions of the Constitutional Court, but these functions were temporarily assigned to the Constitutional Supervision Committee, which functioned until the establishment of the first Constitutional Court in 1995.[86]

In accordance with the revised version of the 1995 *LCC*,[87] the Constitutional Court was

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Internal Affairs of RUz), 1997.

[79] Комментарий к Конституции РУз [Komment. Konstitut. RUz] [Commentary to the Constitution of RUz], (Uzbekiston, 2001), 16-18.

[80] Komment. Konstitut. RUz (2001), 24-25.

[81] Komment. Konstitut. RUz (2001), 27-28.

[82] Конституция Республики Каракалпакстан, принята 9 апреля 1993 года на XII сессии Верховного Совета Республики Каракалпакстан XII созыва [Konstitut. Karakalpakstan] [Constitution of the Republic of Karakalpkstan adopted on April 9, 1993 on the XII session of the Supreme Soviet of the Republic of Karakalpakstan of the XII-call], http://worldconstitutions.ru/archives/182 (accessed December 25, 2013).

[83] Konstitut. Karakalpakstan (1993), art. 1, part 3.

[84] Эшонов, Б.О. (Eshonov, B.O.), the chairman of the Constitutional Court of Ruz (1995), in *Вестник Конституционного суда Республики Узбекистан* [Vest. KS RUz] [Newslatter of the Constitutional Court of Uzbekistan], 1998, No. 1, 56.

[85] Periodical Journal of the Supreme Council of Uzbekistan 5 (1993), 204.

[86] Supreme Council of RUz, Session 12, May 7, 1993.

[87] Закон РУз от 30 августа 1995 года "О Конституционном суде РУз" [Zakon o KS RUz] [Law of

established on December 22, 1995. The Constitutional Court was defined as a part of the judicial system of the state.[88] As a specific judicial institution, it is intended to ensure the supremacy and direct operation of the Constitution, to serve on the same level, the national level, with representative and executive branches. The competence of the Constitutional Court is mainly determined directly in the *Constitution* itself, which is a theoretical guarantee against encroachment on its independence. The special status of the Constitutional Court is emphasized by the fact that the functions and powers of other judicial institutions are not given much attention in the *Constitution*.

The original design of the powers of the Constitutional Court, established in the *Constitution*, is that law cannot restrict them, and that all other authorities (except those directly provided for by the Constitution) must uphold the legal nature of this body of state power. Although the detail in the 1995 *LCC* on the jurisdiction of the Constitutional Court is somewhat meager,[89] it basically considers cases on the constitutionality of acts of the legislative and executive branches,[90] in particular laws adopted by Parliament, decrees by President, decisions by Cabinet of Ministries and local bodies of state of power.[91]

However, there are some moments make important to nitice here. The Constitutional Court does not make an interpretation, but checking for compliance of both Parliament chambers' decisions to the *Constitution*, because of their legal status.[92]

The Constitutional Court is to be selected from "experts in the field of politics and law."[93] This study takes the position that ordinarily this would include candidates from a wide range of sectors including academia, the bureaucracy, and notable Uzbekistanis with international judicial experience. However, in reality, the members are always drawn from the government.[94]

The Senate of the Parliament with President's representation elects judges of the Constitutional Court – a chairman, a deputy chairman and five judges, including a representative from the Republic of Karakalpakstan – for the term of 5 years.[95] The Constitutioanl Court may work

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RUz on Constitutional Court of RUz], in *Vest. KS RUz* (1998), No. 1, 64-70 and *Periodical Journal of the Parliament of Uzbekistan* 9 (1995), 138.

[88] Konstitut. RUz (1992), art. 108.

[89] Vest. KS RUz (1998), No. 1, 64-70.

[90] Zakon o KS RUz (1995), art. 1.

[91] *Мирбабаев, Б.Ш.* (Mirbabaev, B.Sh.), Судебный контроль за конституционностью нормативных актов, защищающих права и свободы человека (Judicial Control over the Constitutionality of Laws) in *Vest. KS RUz* (2006), 59.

[92] Решение Конституционного суда Республики Узбекистан от 2 мая 2006 года "О толковании части второй статьи 31 Закона Республики Узбекистан О нормативно-правовых актов" [Reshenie KS RUz] [Decision of the Constitutional Court of RUz on Interpretation of Article 31, Part 2 of the Law on Normative and Legal Acts], in *Vest. KS RUz* (2006), No. 14, 55-57.

[93] Konstitut. RUz (1992), art. 108; Vest. KS RUz (2004), 123-160.

[94] *Кариева, Наргиз* (Karieva, Nargis), Конституционный суд в условиях судебно-правовой реформы (The Constitutional Court in Conditions of Judicial and Legal Reforms), Vest. KS RUz (2005), No.13, 83-91.

[95] Zakon o KS RUz (1995), art. 2, art. 3.

if the number of the elected candidates is no less than four people.[96] This means that present Constitutional Court that is in charge for review the constitutionality of the acts by legislative and executive bodies may have vacant positions and it has three – vacant position of the Chairman and two positions for constitutional judges.[97]

The performance of duties on the Constitutional Court is incompatible with a deputy's mandate. Members of the Constitutional Court may not be members of political parties or movements, and may not hold any other paid positions. However they are inadequately paid, which might expose them to a higher risk of graft or make it difficult for them to live without another job.[98]

Judges of the Constitutional Court enjoy immunity. They are theoretically independent and subject only to the Constitution. And the government's position is that the basic principles undergirding the Constitutional Court are commitment to the *Constitution*, independence, collegiality, transparency, impartiality and equality of the rights of judges.[99] While making decisions, formally and very briefly, judges express their legal position, free from considerations of expediency, political inclinations, and other extraneous influences.[100]

One more legal act that regulates the judicial proceedings of the Constitutional Court is the 2004 *Regulation of Constitutional Court*.[101] The Constitutional Court approved it. This regulation has a status of the internal document of the court that maybe easily can be changed. The practice shows that this regulation determines the order of the constitutional judicial proceedings and it is reasonable to change the status of this regulation to law and make it more effective as a legal document.[102]

The protection of the rights and freedoms by Constitutional Court can be realized through the official interpretation of the constitutional provisions and other laws adopted by the Parliament. Official interpretation means that it is officially published openly and every citizen has access to that interpretation. This interpretation by Constitutional Court based on the principles of independence,

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[96] Zakon o KS RUz (1995), art. 2.
[97] Конституционный суд РУз [Constitutional Court of RUZ] http://Ksu.uz/ru/page/index/id/10 (accessed December 24, 2013), Мирбабаев Бахтияр Шамсутдинович, заместитель председателя с 1998-2009, переизбран в 2009 (Mirbabaev Bakhtiyar Shamsutdinovich, vice-chairman since 1998-2009, re-elected in 2009), судья Бозоров Узок Бозорович с 2000, переизбран в 2005 и 2010 (Bazarov Uzak, judge since 2000, re-elected in 2005 and 2010), судья Пиржанов Генжемурат с 1995, переизбран в 2000, 2005 и 2010 годах (Pirjanov Genjemurat, judge since 1995, re-elected in 2000, 2005 and 2010), судья Хусанова Фатима Усмановна с 2011 (Khusanova Fatima Usmanovna, judge sicne 2011).
[98] Vest. KS, 2008.
[99] Zakon o KS RUz (1995), art. 4.
[100] Zakon o KS RUz (1995), art. 5.
[101] Регламент Конституционного суда Республики Узбекистан от 30 января 2004 года № 1 [Reglament KS RUz] [Regulation of the Constitutional Court of RUz, January 30, 2004 No. 1].
[102] Mirbabaev, Vest. KS RUz (2006), 59.

collegiality, transparency, impartiality and equality of the rights of judges.[103]

The right to file constitutional issues to the Constitutional Court has: both Chambers of the Parliament, President, Speaker of the Legislative Chamber, Chairman of the Senate, Supreme Soviet (*Jokargi Kenes*) of Karakalpakstan, group of parliament deputies – no less than one fourth from the total number deputies in the Legislative Chamber, group of senators – no less than one fourth from the total number of senators, chairman of the Supreme Court, chairman of the High Economic Court, General Prosecutor and finaly, group of judges of the Constitutional Court – no less than three from the total number.[104] The Constitutional Court has practice to review constitutional issues summarized from the results of analysis of letters and applications by citizens, state bodies and public associations and filed by judges.[105] This part that allows judges to initiate proceeding for constitutional review slightly contradict to the principles of the impartiality. The limited access to the Constitutional Court was expressly designed in that way that makes judges not to be over busy with numerous of files, which may reflect to the quality of review from one side, and to the necessaty of bigger number of judges from another.

For this reason, this list excluded the possibility to realize direct or indirect right (through judicial instances) to file to the Constitutional Court by citizens, but only by public officials.[106] This means that the institution of constitutional control was designed exclusively for politicians, but not for the people. Even though, citizens file with numerous of issues to those public officials who have this right by law. The practice showed that there is large number of questionable issues that citizens want to make clear, which became the base for some constitutional reviews by Constitutonal Court.[107]

Another question that comes to mention here is about constitutional review of non-normative individual acts. There is no clear constitutional provision or laws about that except the 2001 *Law on Prosecutor Office*,[108] which says that in case of the contradiction of orders and other acts of the General Prosecutor's (except acts with individual features) to the *Constitution* and laws of Uzbekistan, the former must be abolished by Constitutional Court's decision.[109] Departing from this provision of the law, Constitutional Court must not control acts with individual features by President or Cabinet of Ministries.[110]

In case of courts of the general jurisdiction, when they or citizens questioning some

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[103] Mirbabaev, in *Vest. KS RUz* (2006), 60.
[104] Zakon o KS RUz (1995), art. 19.
[105] Eshonov, in *Vest. KS RUz* (1998), No. 1, 56.
[106] Mirbabaev, in *Vest. KS RUz* (2006), 60.
[107] Mirbabaev, in *Vest. KS RUz* (2006), 61.
[108] Закон Республики Узбекистан от 29 августа 2001 года № 257-II "О Прокуратуре" [Zakon o Prokur. RUz] [Law on Prosecutor Office, August 29, 2001 No. 257-II].
[109] Zakon o Prokur. RUz (2001), art. 13, part 3.
[110] Mirbabaev, Vest. KS RUz (2006), 62.

normative acts, then the Chairman of Supreme Court or High Economic Court may send requist to the Constitutional Court to clearify that question. However, the dispute comes to the moment if this request right or obligation, because the 1995 *LCC* can be read as their right.[111] In this case, different chairmen may decide by their necessaty. For example, the Supreme Court is permitted to rely on the advice of the Constitutional Court when interpreting the *Constitution*, because the Constitutional Court is the only government institution, which can give an interpretation of constitutional provisions.[112] The question is in which oral or written form the Constitutional Court gives its interpretation. If it is written form then it will be published, have a binding force and be absolute for everybody. If it is in oral form then the effect of this interpretation is more recommendatory, and do not have binding force.

The Supreme Court is another judicial body that has function to review some constitutional issues base on present legislation of Uzbekistan. For example, the Supreme Court can determine the activities of political parties,[113] if citizens establish contradictory public associations or political parties.[114] This type of the constitutional issues, generally, makes sense to be reviewed by the Constitutional Court, because of the nature of these issues.[115] This study takes the view that to dissolve or ban a political party needs a significant constitutional justification and constitutional review of the rules and platform of the party. The Constitutional Court is the specific body that is able to do this according to its jurisdiction as provided by the *Constitution*.[116]

Moreover, the Supreme Court if the highest judicial body in the sphere of civil, criminal and administrative judicial proceedings. The Supreme Court does not act on its own to ban a party. It takes the initiative only when called on by a MoJ resolution, a resolution of or claim from the General Prosecutor's, or a political party's claim.[117] The Supreme Court quarterly must publish reports of its decisions, which contain articles evaluating legislation and reports on some decisions of the Supreme Court. However, decisions on the banning or deregistration of political parties are not in the published one. This means that this study cannot present the Supreme Court's decisions to dissolve or ban political parties in 1991-2013, because of the lack of access for ordinary citizens.

A number of Uzbek researchers have knowledge of these decisions and have explained them in their writings, unfortunately without formal citations. [118] As a result, this study also cannot offer a rigorous analysis of these deregistration decisions and is limited to analysing the 1996 *Law on Political Parties* (LPP) whereby the Supreme Court fulfils a passive controlling function over the

[111] Zakon o KS RUz (1995), art. 19.
[112] Konstitut. RUz (1992), art. 103, part 3.
[113] Zakon RUz o PP (1996), art. 11.
[114] Konstitut. RUz (1992), art. 57.
[115] Mirbabaev, Vest. KS RUz (2006), 62.
[116] Konstitut. RUz (1992), art. 108.
[117] Zakon RUz o PP (1996), art. 10.
[118] Fayziev (2009), 185.

constitutionality of political parties.

The supreme legislative body of the republic is the Parliament (*Oliy Majlis*) with a five-year term (it was four-year term until 1999). It was established as a unicameral parliament based on the multi-party system in 1995.[119] The process of multi-party division of the seats in the parliament has started with four political parties such as: the People's Democratic Party (*O'zbekiston Xalq Demokratik Partiyasi* – O'zXDP), the Justice Social Democratic Party (*"Adolat" Sotsial-Demokratik Partiyasi – Adolat*), Homeland Progress Party (*Vatan Taraqqiyoti Partiyasi – Vatan Taraqqiyoti*) and the National Revival Democratic Party of Uzbekistan (*O'zbekiston "Milliy Tiklanish" Demokratik Partiyasi – Milliy Tiklanish*, from 2008 it includes the former Self-Sacrifice National Democratic Party (*Fidokorlar Milliy Demokratik Partiyasi – Fidokorlar*)), while the remaining parliamentary deputies were nominated from local executive body.

The local executive bodies also have the right to nominate candidates. Usually they nominate local rulers (*khokim*). *Khokim* is permitted to both perform his local office and enjoy membership in the Parliament.[120] This is possible as it convenes for only two to three days, four times per year, in order to adopt laws drafted by its committees and commissions.[121]

Since local government sponsored candidates are not required to collect signatures for their support, unlike candidates from political parties or initiative groups (which now cannot participate in elections due to 2008 reforms), the candidacy requirements are inequitable.[122] In addition, pre-election meetings of candidates and their constituencies may only be organized by the Central Electoral Commission (CEC) and held in the presence of CEC members, who are usually influenced by local governments. These two problems mean that local government bodies clearly have an inappropriate level of political power on the national stage, which is to the detriment of truly democratic elections.

For example, in the 1999 parliamentary elections, the results showed the participation of five political parties such as: O'zXDP won 49, *Fidokorlar* won 34 seats, Motherland Progress Party (MPP) won 20 seats, *Adolat* won 11 seats and *Milliy Tiklanish* won 10 seats out of 250 seats. However, local nominees who did not belong to any of those five parties won 110 seats and and initiative groups won 16 seats.

Under the 2002 referendum was formed a new bicameral parliament.[123] The parliament

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[119] Закон Республики Узбекистан "Об общественных объединениях в Республике Узбекистан [ZRUz Ob OO] [Law of RUz on Public Associations of RUz], 4 Ведомости Верховного Совета РУз (1991), 76.
[120] Konstitut. RUz (1992), art. 102, part 1.
[121] Bektemirov, K. & Rahimov, E. "Local Government in Uzbekistan," in *Local Government in Eastern Europe* (Caucasus and Central Asia, 2001).
[122] Ibid.
[123] Конституционный Закон Республики Узбекистан от 4 апреля 2002 года № 350-II "Об итогах референдума и основных принципах организации государственной власти" [KZRUz Ob Itogax

consisted of two chambers the Senate[124] and Legislative Chamber.[125] Soon after on December 24, 2004 and January 9, 2005 were the parliamentary elections where O'zZDP won 28 seats, Milliy Tiklanish won 11 seats, *Fidokorlar* won 18 seats, Liberal Democratic Party ("*Tadbirkorlar va ishbilarmonlar harakati – O'zbekiston Liberal-Demokratik Partiyasi*" – LDP) won 41 seats out of 120 seats.

After 2008 reforms: the number of seats to the Legislative Chamber was increased from 120 to 150. 135 of them eleceted by constituencies on the multy-party system. Other 15 seats elected from the Ecological Movement (*O'zbekistan Ekologik Harakati – Ekologik Harakati*), while initiative groups of citizens were lost their right to nominate candidates in all elections. This explains the next, the election rights of citizens were limited with this amendments.[126] The new law granted people with right to participate in elections if they work on with environmental problems in ecological organizations, which may nominate their candidates to the Central Election Committe, but not universal elections. In 2009-2010 parliamentary elections: LDP won 55 seats, Ecological movement of Uzbekistan (*O'zbekiston ekologik harakati – Ekologik Harakati*) 15 seats out of 150.

The head of state is the President. He was a head of the governmnet due to 2008 reforms, when this function was granted to the Prime Minister of Uzbekistan. O'zXDP nominated him for president office in 1991, in 2007 by LDP. The 2002 referendum extended the presidential term from 5 years to 7 years.[127] After ten years, the Parliament of Uzbekistan adopted a new constitutional law that changed presidential term back to 5 years without referendum. This is one more way to make any amendments to the 1992 *Constitution*.[128]

For the 20 years of independence of Uzbekistan 1992 *Constitution* was gradually updated five times in 1994, 2003, 2007, 2008, 2011. The current state and its rapid legal liberalization process needs to add some technichs for minimizing the political issues of the governmnet during the construction of the constitutional and legal framework. According to Article 128 of the Constitution, Oliy Majlis may adopt a law on a changes and amendments to the Constitution within six months after the submission of a proposal which was already discussed at the parliament.

Referendum] [Constitutional Law of RUz on Results of the Referendum and General Principles of the State of Power Organization], 4-5 Ведомости Олий Мажлиса РУз [Vedom. OM RUz] [Gazette of the Parliament] (2002), 60.

[124] Конституционный Закон РУз "О Сенате Олий Мажлиса РУз" [Constitutional Law of RUz on Senate of the Parliament of RUz], 5 Vedom. OM RUz (2002), 67.

[125] Конституционный Закон РУз "О Законодательной палате Олий Мажлиса РУз" [Constitutional Law of RUz on Legislative Chamber of the Parliament of RUz], 12 Vedom. OM RUz (2002), 215.

[126] Nikolay Borisov, "Politics," in *Central Eurasia 2008 Analytical Annual* 395-400 (CA&CC Press, 2009), 397.

[127] Конституционный Закон Республики Узбекистан от 4 апреля 2002 года № 350-II "Об итогах референдума и основных принципах организации государственной власти" [KZRUz Ob Itogax Referendum] [Constitutional Law of RUz on Results of the Referendum and General Principles of the State of Power Organization], 4-5 Ведомости Олий Мажлиса РУз [Vedom. OM RUz] [Gazette of the Parliament] (2002), 60.

[128] Konstitut. RUz (1992), art. 128.

2.2.1 Constitutionality of Political Parties under the 1992 Constitution

This first *Constitution* was notable for three particular strengths. The first strength was that this was the only time when it was possible for close public scrutiny of the content of the *Constitution*. The second strength was that the 1992 *Constitution* introduced many goals of the new government. A significant goal was building "a humane and democratic state."[129] So the first chapter of six, although brief, is dedicated to provisions on human rights and freedoms.[130] The third strength was that the rule of law was introduced in Articles 15 and 16. After his election as President in December 1991, Karimov stated that building a constitutional democracy depended on the five principles in his Uzbek model of strategic development. The rule of law was one of those principles.

However, Uzbekistan since independence has actually been a highly centralized regime. The political realities have not reflected the provisions on human rights and the rule of law in the *Constitution*. President Karimov is generally seen as an supervised leader who has given democracy short shrift. He knows the nature of the people and knows how to rule them through the strong hands of the leader and he did it for more then 20 years.

Autocracies often thrive where nationalism is strongest.[131] The Soviet legacy did not include a strong sense of nationalism. And the Uzbek *Constitution* does not include nationalism in its provisions. In fact "[t]he Preamble pays powerful homage to democracy." The Preamble reads:

> The people of Uzbekistan, solemnly declaring our devotion to human rights and the principles of state sovereignty, understanding a high responsibility before present and future generations, relying on the historical experience of the development of the Uzbek state, affirming our fidelity to the ideals of democracy and social justice, recognizing the primacy of generally recognized norms of international law, endeavoring to ensure a worthy life to citizens of the Republic, setting as a goal the formation of a humanitarian democratic state operating under the rule of law, and in order to ensure civic peace and national accord through our authorized representatives adopt this Constitution of the Republic of Uzbekistan.[132]

The *Constitution* appears on a casual reading to protect religious and ethnic minorities (Article 34). The *Law on Language* promulgated in 1991 declares Uzbek the country's official language, but also ensures "a respectful attitude toward the languages, customs, and traditions of the nationalities and peoples living on its territory and ensures conditions for their development." But it does not mean that makes liberal constitutionalism stronger." "Freedom of religion is guaranteed in Uzbekistan. There is no any religion that the state mentions as particular, even the majority of people in a country Sunni Muslim." Giving all Uzbeks the freedom to follow their own religion is another

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[129] Konstitut. RUz (1992), Preamble, trans. by the Press Service of the President of RUz http://www.press-service.uz/en/section.scm?sectionId=4713#en/content/constitution/konstituciya_uzbekistana/page/1/ (accessed August 8, 2013).
[130] Konstitut. RUz (1992), art. 18-20; art. 21-23; art. 24-31; art. 32-35; art. 36-42; art. 43-46; art. 47-52.
[131] Anderson, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (new ed., Verso, 2006).
[132] Konstitut. RUz (1992).

aspect of nation-building. This freedom was welcomed and acclaimed out the outset by the Sunni majority. But crucially Article 57 prohibits ethnically- or religiously-based political parties.[133] This in effect blocks the growth of any powerful opposition that might grow from an ethnic or religious base.

The constitutional regulation of the rights of political parties in 1992 had four main new elements: socio-political pluralism; freedom of association; promoting a multi-party system and allowing opposition parties. The first three elements are found in Articles 12, 29, 30, 34. The definition of pluralism in the context of the Uzbek Constitution means different ideas, ideologies, policies, and methods for solving problems in different spheres of the life of citizens. For example, Article 12 rejects a single ideology and accepts the existence of a variety of political parties with different ideologies.[134] The Constitution has no trace remnants of communist ideology, avoids the class approach and rejects the one-party system.[135] However, in practice government institutions such as the Ministry of Justice strictly monitor and supervise the functioning of political parties in Uzbekistan and the compliance of their activities with the Constitution.[136]

Article 32 sets forth the idea of representative democracy, where all citizens can use their political rights, either by standing for election or by voting.[137] Referenda play the main role in the realization of state policy in Uzbekistan. For example, there was a referendum concerning the extension of the term of the President from five to seven years. 90% of Uzbekistan voters approved each referendum since independence. The reason was their trust to the policy that designed by president. Other political parties were just kept silent, mainly because they were not confident with their power to change something. The Law of the Republic of Uzbekistan on Referenda[138] describes the process of the referendum.

Article 34 of the *Constitution* protects and regulates the freedom of association. The provisions of the Article provide for the equal rights of political parties, including minority opposition parties. This provision talks about the right of public association that is protected by the *Constitution*.

> All citizens of the Republic of Uzbekistan shall have the right to form trade unions, political parties and any other public associations, and to participate in mass movements. No one may infringe on the rights, freedoms and dignity of the individuals constituting the minority

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[133] Konstitut. RUz (1992).
[134] Urazaev (2001), 69.
[135] *Мавлянова, С.Н.* (Mavlyanova, S.N.), Многопартийность – несущая конструкцию политического плюрализма в Арабской Республике Египет и Республики Узбекистан (Multiparty System – the Backbone of Political Pluralism in the Arab Republic of Egypt and the Republic of Uzbekistan), (Ph.D. Dissertation, Tashkent State Institut of Oriental Studies, 2004), 43.
[136] Rabbimov, Kamoliddin. "Uzbekistan's Political Parties Between the Government and Society," in *Central Asia and the Caucasus Journal of Social and Political Studies* (CA&CC Press, 2007, No. 1(43)).
[137] Urazaev Sh.Z. et al., (2001), p.210.
[138] Закон РУз от 18 ноября 1991 № 417-XII О Референдуме [Law on Referendum, November 18, 1991 No. 417-XII).

> opposition parties, public associations and mass movements, as well as in representative bodies of authority.[139]

In Article 56 set forth a narrow definition of public association.

> Trade unions, political parties, and scientific societies, as well as women's, veterans' and youth leagues, professional associations, mass movements and other organizations registered in accordance with the procedure prescribed by law, shall have the status of public associations in the Republic of Uzbekistan.

Even political parties are subject to restrictions under the Constitution. Article 57 states:

> The formation and functioning of political parties and public associations aiming to do the following shall be prohibited: changing the existing constitutional system by force: coming out against the sovereignty, territorial integrity and security of the Republic, as well as the constitutional rights and freedoms of its citizens; advocating war and social, national, racial and religious hostility, and encroaching on the health and morality of the people, as well as of any armed associations and political parties based on the national or religious principles…

The Ministry of Justice has the right to prevent the formation of parties. Groups whose application for registration as a political party has been denied can appeal to the Supreme Court against the Ministry's decision in the manner provided by Article 12 of the 1991 *Law on Public Associations and* Articles 1 and 4 of the 1997 *Code of Civil Procedure*.[140] The grounds for the Ministry's decision to reject the registration of a political party are those stipulated in the *Constitution*, the *Law on Public Associations* (Articles 20-22), the *Law on Political Parties* (Articles 9-11, 17), the *Criminal Code* (Articles 216^1, 216^2-218), *the Code on Administrative Liability* (Article 7) and decrees of the Cabinet Ministry.

Article 58 of the *Constitution* contains provisions concerning the distance that should be kept between public associations and government institutions in their activities.

> The state shall safeguard the rights and lawful interests of public associations and provide them with equal legal possibilities for participating in public life.
> Interference by state bodies and officials in the activity of public associations, as well as interference by public associations in the activity of state bodies and officials is impermissible.

In this way, the *Constitution* prohibits public associations and government institutions from overstepping the boundaries of their defined roles. For example, a political party may not take direct action to remove a government official accused of corruption. And in theory government institutions are prohibited from censoring the speech of political parties.

From 1992 onwards the *Constitution* has contained not only provisions about public associations, but also about political parties. Article 60 the *Constitution* states the aim and role of political parties as public associations:

> Political parties shall express the political will of various sections and groups of the population, and through their democratically elected representatives shall participate in the formation of state authority...

This definition of the role of political parties clearly stipulates that political parties express only the political will of various sections and groups, not of all the people. The 1991 *Law on Public*

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[139] Urazaev Sh.Z. et al., (2001), p.215.
[140] Гражданский процессуальный Кодекс РУз с изменениями от 2001 года [Civil Procedural Code of RUz, amended in 2001].

Associations permitted the formation of "initiative groups," which are temporary political associations formed for the sole purpose of nominating a candidates for an election. Before 2008 amendments the *Law on Presidential Elections* and *Law on Parliamentary Elections* both provided that "political parties and initiative groups have the right to nominate candidates."[141] This meant that initiative groups could also express the political will of interest groups. However the 2008 amendment to all three of these laws and related legislation restricted the right to nominate candidates to political parties only.

In addition, Article 61 of the *Constitution* prescribes the separation of the state and religion:

> Religious organizations and associations shall be separated from the state and equal before the law. The state shall not interfere with the activity of religious associations.

The phrase "secular state" does not exist in the *Constitution,* but the document embodies the essence of this phrase in a number of articles. The *Constitution* indicates that the mission of the revival of spirituality of the people should be based on the Islamic culture, but with the requirements that Uzbekistan's development must follow a secular path.[142] For this reason, Ministry of Justice exercises control over Islamic groups,[143] strictly prohibiting them from interfering in the political system of Uzbekistan. These strict controls have been implemented in a thorough way over the last two decades.

The Uzbekistani courts act as the "referee" in disputes between public associations and the Ministry of Justice according to Article 62.

> Public associations may be dissolved or banned, or subject to restricted activity solely by the sentence of a court.[144]

Constitution does not specify the particular court that has this power. According to other provisions in the *Constitution* the Supreme Court of Uzbekistan is the highest judicial authority in civil, criminal and administrative proceedings,[145] while the Constitutional Court of Uzbekistan considers cases on the constitutionality of acts of the legislative and executive branches.[146] Thus, there is ambiguity in the word "court" in Article 62. The *Constitution* does not clarify which court can limit the rights of public associations, including political parties, by banning them. This study argues that cases on dissolving or banning any political party requires careful study by experts in constitutional law, who are found on the Constitutional Court in Uzbekistan.

At the end, after analyzing the constitutional provisions, this thesis argues that the

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[141] Закон РУз от 18 ноября 1991 года № 414-XII "О выборах президента Республики Узбекистан" [Law on Presidential Elections of Uzbekistan, November 18, 1991 No. 414-XII,], art. 24; Закон РУз от 28 августа 2003 года №518-II "О выборах в Олий Мажлис" [Law of the RUz on Oliy Majlis Elections of Uzbekistan, August 28, 2003 No. 518-II], art. 20.
[142] Urazaev (2001), 318.
[143] Закон РУз от 1 мая 1998 года № 618-I "О свободе совести и религиозных организациях" [Law on Freedom of Conscience and Religious Organizations, May 1, 1998 No. 618-I].
[144] Translated from Uzbek into English language by PRAVO legal information system http://www.pravo.uz/english/resources/doc/constitution.php3 (accessed May 3, 2010).
[145] Konstitut. RUz (1992), art. 110.
[146] Konstitut. RUz (1992), art. 108.

Constitution apparently provides robust rights for political parties in Uzbekistan. The aim of the adoption of ten different provisions in the *Constitution* on this one topic was to protect the rights of parties and to prevent the monopoly of power by any one party. At the same time, the *Constitution* also set appropriate limits on these rights of political parties to keep the country secure. Chapter V works from this basic position to illustrate that these robust rights are not protected in practice at present.

2.2.2 Regulation of Political Parties under the 1992 Constitution

After the first election of the Uzbek Parliament in 1994, parliamentary deputies have started the work on the draft of the *Law on Political Parties*, which was necessary to regulate the status of political parties and their formation, their political role in establishing of the parliament and government representatives.[147] This paper considers several questions regarding political parties. The provisions about formation and activities of political parties in Uzbekistan has been amended five times to date; in 1999, twice in 2004, in 2007, and in 2008.[148]

This paper focuses on examination of this law and its effectiveness as legal regulation of political parties from the perspective of the constitutionalism. To be specific, … The 1996 *Law on Political Parties* can be divided into: essential principles, formal procedures, organizational structure and limitations of political parties.

The legislation identifies the basic characteristics of parties. According to Article 1:

> A political party is a voluntary association of citizens of Uzbekistan, formed on the basis of common views, interests and goals, with the goal of exercising the political will of a certain part of society by nominating candidates, and participating through its representatives in governing the state and social affairs.[149]

In the process of the realization of the political will of the certain part of society, a political party should follow democratic principles on the basis of constitutional order. Having understood the meaning of a political party, an interest group then begins the formal process of formation.

Article 6 contains the requirements for the establishment of a political party. Only 50 actual members are required to begin with creation of the party (Article 6 of the 1996 *LPP*).

> No less than twenty thousand signatures of the citizens living in no less than eight territorial entities (provinces), including the Republic of Karakalpakstan and Tashkent City, who have the intention of uniting in support of a party are required to set up a political party.[150]

Until amendments on December 12, 2003, the *Law on Political Parties* required "no less than five

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[147] ZRUz 337-I (1996).
[148] Закон Республики Узбекистан от 25 декабря 2008 года № ЗРУ-194 "О внесении изменений и дополнений в некоторые законодательные акты РУз в связи с совершенствованием законодательства о выборах" [ZRUz-194] [Law of RUz on Amendemnts and Addenda to Some Legal Acts of the RUz in Connection with Improvements in Election Legislation, December 25, 2008 No. ZRU-194].
[149] Translation from Uzbek into English language done by Sapyazova.
[150] Translation from Uzbek into English language done by Rabbimov (2007).

thousand signatures." The amendment changed this expression to "no less than twenty thousand signatures." Rabbimov argues that this new approach was to prevent Uzbekistan experiencing a revolution similar to the Color Revolutions in other post-Soviet countries such as Georgia and Ukraine.[151] Some other authors or positivists of Karimov's regime think that it was necessary at the time to re-check the legality of all political parties.[152] In either event it is a fact that this change created new legal barriers in the steps for forming political parties.[153]

After an application to establish a political party is lodged, the MoJ checks that the application includes: an application form signed by not less than three members of the governing body of the party; the party's charter; the party's policy statement; minutes of the constituent assembly; a bank document confirming payment of the registration fees in the amount established by law;[154] materials confirming compliance with the requirements of the *Law on Political Parties*, including a list of twenty thousand citizens of Uzbekistan who have expressed a desire to unite in support of the party with their signatures, full name, date of birth, place of residence and work, and phone number; the party's governing body which has the right to represent the party in the registration process or in case of disputes in court.[155]

This are the formal documents that the MoJ examines within one month, then makes one of the following decisions, first, to register the party; second, to refusing to register the party, or third, the rejection of the application without consideration. In case of registration of the political party, the MoJ publishes the decision in the official government periodical and MoJ starts to exercise control over the political party.[156]

According to Articles 10 and 11 of the *Law on Political Parties*, the MoJ can suspend the activities of, or deregister political parties through a decision of the Supreme Court. In case of refusal to register a political party, Article 9 provides:

> If the charter, goals, objectives and practices of a political party are contrary to the Constitution of Uzbekistan, this Law and other acts of legislation, or a political party has the same name as a previously registered party or movement, then the MoJ will not register the political party.[157]

The main feature of this article is that the MoJ is given power to itself evaluate the extent of a breach of the *Constitution* by a political party. In terms of the separation of powers, this is highly controversial, because an executive body is not a law-making body or a decision-making body. The

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[151] *See*, Scott Peterson, West Presses for Uzbek Reform (The Christian Science Monitor, April 7, 2004), http://www.csmonitor.com/2004/0407/p06s02-wosc.html (accessed June 19, 2010).
[152] Rabbimov (2007), 57-72.
[153] Ilkhamov (2004), 163.
[154] Постановлением Кабинета Министров РУз от 12 марта 1993 года № 132 "Об упорядочении регистрации уставов общественных объединений в РУз" [Postan. Ob Uporyadoch. Registr. Ustavov OO] [Decree of the Cabinet of Ministries on Ordering Registration of Charters of Public Associations in Uzbekistan, March 12, 1993 No. 132), (registration fee is 10 minimum salaries).
[155] Translation from Uzbek into English language done by Sapyazova.
[156] Zakon RUz o PP (1996), art. 17.
[157] Translation from Uzbek into English language done by Sapyazova.

1992 *Constitution* is largely based on this fundamental principle of constitutional law, although the situation of *khokim* (local bureaucrats who simultaneously serve as parliamentary deputies) does indicate that his principle is not absolute in Uzbekistan.

The MoJ is a part of the executive body, which should be subject to and follows the law. According to the Article 109 of the *Constitution*, only the Constitutional Court has the prerogative to measure the constitutionality of an act. The problem is that, the advice of the Constitutional Court to the Supreme Court on the constitutionality of political parties is merely recommendatory in character. In addition, although Article 57 of the *Constitution* attempts to offer guidance on what parties are prohibited, there is no law that gives a detailed explanation of which types of party will be constitutional and which will be unconstitutional.

If there is no law, then the Constitutional Court should have the role of making decisions in the area. The *LPP* should have been amended to include concrete criteria for the MoJ to follow. This was not done and this has allowed the MoJ to have unlimited power which is inappropriate in a democracy. The MoJ would have still role of interpreting and applying the *LPP* provisions on what parties were registered but this role would be much more restricted and could possibly be challenged in an administrative law suit. On the basis of these decisions, the MoJ would have a purely technical role in checking the existence of all documents in the party's application and just register it.

The power of the MoJ RUz over a political party is a significant question for this paper. The legislation above shows that freedom of a political party cost a very high price for and the public purpose[158] is going toward heavier control over a political party. The MoJ, the Prosecutor's office has very strong controlling functions, by studying and indentifying constitutionality of political parties.

The MoJ, the Prosecutor's office can initiate the examination of the constitutionality of political party in the court. The MoJ is one of the main controlling government institutions over the political parties.[159] The 1992 *Constitution* and other laws of the Uzbekistan guide the MoJ in the questions of registration of political parties and evaluation of their constitutionality.[160] The MoJ fulfilled its missions and functions directly and through subordinate national and territorial entities (provinces) offices.[161] The role of the MoJ to explain the registration rules to political parties.[162]

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[158] Bryner, C. Gary & Reynolds, B. Noel, *Constitutionalism and rights* (Brigham Young University, 1987).
[159] Zakon RUz o PP (1996), art. 17.
[160] Положение о Министерстве Юстиции РУз от 27 августа 2003 года № 370 [Poloj. O MoJ RUz] [Regulations on Ministry of Justice of Uzbekistan, August 27, 2003 No. 370].
[161] Poloj. O MoJ RUz (2003).
[162] Postan. Ob Uporyadoch. Registr. Ustavov OO (1993); Постановление КМ РУз от 12 марта 1993 №132 "О правилах рассмотрения заявлений о регистрации уставов общественных объединений, действующих на территории РУз" [Postan. KM RUz O Pravilax Rassm. Zayav. O Registr.] [Resolution of the Cabinet of Ministries on Rules for Reviewing Applications on Registration of Charters of Public Associations Acting Legally on the Territories of Uzbekistan].

This means, the registration as a formal procedure has become a long process that takes not only time but also money to go through all the steps required. Also, the MoJ has a right to charge the registration fee from the parties in the amount of ten times the minimum wage.[163] In the registration process, the MoJ checks all submitted documents by the political parties, which include of (a) the application form; (b) charter; (c) the record of the constituent assembly (conference) or general meeting (Congress); (d) the deposit document confirming the payment of the registration fee; (e) the lists of no less than twenty thousand signature of the citizens residing in at least eight territorial areas (regions), including the Republic of Karakalpakstan and Tashkent city; in triplicate.

Consideration of the application for registration is one month (include fact and explain this was reduced to give applicant a fairer) from the date of receipt of all required documents. The MoJ checks the reliability of the documents, represented by political parties and their compliance with existed legislation. If necessary, the MoJ could put in order the relevant organizations to make an examination of the charter of the political parties. Therefore, the duration of the application might be extended, but no more than a month.[164] After reviewing all documents, the MoJ make one of the following decisions on: registration of the statute; refusing the registration of; abandonment of the application without consideration.[165]

In case of registration of the statute, the MoJ issues a certificate to the applicant in a standard form. After this, the MoJ puts a registration number into the register list (the record list would be available to the media).[166] Because of the absence of this record list in the official database, this study could not provide such a copy of the document.

The MoJ has the right to revoke a decision on registration and prepared a statement on the elimination of a political party to the Court. A decision on cancellation of the registration, by the MoJ, includes a proposal based on an extract from the minutes of the party meeting or a decision of the court. At the same time, the parties can appeal the decision of the ministry to the court in the manner and conditions stipulated by the *Code Civil Procedural* (CCP).

When the Ministry should develop a reasoned decision and notify the applicant in written form. In case of refusing the registration or abandonment of the application without consideration, a political party can re-apply for registration and do not need to pay registration fee again, after the removal of insufficiencies in documentations. Some such decisions of the "ministry refuse political party and often do not indicate why the submitted documents do not correspond to the law."[167] Based on the difficulties in receiving the data from the ministry, this study emerged with a different view of this controlling government institution. The MoJ showed that it operates not just as a

[163] The minimum wage upto August 15, 2013 amounted 91,530 sums, which is equal to $43.
[164] Postan. KM RUz O Pravilax Rassm. Zayav. O Registr. (1993).
[165] Postan. KM RUz O Pravilax Rassm. Zayav. O Registr. (1993).
[166] Zakon RUz o PP (1996), art. 8.
[167] Rabbimov (2007), 63.

registering institution, but also as a filter to the ideas of any political party under its own discretion while disregarding the constitutional principles and laws on the independence of the judicial branch.

2.2.3 Other Provisions Regulating Political Parties

Many key pieces of legislation passed in the early years after independence formed the legal framework for the existence of political parties, except the 1996 *LPP*, notably these: the 1991 *Law on Presidential Elections*;[168] the 1991 *Law on Public Associations*;[169] the 1993 *Law on Elections of Oliy Majlis* (Supreme Assembly);[170] the 1994 *Law on Guarantees of Election Rights of Citizens*;[171] the 1994 *Law on Elections to the Parliament*;[172] the 1994 *Law on Elections of the Regional, District and City Soviets of People's Deputies*;[173] 1994 the *Law on Local Government*; the 1998 *Law on Central Election Committee of Uzbekistan*; [174] the 1999 *Law on Nongovernment Noncommercial Organizations*; [175] the 2002 *Constitutional Law on Legislative Chamber of the Oliy Majlis of Uzbekistan*;[176] the 2003 *Law on Elections in Oliy Majlis of Uzbekistan*;[177] the 2004 *Law on Financing of Political Parties in Uzbekistan*;[178] the 2007 *Constitutional Law on Strengthening the Role of Political Parties in the Renewal and Further Democratization of State Governance and Modernization of the Country*.[179] This legal framework portrays Uzbekistan as moving continually towards robust

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[168] Закон РУз от 18 ноября 1991 года № 414-XII "О выборах Президента Республики Узбекистан" [Zak. O Vib. Prezid. RUz] [Law on Election of the President of RUz, November 18, 1991 No. 414-XII].
[169] Закон РУз от 5 февраля 1991 года № 223-XII "Об общественных объединениях в РУз" [Law on Public Associations of RUz, February 15, 1991 No. 223-XII] (amended 1992).
[170] Закон РУз от 1993 года № 990-XII "О выборах в Олий Мажлис РУз" [Law on Elections of the Oliy Majlis of RUz, 1993 No. 990-XII].
[171] Закон РУз от 5 мая 1994 года № 1051-XII "О гарантиях избирательных прав граждан" [Law on Guarantees of Citizens Suffrage, 1994 No. 1051-XII].
[172] Закон Республики Узбекистан от 28 декабря 1993 года № 990-XII «О выборах в Олий Мажлис Республики Узбекистан» [Zak. O Vib. OM RUz] [Law on Election of the Parliament of RUz, December 28, 1993 No. 990-XII].
[173] Закон РУз от 1994 года № 1050-XII "О выборах в областные, районные и городские Кенгаши Народных Депутатов" [Law on Elections of the Regional, District and City Soviets of People's Deputies, 1994 No. 1050-XII).
[174] Закон РУз от 30 апреля 1998 года № 613-1 "О центральной избирательной комиссии Республики Узбекистан" [Law on Central Election Committee of Uzbekistan, April 30, 1998 No. 613-1].
[175] Закон РУз от 1999 года № 763-I "О негосударственных некомерческих организациях" [Law on Nongovernmnetal and Noncomercial Organizations, 1999 No. 763-I).
[176] Конституционный Закон РУз от 12 декабря 2002 года № 434-II "О Законодательной палате Олий Мажлиса Республики Узбекистан" [Constitutional Law on Legislative Chamber of the Oliy Majlis of Uzbekistan, December 12, 2002 No. 434-II].
[177] Закон РУз от 28 августа 2003 года № 518-II "О выборах в Олий Мажлис Республики Узбекистан" [Law on Elections in Oliy Majlis of Uzbekistan, August 28, 2003 No. 518-II].
[178] Zakon RUz o Fin. PP (2004).
[179] Конституционный Закон РУз от 11 апреля 2007 года № ЗРУ–88 "Об усилении роли политических партий в обновлении и дальнейшей демократизации государственного управления и модернизации страны" [KZ Ruz ob Usilen. Roli PP] [Constitutional Law on Strengthening the Role of Political Parties in the Renewal and Further Democratization of State Governance and Modernization of the Country, April 11, 2007 No. ZRU-88].

pluralism for at least the first decade after independence.[180]

Political party has three types of state financial support for its activities: the first, state financial support for political party's activities;[181] second, state financial support for participation in parliament elections and other representative government bodies;[182] and third, state financial support for parliamentary activities of factions of political parties.[183] Up to 2004 political parties were financed entirely through party-run businesses, membership dues and private donations. The new state finance included requirements for parties who participate in elections. These parties must win at least nine deputy seats in the parliament in order to receive annual funds.[184]

Under the electoral laws, only registered political parties by the MoJ at least three months (six months before 2008 reforms) before the Election Day. Political party had collected 40,00 (50,000 before 2008 reforms) signatures could be placed on the ballot.

2.3 Implementing Constitutional Review of Political Parties

From the beginning of the independence of Uzbekistan continues the reform process in the sphere of increasing the role of political parties through presidential initiatives and direct control through the Cabinet of Ministries and MoJ. Structurally, the President appoints a director and a deputy director to head the MoJ. The MoJ includes nine departments and two of them directly relate to the life of political parties and movements.[185]

The main tasks of the MoJ are to analyze the improvement of legal basis of reforming and modernization of the country. It prepares proposals on compliance with the procedure established by the law and the procedures for consideration and passage of the draft laws in close collaboration with the Constitutional Court of Uzbekistan. The MoJ monitors the realization of norms and principles of the 1992 *Constitution* of Uzbekistan[186] in laws, other acts of legislation and their application, as well as interconnectivity, integrity and harmonization of legal norms in legislative acts. Finally, the MoJ studies of compliance of legislation of Uzbekistan with international norms and standards, and ensuing the priority of the universally recognized principles and norms of

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[180] Instit. Monitor. Zakon. "Политические партии – в процессе модернизации страны" (Political Parties in the Process of Modernization of the Country), in *Жахон Информационное агенство* (Jahon Information Agency), September, 28, 2009 http://www.jahonnews.uz/rus/rubriki/politika/politicheskie_partii_v_proesse_modernizaii_strani.mgr (accessed April 23, 2012).
[181] Zakon RUz o Fin. PP (2004), art. 7.
[182] Zakon RUz o Fin. PP (2004), art. 8.
[183] Zakon RUz o Fin. PP (2004), art. 9.
[184] Rabbimov (2007), 57-72.
[185] Институт Мониторинга Действующего Законодательства При Президенте РУз [Instit. Monitor. Zakon.] [Institute for Monitoring of Current Legislation under the President of RUz], [Presidential Decree No. 3590], http://www.monitoring.uz/institute-en.html (accessed April 23, 2012).
[186] Конституция РУз от 8 декабря 1992 года [Konstitut. RUz] [Constitution of RUz, December 8, 1992].

international law, human rights and freedoms in the draft laws.

From the first days of independence until the present, the MoJ has officially registered ten political parties and movements. In Uzbekistan, in the contrast to most countries of the Commonwealth of Independent States (CIS), there has been a revival of the Communist Party.[187] The former Communist Party was super-powered. The membership was compulsory and necessary for career development, training top positions or honorary position in society. The Communist Party of Uzbek SSR pursued the ideological indoctrination of public consciousness, shaped it compulsorily in a spirit of loyalty to the affair and policy of the party.

After the independence, Communist Party of Uzbek SSR was changed and registered as O'zXDP in November 1, 1991.[188] The O'zXDP is expressful defender of the interests of the unemployed but able-bodied population, other people in need of social protection, and those experiencing difficulties in finding jobs. The O'zXDP protects the rights of teachers, doctors, workers and experts of other social spheres, needy and large families, pensioners and people with the limited abilities.[189] There are four main issues of the O'zXDP that it focuses on. The first is to provide financial stability for workers. The second is to provide a reliable insurance and equal opportunities for everybody, to protect constitutional rights and freedoms. The third issue relates to protection of honor, dignity and peaceful life of the people no matter what kind of nationality, origin, believes they are. And finally, O'zXDP has an issue to create a just society in Uzbekistan.[190]

Practice of the MoJ showed the quality of evaluation of the constitutionality of political parties in parliamentary and presidential elections. From some reports of the international organizations possible to say that the MoJ decides the possible party candidates, which may be registered.[191] If there are some reasons to not register then the decision looks as follow. The practice of the MoJ illustrates how it happens the quality of evaluation of the constitutionality of political parties. The first, Unity Movement (*Birlik)* failed to be register because of the absence of addresses and workplaces of signatures. The *Birlik* made five attempts to submit its documents, but was refused the right to register the statute by MoJ.[192] The second case and reasoning was about discontinuation of activities by the registered party (the cancelation of the activities of the party is

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[187] Mavlyanova (2004), 115.

[188] "Мир это борьба интересов" (World is Full of Self-Interest Struggles), in *Газета "Правда Востока"* от 14 мая 2002 (The True of the East Newspaper, May 14, 2002), 2 (According to the statement of the first secretary of the Central Council of the O'zXDP had nothing in common with the former Communist Party or with any other organizations of this kind.).

[189] O'zXDP Dasturi (Program), July 2, 2005, www.xdp.uz/party/osnovnie/programm/ (accessed December 25, 2013).

[190] Ibid.

[191] "Republic of Uzbekistan: President Elections, 23 December 2007," in OSCE/ODIHR Needs Assessment Mission, Office for Democratic Institutions and Human Rights (Warsaw, 2007).

[192] Babak et al (2004), 366, 375. There were also cases when the MoJ rejected to register due to the lack of a proper address.

the prerogative of the Supreme Court) of the Freedom Party (*Erk*) in 1993, after the re-registering all political parties in Uzbekistan. The third, Free Dekhkans Party (*Ozod Dekhkonlar Partiyasi – Ozod Dekhkonlar*) tells that it had received a late reply to the application compare with the fixed time in the law. The fourth, in case of the Party of Agrarians and Entrepreneurs (Agrarians) in 2003, the ministry demanded addresses for the 5,000 signatures.[193] Thus, the Ministry of Justice strictly limits by the interpretation and implementation of legal provisions regulating the registration of political parties that decrease the possibility for the creation and development of a new political party.[194] The fist two cases and other following are examined in the section below.

The OSCE observers argue that Uzbek political parties do not represent any one group of society with their intended legislative agenda, critical policy analysis, or polity alternative.[195] In general, political parties in Uzbekistan are not far left or far right parties. Saidnumonov supports this view, noting that the *Fidokorlar* is although conservative, quite moderate and, the O'zXDP which began as a socialist party that was the largest, most influential party in 1991 and was made up of leaders from the Soviet era, gradually became an opposition party with more democratic aims.[196]

On December 23, 2007, presidential elections were held in Uzbekistan. Only three political parties: the Liberal Democratic Party of Uzbekistan (LDP) which fielded Karimov as its candidate, *Adolat* represented by Tashmuhamedova and the O'zXDP which fielded Rustamov, and one initiative group represented by Saidov nominated candidates. This initiative group showed high political potential, in contrast to some political parties, which did not participate in the elections at all.

The representation of political parties in the Legislative Chamber, in 2009 increased from 120 to 150 deputies. Legislators granted the Ecological Movement of Uzbekistan with 15 seats. This measure, lawmakers explained by the importance of environmental matters in the current stage of development in Uzbekistan. All political parties supported such idea. The results of the parliamentary elections, in 2009, showed the participants of four political parties and one ecological movement. The results were as follows: 53 deputies from LDP, 32 from *Fidokorlar*, 31 from *Milliy Tiklanish*, 19 from *Adolat*, and 15 from the Ecological Movement of Uzbekistan (hereinafter EMU).[197]

There has been a recent proposal for further electoral system changes. In July 29, 2013, democratic bloc of Parliament (three factions LDP, *Milliy Tiklanish* and *Adolat* unified into one democratic bloc) hold a session on strengthening competition between parties in the representative

[193] OSCE/ODIHR (2005).
[194] OSCE/ODIHR (2005).
[195] OSCE/ODIHR (2005).
[196] Saidnumonov A., *Uzbekistan: Political Parties on the Eve of the Parliamentary Elections* (CA&CC, 5/29, 2004).
[197] Akhmadov E., *Parliamentary Elections in Uzbekistan*, (January 20, 2010 issue of the CACI Analyst), http://www.cacianalyst.org/?q=node/5253 (accessed May 26, 2010).

state bodies. They discussed the positive side of the current political system and the role of political parties in this system. In their opinion, current political system includes effective political parties, which can increase social and political activities of the citizens.[198]

Participants of the discussion pointed the significant strengthening the role of parties and their influence to the local representative body (*Kegash Narodnix Deputatov*) in solving social and economical issues of regional development. One of the examples is the regional investment development program introduced for six regional areas of the country. At the same time, representative of the bloc noted about the weak side of the party representation at the region level.

They noticed about inefficiency of 2008 legal reforms because of their insufficient implementation at the regions. Executive authorities have done close and not constructive discussions on 2008 political reforms, which make a sense that they cannot deal with their duties. For this reason, democratic bloc introduced a new suggestion to increase deputy control over them during the law implementation.[199]

The democratic bloc recommended making further changes and amendments to the *Law on Political Parties*. The bloc argued that the law should concern a clearer legal definition about party groups at the region and all necessary procedures for establishing party groups at the region, giving them additional authority to control representative government at the regional level.[200]

2.3.1 Birlik vs. Ministry of Justice (1993)[201]

The *Birlik* (Unity) movement was established on July 19, 1991. It filed an application for registration into the MoJ in 1991, but the request was rejected because the law did not provide any instructions about the 'movements,' as a form of public associations. On September 25, 1991, the second attempt to register was successful for the *Birlik*.

On December 17, 1992, the MoJ filed a motion to the Supreme Court on suspension the activities of the movement. Motivation for that was the violation acts by the members with some criminal features (due to the fact that the leaders and activists have been prosecuted and convicted). In 1993, the Supreme Court decided to suspend movement for 3 months until the problem solved. Finally, after three months it was banned.

In 1993, there was the third attempt to apply for registration. The MoJ decided not to register because of the formal errors such as addresses. Also in 1993, all associations should re-

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[198] "Демократический блок предлагает поправки в закон о политических партиях" (Democratic bloc introduce amendments to the Law on Political Parties), in *Gazeta.uz* July 29, 2013, http://www.gazeta.uz/2013/07/29/parties/ (accessed July 30, 2013).
[199] Ibid.
[200] Ibid.
[201] Information received from the words of the people, whose functions are directly relates to the public associations, such as political parties and their registration.

register by the MoJ base on the *Regulation of the Cabinet of Ministers on Putting in Order (Regulating) the Activities of Public Associations in the RUz* (No.132). The period for re-registering was given until September 30, 1993.[202]

On October 25, 1993, the Supreme Court decided to ban *Birlik*'s activities because it was not re-registered by the MoJ. (Earlier in the same case, movement activities suspended for 3 months). After that, the movement kept silent for 10-years. Some members of this movement leaved the country and some finished their carries of positions.

On September 22, 2003, the initiative group applied to the MoJ for the registration of the party of the popular movement *Birlik*. Checking results of the applicant documents showed some contradictions to the legislation of Uzbekistan particularly sections 5.2 and 5.3 of the political party statute included provisions about collective membership. These provisions conflicted with Article 4 of the *LPP*, which says that political parties must have fixed individual membership. The statute of the political party included the right of citizens to a second citizenship. This norm in the statute conflicted with Articles 21 and 23 of the 1992 *Constitution*. In this connection, the MoJ base on provisions of the *LPA*, *Law on NGO*, the *LPP* and of the *Rule on Checking Applications for Registration Statutes of Public Associations*[203] made a decision to reject the registration of the party.

On November 24, 2003, another attempts to submit the movement did an application to the MoJ. Checking results of the applicant documents showed that party's documents did not meet the requirements of the *LPA*, *LPP*. This means, according to Article 6 of the *LPP*, it is not represented by a list of the initiators of Karakalpakstan Branch of the Party. According to this article to create political party must have at least five thousand signatures of citizens living in at least eight territorial entities (regions), including Karakalpakstan and Tashkent.[204]

In a list of Fergana and Kashkadarya regional offices are the signature of minors in violation of Article 9 of the *LPA*, Article 18 of the *Law on NGO* and paragraph 4.1 of the *Party Charter*. In paragraphs 5.1 and 5.2 of the 1992 *Constitution* provided for the collective membership, contrary to Article 4 of the *LPP*. According to this law, political parties have a fixed individual membership.[205]

In addition, Vasilya Inoyatova, secretary general of the party, while she is chairman of the Human Rights Society of Uzbekistan Ezgulik, this fact is contrary to paragraph 2 of the 1993 *Regulation* No.132 by the Cabinet of Ministers, under which a member of the governing body of a social movement cannot be simultaneously a member of the governing body of the other public associations.

In this connection, on December 24, 2003 application for registration was rejected. This In 2004, the MoJ has received a new application from the party. According to the protocols done by

[202] Cavanaugh (1992).
[203] Postan. KM RUz O Pravilax Rassm. Zayav. O Registr. (1993).
[204] Casandra (1992).
[205] Babak (2004).

local authorities in Syrdarya, Khorezm, Ferghana, Namangan and Tashkent regions, 329 signatures of the citizens supported *Birlik* were falsified. The evidence showed that, the local governors (*makhalla*) helped to collect signatures of citizens to make party creation procedures easier, argues the MoJ.

In this connection, on February 26, 2004 statement for registration is not reviewed, and applicants given a written response. Currently, the MoJ on the issue of party registration did not apply. Furthermore, the definition of the Supreme Court of Uzbekistan on May 7, 2004 denied making statements about party registration. On June 24, 2004 the Trial Chamber of the Supreme Court of the definition is upheld.

2.3.2 Erk vs. Ministry of Justice (1993)

The MoJ decided to register the *Erk* Democratic Party (*Erk*) in September 1991. The *Erk* originally established as the opposition party along with the *Birlik* party. The witnesses of this story argue that increased the confrontation between opposition and government.[206]This confrontation related to the Communist leaders who occupied all public positions under the labels 'democrats' and 'reformers.' The opposition showed their discredit advocating that everything is lie. Others critics give arguments that the opposition struggled for power using all methods lidal and illegal to destabilize the situation in the country.[207] This led opposition to fail and loose people's support.

According to the program of *Erk*, they supported ideas about parliamentary republic in Uzbekistan.[208] Their purpose was to create an independent, democratic state governed by the rule of law. The *Erk* stood for the equality of all citizens before the law, freedom of conscience and religion, freedom of assembly, speech and the press, and freedom to form parties, unions and political organizations. [209] The *Erk* called for ensuring the principles of nonintervention of the state to the sphere of education.[210] In order to prevent the possibility of the revolution, Karimov made a decree that prohibits the any activities of political parties in the education system.[211]

On November 18, 1991, the *Erk* nominated its candidate to the presidential election.[212] The

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[206] Mavlyanova (2004), 118.
[207] Babak (2004), 359-362.
[208] *See*. "Независимая газета", 28 июля, 1992. / Independent Nawspaper (July 28, 1992).
[209] Mavlyanova (2004), 119-120.
[210] Political Program of the *Erk* Democratic Party (1990).
[211] Указ Президента РУз о департизации органов государственной власти и управления и системы народного образования Республики, от 17 сентября 1991 г. / Decree of the President of the RUz on departization of the government institutions and administration, and the public education system Uzbekistan (September 17, 1991).
[212] Закон о Выборах Президента РУз (№414-XII, 18 ноября 1991), Статьи 5, 13, 15, 24, 26, 28, 29. / Law on Presidential Elections of Uzbekistan (№414-XII, November 18, 1991), Articles 5, 13, 15, 24, 26, 28, 29.

Erk developed its platform with the slogans and labels "Which way must we go?"[213] The *Erk* was ready to abide by the constitution, and defended its position by democratic parliamentary means and to allow political struggle only according to the law. As the party recognized the supremacy of law,[214] further reaction to the results of the election was different. However, on December 29, 1991, nearly 10 million voters (94.2 percent) voted for the candidate Karimov.[215] After the elections in 1992, the MoJ sent a request to the Supreme Court to ban *Erk*, because of illegal activities by their members.[216] The attempt to re-register in 1993 was unsuccessful for party. All reasoning was limited with phrases about inappropriate information about addresses of the members.[217]

In 2003 was formed *Ozod Dekhkonlar* by Ni

2.4 Summary and Reflections

The real democracy in many countries teaches people to live in consensus and with tolerance to each other and only under the rule of law. However, do people of Uzbekistan learned lessons of democracy passing through variety of problems and their solutions or not, need to be clarified. The society could not live in a democratic country without need. Since the need will come people begin to struggle for their life, their fundamental rights and freedoms.

Five constitutions of Uzbekistan (1924, 1927, 1937, 1978, 1992) played a great role in the establishment of the Uzbek statehood. They emphasized the values and traditions for each period of time differently. Sometime there were communists, now the doors open to all thinkers, but not all hurry ups to go and change.

The maximum level that constitutionalism of Uzbekistan achieved until today is that people under the rule of law may protect their rights by them. All fundamental rights ensured by the 1992 *Constitution*. The only things must to do is to design those democratic instruments that help to not only oppose, struggle, but control from violation by the public authorities through the independent institutions such as political parties, courts. Designing the scope of protection of the rights takes along process and time.

Time has come to Uzbekistan and machine is also works on the way to the liberalization of the laws and measures. The reality is that the rule of law is not applicable yet in Uzbekistan, but it is on the right road. The *Constitution* has all bases to make this road strong and long forever. However, needs of clearances of ideas about democracy and people's justice are n seek.

The needs of this paper are to determine the appropriate procedures fort constitutional

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[213] "По какому пути нам идти" (By What Way Should We Go), in *Газета "Правда Востока"* (Pravda Vostoka Newspaper), (December 10, 1991), 2.
[214] Political Program of the Erk Democratic Party (1990).
[215] Pravda Vostoka Newspaper (January 1, 1992).
[216] Mavlyanova (2004), 121-122.
[217] Vladimir Babak, Demian Vaisman, and Aryeh Wasserman (2004), 375.

review of political parties. According to the *Prohibition of Political Parties and Analogues Measures Report*,[218] the question on prohibiting of political parties in more than forty countries is in the competence of the judiciary. Thus, the majority of the countries already decided that only the independent court must make political process with the Constitution. The qualified supervision over the constitutional political parties allows protecting the democratic order of the country. Only the courts may guarantee the protection of the fundamental rights from the state interference.

This thesis finds a need to note the distinctive features of the competent Court for the question of unconstitutionality in Uzbekistan. Some of the distinctive features are: (1) independence; (2) impartiality; (3) not politicized; (4) specialized in constitutional review; (5) specialized in the interpretation of the constitution; (6) specialized in protection of the fundamental rights of individuals and associations from the governmental incursion; (7) specialized in constitutional theories and doctrines; (8) specialized in the philosophy, ideologies of different political parties; (9) specialized in democratic principles; (10) specialized in secular states; (11) specialized in the constitutional orders; (12) specialized in measuring the level of danger of the political parties activities to the human rights and state territorial unity; (13) great number of judges. And this is not the all that the judicial system needs to level up for protection fundamental rights of the people in Uzbekistan.

In effect the Constitutional Court is an institution with very little power within the Uzbek legal architecture. This study argues that the opinion of the Constitutional Court is apolitical should be regarded as binding and of greater weight than the view of the Ministry of Justice which is seeking to deregister a party.

[218] Venice Commission, *Prohibition of political parties and analogous measures* (CDL-INF 014, 1998), http://www.venice.coe.int/docs/1998/CDL-INF(1998)014-e.asp (accessed May 14, 2010).

Chapter III: Legal Framework Regulating Political Parties in the Federation of Russia

3.1 Historical Development from a Constitutional Prespective

Constitutional development of Russia should be clearly divided between political and legal developments. Logically discussing constitutional development means concentrated attention on constitutionalism itself. Also there are several distinct periods of constitutionalism in Russia.[219] According to the historical development of Russian constitutionalism, three periods can be observed: 1) pre-Soviet period, before October 1917;[220] 2) the Soviet period from October 1917 until the second half of the 1980s; 3) and the post-Soviet period.

This historical waves of political and social change over 250 years with repeated movements in favor of freedom of political association. This is vital contextual information against which modern Russian constitutionalism must be viewed. The attempts of the people in the power and large society to change the old stereotypes about authoritarian regime through the revolutions and destructions of the state, finally, had come to the new approach of constructive and efficient reforms of the state, society and party system. This is the way that this paper understands interrelationships between modern Russian constitutionalism and political parties.

3.1.1 Russian Constitutionalism in the Pre-Soviet Period up to 1917

The autocracy that existed before October 1917 denied constitutionalism as the instrument for building a rule of law in the Russian state. All subjects of constitutional law from the period of Kievan Rus (IX~XIII, when Imperial Russia was ruled from Kiev), ancient *Rus* and from Sankt-Petersburg and then Moscow (1721~1917) were regulated by royal deeds called *knyaz*, inter-regional accords, and cathedral resolutions from the Russian Orthodox Church, and imperial decrees.

The first constitutional ideas were developed in pre-revolutionary Russia between the 17th and 19th centuries and were about monarchical constitutionalism.[221] Sweden's constitutionalism of that period was taken as a model for establishing an Imperial Soviet.[222] But although a decree to

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[219] *Авакьян, С.А.* (Avakian, S.A.) Конституция России: природа, эволюция, современность (Constitution of Russia: Nature, Evolution, Modernity) [Const. Rus.: N.E.M.] (2nd ed., Sashko, 2000); *Кравец, И.А.* (Kravec, I.A.) Конституционализм и российская государственность в начале XX в.: учебное пособие (Constitutionalism and Russia State in the Beginning of the 20th) [Const.-ism and Rus.S. Beg. 20th] (2006); *Шульженко, Ю.Л.* (Shuljenko, Yu.L.) Отечественный конституционализм (Our Constitutionalism) [Our Const.-ism] (2010).

[220] *Некрасов, С.И.* (Nekrasov, S.I.) Конституционное право РФ: учебное пособие для бакалавров (Constitutional Law: Handbook for Bachelor Students) (Yurait, 2012), 33-40; *Эбзеев, Б.С.* и др. (Ebzeev, B.S. et al.) Конституционное право России (Constitutional Law of Russia) (5th ed., Yuniti-Dana, 2012), 75-77.

[221] Ebzeev et al., *Const. law of Russia* (2012), 75.

[222] Nekrasov, *Const. law* (2012), 34. Панин, Н.И. (Panin, N.I.) argued about designing the Imperial Soviet base on Sweden model.

reform government institutions were signed by Catherine the Great, the Empress of Russia (1762-1796) in 1762, it was never implemented.[223] A draft project of the *Basic Law* that included some elements of western democracy was proposed in the 1770s and received public attention.[224] But still these reform attempts were not actually supported, because of the clear class division in the state, where the central role in the political system was that of the monarch.[225]

New political ideas about enlightenment, were developed at this time in the second half of the 18th century, leading to a period when a great deal of attention was given to constitutionalism in Russia.[226] The Russian intelligentsia was against absolute monarchical power and struggled to give the people the central place in the state mechanism.

Russian constitutional development in the 19th century prioritized the role of the monarchy[227] and the nobility, and middle class *bourgeois* ways.[228] Some supporters introduced the ideas of establishing a republic.[229] One of the constitutional drafts even introduced the federation form of government. Actually, the dominant idea was the idea to promote the formation of a constitutional monarchy in Russia. And the most popular and significant historical role was played by the ideas of Dolgorukov based on the constitutional monarchies of Italy and Belgium.[230]

A period from 1861 until October 1905 has been characterized as a period of increased protection of rights and freedoms with some reforms in the local self-governing bodies.[231] The result of these reforms, the *Manifesto* was adopted in 1861, which gifted freedom to 22 million peasants.[232] In 1881, revolutionary activism increased in the Russian Empire, and many constitutional ideas were introduced by the *dekabrist* (Decembrists Movement). The members of the Decembrists Movement opposed serfdom in Russian Empire. The most popular discussions concerned two political works, *Russian Truth* by Pestel and *Constitution* by Muraviev.[233] The idea of equal rights for all classes drew the most attention. Alexander II was a main reformer, as recent historical works has been portrayed him, was ready to change the whole system of that period, until he was killed by

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[223] Manifest on Establishing of Imperial Soviet introduced to Catherine the Great by Panin (1762).
[224] Avakian, *Const. Rus.: N.E.M.* (2nd ed. 2000); Kravec, Const.-ism and Rus.S. Beg. 20th (2006); Shuljenko, *Our Const.-ism* (2010).
[225] Nekrasov, *Const. law* (2012), 34.
[226] Ibid., 34. The representetives of that idea were Десницкий С.И. (Desnickii S.E.), Фонвизин Д.И. (Fonvizin D.I.), Новиков Н.И. (Novikov N.I.), and also Радищев А.Н. (Radishev A.N).
[227] Ibid, 35. Supporters of those ideas were Сперанский М.М. (Speranskii M.M.), Новосильцев Н.Н. (Novosil'cev N.N.), Вяземский П.А. (Vyazemskii P.A.), Шувалов П.И. (Shuvalov P.I.), and also Валуев П.А. (Valuev P.A).
[228] Ibid. Supporters of those ideas are Бердяев А.В. (Berdiaev A.V.), Долгоруков П.В. (Dolgorukov P.V.), Пестель П.И. (Pestel P.I.), Муравьев Н.М. (Muraviev N.M.), Герцен А.И. (Gercen A.I.), Огарев Н.П. (Ogarev N.P.), and also Чернышевский Н.Г. (Chernishevskii N.G.).
[229] *Пестель, П.И.* (Pestel, P.I.) Русская правда (Russian Truth) (1824).
[230] Nekrasov, *Const. law* (2012), 35-36.
[231] Ebzeev et al., *Const. law of Russia* (2012), 75.
[232] Российское законодательство X-XX веков. V 9 t. T. 7. M., 1989. p.27-31, 37-77.
[233] Mazour, Anatole Gregory. *The first Russian Revolution, 1825: the Decembrist Movement, Its Origins, Development, and Significance* 324 (Stanford University Press, 1961).

oppositions.[234]

Ideas about modern, post-monarchical constitutionalism started to spread in Russia in the first quarter of 19th century, but it was only in the 20th century that those ideas were transformed into a strong constructive discussion on reforms. By 1906 Nikolai II issued the 1905 *Imperial Manifesto on Improvement of State Order* (*Высочайший Манифест от 17 октября 1905 "Об усовершенствовании государственного порядка"*) and some significant bills were adopted to begin the implementation of ideas about constitutionalism and parliamentary democracy.[235] Human rights were declared as essential in Russia. Moreover, State Duma and State Assembly (Lower and Upper chambers of Russian Parliament) were established as legislative bodies.[236]

According to the Emperor Nicholai II's October 17, 1905 *Imperial Manifesto*, jury trials, and the bicameral parliament, city and rural self-governments were designed as independent institutions. The principles such as freedom of conscience, expression assembly and association were declared by this manifesto.[237] This means, the legal history of party formation began.[238] Some level of constitutional principles were introduced in a distinctive Russian format, particularly: legislative power for the Parliament in cooperation with Tsar, executive power under the Tsar and his decrees, judicial power partially given to judges, nominated by Tsar and partly given to the patriarchal court. In spring of 1906, the Emperor signed another document called *Nominal Supreme Decree on the Provisional Rules of Associations and Unions*.[239] According to this decree bestowed people with right to form associations and unions "without requested permission of government, with the maintenance of the rule."[240] These rules were illustrated as the first with the legal definition of associations, which cause the formation of at least eight political parties in the Tsarist Russia.[241]

Politically fatal decision to go to war in 1914 was finished with collapse of the Russian Empire in 1917.[242] In fall 1917, when Nikolai II and his brother Mikhail abdicated from their positions, the monarchy was finished in Russia. The middle class of bourgeoisie took power and established Provisional Government that was not accepted by the workers class. Attempts to

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[234] Nekrasov, *Const. law* (2012), 37.
[235] Ibid., 38.
[236] Ebzeev et al., *Const. law of Russia* (2012), 76.
[237] *See* Собрание законов Российской Империи [SZ] [Collection of Laws of the Russian Empire] 1906, No. 26803.
[238] Дмитриев, Ю.А. (Dmitriev, Y.A.) Научно-практический постатейный комментарий к федеральному закону от 11 июля 2001 г. № 95-ФЗ "О политических партиях" (с изм. от 2 апреля 2012 г. № 228-ФЗ) (Scientific and Practical Itemized Commentary to the Federal Law of July 11, 2001 No. 95-FZ on Political Parties, with amendments of April 2, 2012 No. 228-FZ) [Com.FLPP], *Право и Жизнь* [Pravo i Jizn] 30, No. 173 (11) (2012), http://www.law-n-life.ru/arch/173/173-3.PDF (accessed October 17, 2013).
[239] Ibid., p.30.
[240] *See* SZ of Russia Empire (1906), No. 48.
[241] Dmitriev, Y.A., "Com.FLPP," in *Pravo i Jizn*, No. 173 (11) (2012), 30.
[242] Geyer, Dietrich. *Russian imperialism: The interaction of domestic and foreign policy, 1860-1914.* (Yale University Press, 1987), 65-85, 315-318.

overthrow the Government in summer finished with diversity of arrests and death penalty of workers, peasant's and soldiers. The short period of the Provisional Government (February 28 – October 25, 1917) was remembered with the greatest blossoming of the associations of the people. *Bolsheviks* inspired Russian citizens to establish associations and unions without getting any special permission from the government and struggle for the dictatorship of the proletariat.[243] The freest but militant conditions of the Government, however, were finished with the October Socialist Revolution in 1917 and previous Provisional Government was replaced with new one.

On October 26 (November 8) of the 1917, an extra Russian-wide Congress of workers, soldiers and peasants deputies established a new Provisional Government.[244] The second Provisional Government (*Sovet Narodnix Komissarov*) was established under the leadership of the Chairman of the Communist Party, Lenin and fourteen ministers, including chairman of nationalities affairs – Stalin.[245] The program of the Second Provisional Government and all forces, including militant force were realized with concentration to stable counter-revolutionary climate in Russian-wide.[246] The ministries of the previous government from the middle class were arrested and replaced by the working class.[247]

3.1.2 Russian Constitutionalism in Soviet Period: October 1917 to the late 1980s

In the historical development of the Soviet legislation had played a great role of the decrees of the Supreme Soviet. The first Congress of the Second Russian-wide Soviets was held on October 26, 1917 and where deputies considered the nationalities issues, particularly:

1) equality and sovereignty of the nations;
2) free self-determination of the nations;
3) abolition of all types of national restrictions and privileges;
and 4) free development of nation-minorities living in Russia.[248]

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[243] Decree on Assembly and Association. See, the Code of Laws. No.540; bulletin of the Provisional Governmnet No. 35/81.

[244] Постановление II Всероссийского съезда Советов "Об образовании рабочего и крестьянского правительства" [Postan. II VSS] [Government Regulation on Establishment of Workers and Peasants' Governmnet by the 2nd Russia-wide Soviet Congress] October 26 (November 8) 1917 in *Сборник законов СССР 1938-1967* [SZ SSSR] (Collection of Laws of the USSR 1938-1967) T.1., M: 1968, C. 32; Ленин, В.И. (Lenin, V.I.) *Полное собрание сочинений* [PSS] (Complete Collection of Essays) (5th ed., M., 1967), v. 35, 28.

[245] Postan. II VSS (1917).

[246] Воззвание II Всероссийского съезда Советов "Об обеспечении революционного порядка на местах" [Proclam. II VSS] [Proclamation on Providing a Revolutionary Order by the 2nd Russia-wide Soviet Congress] October 26 (November 8) 1917 and Обращение II Всероссийского съезда Советов к фронту об образовании в армии революционных коммитетов [Addr. II VSS] [Address to the Front About Establishment of a Revolutionary Military Committees by the 2nd Russia-wide Soviet Congress] October 26 (November 8) 1917 in *SZ SSSR* (1968), 33.

[247] Addr. II VSS, "Браться-Казаки!" [Address to Brothers Cossacks!] and "ко всем железнодорожникам о сохранении полного порядка на железных дорогах" [Address to All Railroadmen to Keep Complete Order on the Railroads] (1917) in *SZ SSSR* (1968), 34-35.

[248] Декларация прав народов России [Declar. PN] [Declaration of People Rights in Russia], November

Also, deputies proclaimed to establish the first Soviet Socialistic Republic in the world. The workers, soldiers and peasants' deputies of the Supreme Soviet were recognized as the guarantors of the revolutionary order in the state and its transition to the soviet republic.[249]

The next following significant documents were adopted – the 1917 *Decrees (decreti) on Peace and Land*. They were as manifest documents of the Soviet state. The 1917 *Decree on Peace* was the first normative act of the young Soviet Republic that included the principle of the international relations based on the peace and equality of the nations, and also independence of all states.[250]

The Second Congress of the Supreme Soviet adopted the *Regulation* (*postanovlenie*) *on Establishing the First Soviet Government* – the Council of Peoples' Commissars (*Sovet Narodnix Komissarov*) at the head of Lenin.[251] Lenin's decrees became the fundamental base for further development of the soviet legislation. They expressed the essential requirements of the people, the role of the Communist Party, and the equality of all nations. Also they expressed the principle of the proletarian internationalism and democratic centralism. This means, the first decrees designed a strong base for the soviet legislation.

The 1917 *Declaration of Russian People's Rights*[252] is the document-designed base on the Lenin's principles of national policy. This declaration proclaimed equal rights, sovereignty of nations and their free self-determination, including separation and establishing a new independent state. With these principles, it was formally recognized the possibility to freely establish independent states such as Ukraine, Finland, states in Caucasus and Central Asia.[253]

A great role have played the 1918 *Declaration of Workers and Exploited People Rights* that proclaimed Soviet Russian Republic as federation of the soviet national republics.[254] This document developed essentials of Lenin's national policy to destruction of any types of the human exploitations, division of the society into different classes. According to the Decree of the 3rd Russian-wide Congress of the Soviets the label of the "Provisional Government" was changed with "Workers and Peasants' Government."[255] This *Declaration* was the basic document that helped to design the first Soviet *Constitution.*

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2 (15), 1917 in *SZ SSSR* (1968), 35.

[249] *SZ SSSR* (1968), 1; See, Worker and Soldier. No. 9, October 26 (November 8), 1917.

[250] Декрет о мире [Decree on Peace], October 26 (November 8), 1917 in *SZ SSSR* (1968), 26; Lenin, *PSS* (1967), v. 35, 13.

[251] Манифест от временного правительства от 1 сентября 1917 г. // Chistyakov O.I. Rossiiskoe zakonodatelstvo X-XX vekov. Zakonodatelstvo burjuazno-demokraticheskix revolyucii. T.9. M., 1994.

[252] Declar. PN (1917), 18.

[253] *SZ SSSR* (1968), 3.

[254] (Declaration of Workers and Expliters Rights was adopted on January 18 (31), 1917) in *SZ SSSR* (1968), 40.

[255] Постановление III Всероссийского съезда Советов о новом названии существующей верховной государственной власти [Postan. III VSS] [Decree on New Name of the Current Supreme State of Power by the 3rd Russia-wide Soviet Congress], November 18 (31), 1918 in *SZ SSSR* (1968), 43.

Almost all principle of the statehood designed by Lenin were accounted in the first RSFSR *Constitution*, which was adopted on July 10, 1918.[256] The 1918 RSFSR *Constitution* proclaimed Russia as a federative republic[257] of soviet workers, soldiers and peasants' deputies[258] and any attempts to appropriate that state power were recognized as counter-revolutionary, or in other word – unconstitutional. The 1918 RSFSR *Constitution* included provisions about soviet socialistic order, which reflected the struggle between proletariat and bourgeoisie together with exploiters[259] in Article 9 of the 1918 *Constitution*:

> The main task of the Constitution is to establish socialism with the dictatorship of the city and rural proletariat, and poor farmers within the framework of Russia-wide Soviet power, the destruction of human exploitation, class divisions and the old forms of state power.[260]

In order to ensure the freedom of expressions and thoughts, the *Constitution* proclaimed the independency of press and provided workers and peasants class with technical and financial support.[261] The 1918 RSFSR *Constitution* included provisions about the workers participation in the state and social affairs. There was a clear hierarchy of the central and local Soviets. The Constitution established universal, equal suffrage based on proportional system of elections,[262] right to organize assembly, meetings, picketing, freedom of expressions, conscience, association and others.[263] This document introduced the freedom of association from the approach of a class division of the State.[264] The term "political party," however, was not included in to the interpretation of the term "association." This means that all associations formed by particular classes must be apolitical. Soviets workers desired for the rule of law and *Bolsheviks* responded to them with their program to establish a socialistic republic with equal rights for everybody without economic, political, religious, racial, national, and sex discriminations.

For this reason, the political system of the 1918 RSFSR was divided into three powers, but bounded each other in some hierarchic stages. The highest legislative state authority, according to the provision 24 of the *Constitution* was the Russian-wide Soviets' Congress (*Vserossiiskii s'ezd Sovetov*).[265] Through the Russian-wide Soviets' Congress, the city Soviets represented at the federal

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[256] Конституция (Основной Закон) Российской Социалистической Федеративной Советской Республики [Konst. RSFSR] [Russia Socialistic Federal Soviet Republic Constitution] of 1918 in SZ SSSR (1968), 44-61.
[257] Konst. RSFSR (1918), Chap. 1, Part 1 and 2; Резолюция III Всероссийского съезда Советов о федеральных учреждениях Российской Республики [Rezol. III VSS] [Resolution on Federal Institutions of Russia Republic by the 3rd Russia-wide Soviet Congress] January 15 (28), 1918.
[258] Konst. RSFSR (1918), Chap. 5, Part 9.
[259] Lenin, *PSS* (1967), v. 37, 147.
[260] Konst. RSFSR (1918), Chap. 5, Part 3.
[261] Konst. RSFSR (1918), Chap. 5, Part 14.
[262] Декрет Всероссийского Исполнительного Комитета о праве отзыва делегатов [Decr. VIK] [Decree on Delegates Recall Right] November 21, 1917.
[263] Konst. RSFSR (1918), Chap. 5, Part 15.
[264] Konst. RSFSR (1918), Chap. 5, Part 16; Dmitriev, Y.A., "Com.FLPP," in *Pravo i Jizn*, No. 173 (11) (2012), 32.
[265] Konst. RSFSR (1918), Chap. 5, Part 12; Rezol. TVSS (1918), Part 2.

level and participates in the federal legislation process. The 1918 *Constitution* provides the suffrage age as of 18 years of age.[266] The nomination of the candidates was held with representation norm of 1 deputy to every 25,000 inhabitants in the city Soviets and 1 deputy to every 125,000 inhabitants in the province (*guberniya*).[267] The Congress called for session no less than twice a year[268] and one of the issues was the formation of the Central Executive Committee (CEC) including no more than 200 people.[269]

The second after Soviets' Congress was CEC, which exercised the functions of the legislator during after the sessions of the Soviet's Congress. The CEC, apart from legislative power, exercised the highest executive and controlling functions, and was accountable to the Soviets Congress.[270] Both Soviets' Congress and CEC were in charge to adopt, add and/or make some changes in the *Constitution*.

The local representation was divided into two more levels. The first local representation was the Soviet Congress, which was divided into 4 territorial entities:

> a) Regions (*oblast'*), with representation norm 1 deputy to every 25,000 inhabitants mainly from one city Soviet and district (*uyezd*) Soviet Congress, and 1 deputy to every 5000 inhabitants from one city. The number of candidates must be no more than 500 people from one region;
> b) Provinces (*guberniya or okrug*), with representation norm 1 deputy to every 10,000 inhabitants from one city Soviet and small district (*volost*) Soviet Congress, and 1 deputy to 2000 inhabitants from one city. The number of candidates must be no more than 300 people from one province;
> c) Districts (*uezd* or *raion*), with representation norm 1 deputy to every 1000 inhabitants from village Soviets. The number of candidates must be no more than 300 people from one province;
> d) Small districts (*volost*), with representation norm 1 deputy to every 10 inhabitants.[271]

The second local representation was the Deputy Soviet. It was divided into two territorial representation: first, cities with representation norm 1 deputy to every 1000 inhabitants, and with nomination no less 50 and no more 100 deputies; and second villages with representation 1 deputy to every 100 inhabitants, but no less 3 and more 50 deputies.[272] The term period of the local deputies was three months. [273]

The Soviets' Congress and CEC were in charge to form the Federal Government (*Sovet narodnix kommisarov*). The Federal Government was the main administrative body and accountable before its 'designers.'[274] It had local executive committees under his regulations, which were

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[266] Konst. RSFSR (1918), Chap. 5, Part 64.
[267] Konst. RSFSR (1918), Chap. 5, Part 25.
[268] Konst. RSFSR (1918), Chap. 5, Part 26.
[269] Konst. RSFSR (1918), Chap. 5, Part 28.
[270] Konst. RSFSR (1918), Chap. 5, Parts 29, 31.
[271] Konst. RSFSR (1918), Chap. 5, Part 53.
[272] Konst. RSFSR (1918), Chap. 5, Part 57.
[273] Konst. RSFSR (1918), Chap. 5, Part 57.
[274] Konst. RSFSR (1918), Chap. 5, Parts 4, 37-48.

designed by the by the local Soviet Congresses. Evaluating the structure of the state authorities, some Russian authors argued that the 1918 *Constitution* established some kind of shared functions of the legislative and administrative power by intervening to each other's work.[275] In this way, the 1918 RSFSR *Constitution* was in effect until the formation of the USSR. The RSFSR was smaller than the eventually formed the USSR.

The formation of the USSR and adoption of the USSR Constitution was planned already in 1918, but it was reactivated in 1922 because of the militant intervention and civil war in Russia.[276] On December 30, 1922 the 1st Congress of the USSR Soviets adopted the *Decision on Approval Declaration and Agreement about Establishing USSR*.[277] The 1922 *Agreement on Establishing of the USSR* had signed next four republics: RSFSR, Ukrainian Socialist Soviet Republic (Ukrainian SSR), Byelorussian Socialist Soviet Republic (Byelorussian SSR), Transcaucasian Socialist Federative Soviet Republic (TSFSR – Georgia, Azerbaijan and Armenia).[278] The political system was stayed in the same design as before,[279] particularly, legislative power in the hands of the USSR Soviet's Congress and CEC, executive power exercised by the Federal Government (*Sovet narodnix komissarov*).[280]

Diversity of the laws, land, forest, civil and criminal codes and procedures to them were adopted in the following years. Finally, the 2nd Congress adopted the USSR *Constitution* on January 31, 1924.[281] Further historical development of RSFSR constitutionalism took place within the framework of the Soviet Union from 1924 until 1991. The constitutions of all republics as subjects of the USSR were modeled on the same as Constitution as the USSR itself. There were three main constitutions in the USSR during that period 1924, 1936 and 1977, and also in the RSFSR - 1925, 1937 and 1978.[282] Due to the fact that constitutions of all republics, including RSFSR were modeled with the same content, it makes reasonable to this paper to analyze the content on the part of political and party systems in three constitutions of the USSR only.

The 1924 USSR *Constitution* was adopted base on the *Declaration on Establishing the*

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[275] Nekrasov, *Const. law* (2012), 42.
[276] SZ SSSR (1968), 6.
[277] Постановление I съезда Советов СССР об утверждении декларации и договора об образовании СССР [Postan. I SS SSSR] [Decree on Declaration and Agreement on Establishing of the USSR by the 1st Soviet Congress of the USSR] December 30, 1922; Декларация и договор об образовании СССР [Declaration and Agreement on Establishing of the USSR] of December 30, 1922 in *SZ SSSR* (1968), 15, 16 and 18.
[278] Agreem. on Establ. of the USSR (1922) in *Konst. SSSR* of January 31, 1924, Sect. 2.
[279] Agreem. on Establ. of the USSR (1922) in SZ SSSR (1968), 63.
[280] Agreem. on Establ. of the USSR (1922) in SZ SSSR (1968), 64-68.
[281] Постановление ЦИК СССР о Конституции СССР [Postan. CIK SSSR] [Decree on Constitution of the USSR by the Centr. Execut. Commit.], Session 2, Call 1, July 6, 1923 and Постановление II съезда Советов СССР об утверждении основного закона (Конституции) СССР [Postan. II SS SSSR] [Decree on Constitution of the USSR by the 2nd Soviet Congress of the USSR], January 31, 1924 in *SZ SSSR* (1968), 71-88.
[282] Ebzeev et al., *Const. law of Russia* (2012), 77.

USSR[283] and the *Agreement on Establishing the USSR*. [284] This basic law reflected the principles of voluntariness and equality, sovereignty, 'brotherhood' cooperation and peaceful cohabitation of the people with different nationalities of each republic joined the USSR.[285] The access to the USSR was declared open to all socialistic countries, which allowed internationalizing the country faster.[286] In the beginning of the twentieth centuries the USSR *Constitution* showed that the internationalization of the proletariat was possible before the national capitalism.[287]

The 1924 USSR *Constitution* was the basic law for development of the constitutions in other republics such as RSFSR, Ukrainian SSR and Transcaucasian Socialist Federative Soviet Republic (TSFSR) in 1925, Byelorussian SSR, Uzbek SSR and Turkmen SSR in 1927. From that time, the constitutional development of the RSFSR depended on the constitutional development of the USSR too. The political system that reflected in the 1924 *Constitution* showed some changes in all three branches.

The highest state authority in the legislative branch was already known as the USSR Soviet Congress. Representatives from the Soviet republics can be selected to the Soviet Congress with the norm 1 deputy to each 25,000 inhabitants from one city and 1 deputy to each 125,000 inhabitants from one province (*gubernskii s'ezd sovetov*).[288] Another legislative body worked mainly between the sessions of the Soviet Congress was the CEC.[289] The CEC had two chambers called Union Soviet and National Soviet. The members of the Union Soviet were selected from the representatives in the Union republics and consisted of 414 members.[290] The National Union was selected 5 deputies from the representatives in the Unions, 5 deputies from autonomous republics and 1 deputy from each autonomic region in the RSFSR.[291]

The highest executive authority represented in the 1924 *Constitution* was the Federal Government (*Sovet narodnix komissarov*).[292] This administrative body had under its subordination another 10 local governments.[293] Moreover, completely a new institution to the Soviet system was the joined state and political department (*Ob'edinyonnoe gosudarstvennoe politicheskoe upravlenie*) under the Federal Government.[294] This state body had a special function to make a control over the implementation of all legislation according to the *Constitution*.

The third branch that comes to the explanation is judicial, where the highest court was

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[283] Declar. on Establ. of the USSR (1922) in *Konst. SSSR* of January 31, 1924, Sect. 1.
[284] Agreem. on Establ. of the USSR (1922) in *Konst. SSSR* of January 31, 1924, Sect. 2.
[285] Declar. on Establ. of the USSR (1922) in *Konst. SSSR* of January 31, 1924, Sect. 1.
[286] Konst. SSSR of January 31, 1924.
[287] Agreem. on Establ. of the USSR (1922) in *Konst. SSSR* of January 31, 1924, Sect. 2.
[288] Konst. SSSR of January 31, 1924, Sect. 2, Chap. 3, Parts 8-12.
[289] Konst. RSFSR (1924), Sect. 2, Chap. 4, Part 13.
[290] Konst. RSFSR (1924), Sect. 2, Chap. 4, Part 14.
[291] Konst. RSFSR (1924), Sect. 2, Chap. 4, Part 15.
[292] Konst. RSFSR (1924), Sect. 2, Chap. 6, Parts 37-42.
[293] Konst. RSFSR (1924), Sect. 2, Chap. 8, Part 49.
[294] Konst. RSFSR (1924), Sect. 2, Chap. 9, Parts 61-63.

proclaimed –the Supreme Court.[295] This branch formed by the CEC and included 11 members. In this member list was also the Prosecutor of the Supreme Court.[296] Seem very interesting, but the justices worked very closely with prosecutors at that time. For this reason, the court system was designed as a single organization where the decisions controlled by the CEC very strongly. The justices and assessors were selected by the Soviet' Congress. The main role of the justices was to protect the communistic order in all joined republics from the different attempts of the revolutions; protect interests and rights of associations; increase the disciplinary rules, and finally just follow the USSR 1924 *Constitution* including other legal acts.

The 1924 USSR *Constitution* reflected many ideas by Stalin,[297] who tried to make some constitutional reforms in the USSR, and focused mainly on the political activation and inspiration of the workers in the local government bodies by giving them some portion of the financial support.[298] In this wave, the USSR gradually increased the political activities of the workers, soldiers and peasants' Soviets in the cities of the USSR.[299]

The complete win of the socialism was recognized and proclaimed only in the 1936 USSR *Constitution.*[300] The number of the republics in the USSR already consisted of 15 member-states such as: RSFSR (including 21 autonomic republics),[301] Ukrainian SSR, Byelorussian SSR, Uzbek SSR (1 autonomic republic),[302] Kazakh SSR, Georgia SSR (3 autonomic republics),[303] Azerbaijan SSR (2 autonomic republics),[304] Lithuanian SSR, Moldavian SSR, Latvian SSR, Kirghiz SSR, Tajik SSR (1 autonomic republic),[305] Armenian SSR, Turkmen SSR, and also Estonian SSR.[306] This basic law slightly expanded the universal, equal and secret suffrage base on direct election of the representatives into the Councils in the different levels with expanded numbers of them.[307] Increasing the meaning of the labels "sovereign state" and "social democracy," the 1936 USSR Constitution proclaimed that:

> Workers of the cities and villages through their representatives in the Soviets are the only and

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[295] Konst. RSFSR (1924), Sect. 2, Chap. 7, Parts 43-48.
[296] Konst. RSFSR (1924), Sect. 2, Chap. 7, Part 46.
[297] Stalin was a Georgian from the Caucasus, one of the leading activists of the CPSU.
[298] SZ SSSR (1968), 11.
[299] Постановление Президиума ЦИК СССР об организации в СССР городских Советов рабочих, крестьянских и красноармейских депутатов [Postan. Prezid. CIK SSSR] [Decree on Establishing of the city Soviets of Workers, Peasants and Red Army Deputies by the Presidium of the Centr. Execut. Committee of the USSR], February 8, 1928.
[300] Konstit. SSSR of December 5, 1936 in *Izvestiya CIK SSSR*, December 6, 1936, No. 283 and SZ SSSR (1968), 95.
[301] Konstit. SSSR (1936), Art. 22.
[302] Konstit. SSSR (1936), Art. 26.
[303] Konstit. SSSR (1936), Art. 25.
[304] Konstit. SSSR (1936), Art. 24.
[305] Konstit. SSSR (1936), Art. 27.
[306] Konstit. SSSR (1936), Art. 13.
[307] *Правда* [Pravda] [The True] June 25, 1967, No. 176.

absolute owner of the power in the USSR.[308]

In this way, the Article 5 of the 1936 *Constitution* provided two types of them: state and local property (*kooperativno-kolkhoznaya*). This means, that it rejected all capitalistic forms of property.

It was the first time the USSR *Constitution* provided a leading role only to one party – the Communist Party of the Soviet Union (CPSU or *Bolsheviks*).[309] Article 126 of the USSR *Constitution* declared that the Communist Party is a leading core of all organizations of the working people,[310] and was repeated in the constitutions of the Union republics. Some changes were in the area of increasing opportunities for workers to improve their position in society, and enhancing the status of ethnic communities, particularly those in Central Asia, while also introducing institutions to control these communities.

Consequently, the political system under the 1936 USSR *Constitution* represented the USSR as a federation consisted of fifteen republics, each with its own constitution,[311] Supreme Soviet and Soviet of Ministers. The Supreme Soviet (parliament) is the heist legislation body exercised in all republics of the USSR.[312] It consisted of two chambers: the Soviet's Union and Nations Union,[313] which exercised the legislative power.[314]

The Soviet's Union was elected directly with the norm of one parliament deputy to three hundred thousand of habitants in the electoral districts, regions.[315] In case of the Nations Union, it was elected 32 deputies from each soviet republic and 11 deputies from each autonomic republic, 5 deputies from autonomic regions (*oblast'*) and 1 deputy from national district (*nacionalnii okrug*).[316] The universal, equal and secret suffrage starts of 18 years of age.[317]

The elections to the Supreme Soviet were held every four years.[318] Both Unions select a warrant commission frequently to check deputies' work.[319] The right to nominate candidates on the elections ensured to the public associations and workers societies, the detailed information about them mentioned below in the block Article 126.[320] Every parliament deputies responsible before their voters and have a risk to loose a seat in the Supreme Soviet by voters' majority decision on recall the deputy.[321]

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[308] Konstit. SSSR (1936), Art. 3.
[309] Nekrasov, *Const. Law* (2012), 43.
[310] *See*, Offcial Publication of the People's Commissariat of Justice of the USSR M. 1936.
[311] Konstit. SSSR (1936), Art. 16.
[312] Konstit. SSSR (1936), Art. 30, 57-63.
[313] Konstit. SSSR (1936), Art. 33, 37, 38.
[314] Konstit. SSSR (1936), Art. 32.
[315] Konstit. SSSR (1936), Art. 34.
[316] Konstit. SSSR (1936), Art. 35.
[317] Konstit. SSSR (1936), Art. 134, 135.
[318] Konstit. SSSR (1936), Art. 36.
[319] Konstit. SSSR (1936), Art. 50.
[320] Konstit. SSSR (1936), Art. 141.
[321] Konstit. SSSR (1936), Art. 142;

All laws pass reading process in both Unions.[322] In case of the disagreements inside Unions, the conciliatory committee, established by the Unions, considered some of the issues. If they did not find an agreement on reviewed issue or some of them were dissatisfied with results, each of the Unions review the law again. Even the last attempt to come to agreement will end with disagreement again, than presidium of the Supreme Soviet makes a decision to dissolve both Unions.[323]

The presidium of the Supreme Soviet, Soviet of ministers (*sovet ministrov*) and ministries were accountable to the Supreme Soviet.[324] The presidium makes an interpretation of the laws, dissolve Supreme Soviet and announce and held a new election during no more than in two months.[325] It also held a referendum. Finally, presidium withdraws decrees (*postanovlenie*) and orders (*rasporyajenie*) of the Soviet of Ministries.[326]

The Soviets of workers deputies are the local representative bodies in the land (*krai*), region (*oblastyax*), autonomous regions (*avtonomnix oblastyax*), divisions (*okrugax*), districts (*raionax*), cities (*gorodax*), villages (*selax*).[327] The local Soviets elections are held every two years.[328] Usually they ensure the protection of the state order, obeying the laws by people and functioning exclusively base on the Constitution of each republic.[329]

The Soviet of Ministries is the highest administrative state authority in the USSR and other republics.[330] The Supreme Soviet forms the Soviet of Ministries including to the membership Chairmen of the Soviet of the Ministries in the republics.[331] Any request from the Supreme Soviet to the Soviet of the Ministries should be reply within 3 days.[332] This means that the power of the Supreme Soviet had a great constitutional base that made a weak position of any ministries beyond people's representatives.

The local administrative authorities represent the executive committees selected by the local Soviets.[333] Their functions regulated by the Constitution of each republic and other regulations coming from the hierarchic stairs from top to down. The local administration is accountable to the local Soviets and Supreme Soviet.[334]

According to the 1936 USSR Constitution, the highest judicial authority exercised by the

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[322] Konstit. SSSR (1936), Art. 39.
[323] Konstit. SSSR (1936), Art. 47.
[324] Konstit. SSSR (1936), Art. 31, 48.
[325] Konstit. SSSR (1936), Art. 31, 54.
[326] Konstit. SSSR (1936), Art. 49.
[327] Konstit. SSSR (1936), Art. 94.
[328] Konstit. SSSR (1936), Art. 49.
[329] Konstit. SSSR (1936), Art. 97.
[330] Konstit. SSSR (1936), Art. 64, 79-88.
[331] Konstit. SSSR (1936), Art. 70.
[332] Konstit. SSSR (1936), Art. 71.
[333] Konstit. SSSR (1936), Art. 99-100.
[334] Konstit. SSSR (1936), Art. 101.

Supreme Court with assessors, excluding some cases provided by law.[335] The Supreme Court of the USSR, each republics and autonomous republics selected properly by the Supreme Soviet of each level every five years.[336] The 1936 Constitution ensure to the courts their independence and comply with Constitution and other laws.[337]

Turning to the constitutional provisions about basic rights and obligations of the citizens, makes this paper to focus on Article 125 and 126. According to Article 125, the workers interests and purpose to increase the socialistic order, citizens of the USSR ensured to realize:

a) Freedom of word;
b) Freedom of press;
c) Freedom of assembly and meeting;
d) Freedom of street demonstrations.[338]

According to Article 126, the workers interests and purpose to develop constructive self- and political activities of the people, citizens ensured to realize right to form associations: professional unions, cooperative associations, youth associations, sport and security organizations, cultural, technical and academic associations. The most active and conscientious of them enter to the CPUS and gain a leading status by implementing the core ideas of the communist society.[339]

The top position in the CPSU was General Secretary. The highest executive division of the CPUS was the CEC that selected by its periodic national congress of delegates from local government party organizations. The party system was 'single,' or in other words an only legal party existed in the USSR was Communist Party, which monopolized the state from inside of it.

Stalin had used the position of party secretary in 1930s, as he had been from 1922 and would be until 1953. He was characterized as the CPSU's supreme leader. The public image was like the Tsar. The way of keeping the balance in the CPSU, in the USSR during different conditions showed his regime with a low degree of legislative competence. Under his regime the USSR took the part in the WWII. After the freezing period, he was initiated the constitutional reforms that was later introduced in the 1977 USSR *Constitution*, also known as Brezhnev *Constitution*.[340]

The Communist Party did a great work
on development of the socialistic democracy
creating a strong socialistic legal base.[341]

Brezhnev (1967)

In 1978 the fourth RSFSR *Constitution*, the last in the Soviet period was adopted, modeled on the 1977 USSR *Constitution*. This fourth *Constitution* proclaimed to build a liberal socialism by transforming the proletariat dictatorship to the all-people governing. It was the first time when

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[335] Konstit. SSSR (1936), Art. 102-103.
[336] Konstit. SSSR (1936), Art. 105-107.
[337] Konstit. SSSR (1936), Art. 112.
[338] Konstit. SSSR (1936), Art. 125.
[339] Konstit. SSSR (1936), Art. 126.
[340] Medushevsky, Andrey N. *Russian Constitutionalism: Historical and Contemporary Development* (Routledge, 2006), 188.
[341] Speech on the 50th Aniversary of the Great October Socialistic Revolution (1967).

Constituton of the USSR have introduced a new chapter called "Foreign Policy," that was interpreted as pacific policy provided by communist party under the leadership of Brezhnev,[342] and was imbued with the ideas of internationalism.[343]

Comunist Party, which decisions were always grasped by absolute majority, guided the political system in the USSR.[344] The Communist Party was renamed to the Communist Party of the Soviet Union and still kept Article 6 with provisions about the leading role of the party.

A significant place in nation-wide discussions took the topic about citizen's rights regulations, including social, economic and civil rights and freedoms along with catalog of obligations before the government, people.[345] This was reflected in several rounds of amendments until the *perestroika* period began in 1985.

36 USSR constitutions (15 union republic constitutions; 20 autonomous republic (ASSR) constitutions and one all-union (USSR) constitution)[346] were adopted between October 1977 and June 1978. The promulgation of these documents was a signal of the finished societal transformation and started a rapid law reform program.[347] Many studies illustrate and examine the differences between the 1936 and 1977 USSR *Constitutions*,[348] as well as the differences among the union republic constitutions.[349]

The enactment of the 1977 USSR *Constitution* signaled the acceptance of the State as the people. Article 2 established the popular sovereignty and legislative supremacy by giving the all power to the people who exercise it through Soviets of people's deputies. The right to draft bills had exclusively the Supreme Soviets of the USSR and the republics or realized through the referenda.

The 1977-78 constitutions had some distinguishes between the constitutional or basic laws. It was officially titled as fundamental law, implying the superior status. Many western scientists,

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[342] *Цунэо Инако, Кадзутака Сугиура и Кацуя Ичихащи* (Tsuneo Inako, Kzutaka Sugiura and Katsuya Ichihashi), Всенародное обсуждение проекта Конституции СССР (Nation-wide Discussion of the Draft Constitution of the USSR), "Известия» Советов депутатов трудящихся СССР 5 июня № 132 [Izvestiya] (Periodicals of the Soviet Workers Deputies of the USSR, June 5 No. 132) (1977), 3.

[343] Izvestiya No. 132, 4.

[344] Izvestiya, No.132, 6.

[345] Izvestiya No. 132, 3.

[346] Translated texts of 36 constitutions can be find in W.E. Butler, *Collected Legislation of the USSR and Constituent Union Republics*, Dobbs Ferry, New York 1980.

[347] Butler, W.E. "The Autonomous Republic Constitutions in the USSR," *Review of Socialist Law* (Sijthoff & Noordhoff, Alphen aan den Rijn, 1981), 335-346.

[348] See more Kavass, I.I. & Christian, G.I. "The 1977 Soviet Constituion: A Historical Comparison," *XII Vanderbilt Journal of Transnational Law* (1979), 597-662; Osakwe, C. "The Theories and Realities of Modern Soviet Constituional Law," *CXXVII University of Pennsylvania Law Review* (1979), 1350-1437; Ramundo, B.A. "Brezhnev Constitutionalism: a New Approach to Constitutionalism?," *XII Journal of International Law and Economics* (1978), 41-108; Sorokowski, A. "The 1977 USSR Constituion: a Document of Social, National and International Consolidation," *I Hastings International and Comparative Law Review* (1978), 325-366; Konstit. SSSR (1978).

[349] Butler, W.E. "The Autonomous Republic Constitutions in the USSR," *Review of Socialist Law* (Sijthoff & Noordhoff, Alphen aan den Rijn, 1981), 335-346.; Cf. Simons, W.B. "Survey of USSR and RSFSR Legislation: 1 July 1981~30 June 1982," *Review of Socialist Law* (Nijhoff Publisher, 1983).

however, argued that this implication was just a technical distinction. The USSR had a single party system. The 1977 USSR *Constitution* refers to the different normative acts such as constitutional laws, basic laws, decrees, regalements (governing internal procedures), and statutes (*polozhenie*). All normative acts, which are lower in the status than constitution, are the instruments that could help to make amendments and changes in the soviet constitution.

The elective State bodies in the USSR were a great improvement in Soviet law. The supreme soviets in the whole USSR were elected for a five-year term. All inferior soviets were elected for a two-and-half year term. Candidates from the CPSU, trade unions, the Komsomol, military units, and other social organizations had the right to be nominated. On March1979 were the elections of the USSR Supreme Soviet.

Consequently, this section of the paper analysed the political system and constitutional changes during the Soviet period, where were designed four constitutions under the Comunist Party and their leaders with different investigations. The 1918 *Constitution* of the RSFSR introduced the achievements of the October Revolution. The 1924 *Constitution* of the USSR reflected social changes as a result of establishing of the USSR. The 1936 *Constitution* of the USSR was blossomed with the leading idea about socialism. Finaly, the 1977 *Constitution* was logical continuation of the progressive development of the socialistic society.

Basicaly, during the soviet period was formed the first communist society without class divisions.[350] The Soviet desire to engage with constitutionalism even during Stalinism. In light of the attempts to proclaim dictatorship of the proletariat, the Soviet constitutionalism created some essential controlling instruments over the public authority. The question was in possibility of creation equal conditions for all representatives from different republics with different nationalities and religion under the communism. Defiantly, the supervised regime where no plurality of political opinion or ideology was allowed than Communistic was strong. The feature of governors repeatedly showed the same scenarios. The struggle against the state policy or the governor, which came from the workers and peasant also impossible, as political parties' protection was impossible even with revolutionary experience.

3.1.3 Russian Constitutionalism in Post-Soviet Period

I fought to the last bullet for
the preservation of the Soviet Union.[351]

Mikhail Gorbachev (2008)

In the late 1980s the speeding-up and intensification policy on development emerged as a

[350] Izvestiya No. 132, 3.
[351] "Познер" (Pozner), with Владимир Познер (Vladimir Pozner) and Михаил Горбачев (Mikhail Gorbachev), in *1tv.ru*, December 1, 2008.

new political way of, introduced by Mikhail Gorbachev.[352] This marked a step of social movement into the civil society based state. Gorbachev succeeded the position of the Chairman of the CPSU (later President) in 1985 until the end of 1989. The speeding-up process was called by many sources as the *perestroika* process. Two both terminologies have their own nuances. The mission of the speeding-up process on development was in intensifying the speed of economical and political changes under the legal reforms, new projects, new employment system or even more new moral codes in the society (prohibition the usage of the alcohol). The mission of the *perestroika* was to change the political system and ideological values of the regime to the new one, which was not the purpose of the Gorbachev at the first two years of his position,[353] but was gradually turned to the later mission.[354]

It was held in the frame of the 1977 USSR *Constitution*. All 36 USSR constitutions repeatedly were amended. Those amendments make started the transition from autocratic regime to democratic. The most recent stage in the flowering of Russian constitutionalism was about to begin with the emergence of presidential constitutionalism, echoed in various forms in many post-Soviet states including Russia. This is flawed version of constitutionalism, however, fails to impose sufficient responsibility on the people generally to maintain democracy. It does not create full complete separation of powers. This constitutionalism leaves too much power in the hands of the President.

The 1980s known as period when Gorbachev's agenda aimed to bring back socialism to Russia through establishing of realignment (*perestroika*)[355] and 'voicesness' (*glasnost*), and strong legislation.[356] This period has opened a new way of looking at the political changes and constitutional development in the State as well. The liberalization process of the Soviet system was viewed as the example of the role of ideology in human affairs with some routine in its implementation.

Constitutional review policy was also one of the aims of Gorbachev policy. Soviet scholars supported the idea about constitutional review of the laws may prevent executive authorities from violating fundamental rights protected by *Constitution*. To achieve this goal faster, constitutional

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[352] *Собчак, А.А.* (Sobchak, A.A.) Жила была КПСС (Once Upon a Time There Was the CPSU) (ed. Sobchak.org, Sant-Petersberg and Moscow), http://sobchak.org/rus/books/Kpss/4.html (accessed December 24, 2013).
[353] Sobchak, "Политический Пунктир (1985-1991)" (Political Peched Line (1985-1991)) in *Once Upon a Time There Was the CPSU*.
[354] *Горбачев, Михаил* (Gorbachev, Mikhail). Перестройка и новое мышление: для нашей страны и для всего мира (Perestroika and New Thought: For Our Country and For the All World), Politizdat, 1988.
[355] Trans. by Ilkhamov (2004), 160: *Perestroika* – realignment.
[356] Trochev, Alexei. *Judging Russia: Constitutional Court in Russia Politics 1990-2006* [Judg. Rus.] (Cambridge University Press, 2008), 57.

scholar introduced opinion to empower the Supreme Court to make a constitutional review.[357] In 1988, Gorbachev approved new constitutional amendments, and the USSR Constitutional Supervision Committee (CSC) was established.[358] According to the amendments to the Constitution in 1988, the members of the committee were elected to the ten-year term.[359] The creation of a new CSC, which was an equivalent of a constitutional court, gained a great power to ensure strict compliance of the laws and regulations by executive authorities with the 1978 *Constitution*.

Continues conflicts of ideas between the Republics weakened the constitutional review power granted to the CSC.[360] The CSC began it work only in 1990, when the USSR Supreme Soviet elected members to the committee. Most of the members were professors from the universities, lawyers who did not have any political interest. In spite of the facts that the Communist leaders approved members, the CSC had a function to review regulations by CPSU. According to the constitutional amendments all judges were to be elected by local, republican and national deputies for a period of ten years. The true effectiveness of the CSC functions, however, showed only the slight change in the judicial system.[361]

Many disputes around parliamentary supremacy and Constitutional Court supremacy were put into a discussion at the 2nd Congress of People's Deputies in the fall of 1990.[362] Among all ideas the most interesting were about American model of presidential republic with institutional separation of powers among three chambers.[363] This idea was most popular and feet to the constitutional framework of Russia. Moreover, Yeltsin ambitions about presidential throne expected exactly the same scenario. Consequently, the hybrid style of the independent and prop residential Federal Constitutional Court (FCC) was established in 1991.[364]

By mid-1991 Moscow was losing control over some republics, in which political parties (unauthorized) emerged for the first time, and local elections were held – this included Uzbekistan. Moscow was in the fact that the USSR already lost the control and it must be to accept a limited number of secessions (Caucasus and all Central Asian countries, Estonia, Lithuania, Ukraine, Latvia, Belarus, Moldova). Gorbachev was not aiming for the collapse of the USSR; he was for make to

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[357] *Кудрявцев, Владимир* (Kudriavtsev, Vladimir) Правовая система: пути перестройки (Legal System: The Ways of Perestroika), Pravda, December 5, 1986, 3.
[358] Trochev, *Judg. Rus.* (2008), 58.
[359] Закон СССР об изменениях и дополнениях в Конституцию СССР 1978 [Law on Amendaments and Additions to the Constitution of the USSR of 1978], 1988 in *Отечественная конституционная юстиция (1988-2010)* [Otec. Const. Yustic.] [National Constitutional Justice] (Wolters Kluwer, 2010), 1118, Art. 125.
[360] Trochev, *Judg. Rus.* (2008), 59.
[361] Ibid., 60.
[362] Rudkin and Mikhail Miutiukov, from Eastern Siberia, supporters to establish the constitutional court.
[363] Trochev, *Judg. Rus.* (2008), Chapt. 4 and 5: Valerii Zorkin, chaireman of the Constitutional Court (1991-1993), reelceted twise to the court in 2003, 2005.
[364] Закон о Конституционном суде РСФСР [Law on Constitutional Court in RSFSR] of 1991 in *Otec. Const. Yustic.* (2010), 232-233.

leave some republics from USSR already as independent republics with their own economic development.[365] There were three mistakes that Gorbachev did: the first, he wished to make a reform in the CPSU, to change all members from bottom to the top, but he did not do it on time; the second, his main opponent during the perestroika process was Yeltsin (later the first president of Russia Federation). Yeltsin did everything to take the presidential post as fast as he could. His struggle for the power unbalanced the power of Gorbachev, who lately lost his supporters and his position as the president. He leaved the country to the hand of political chaos.

This means the FCC had function to check the constitutionality of federal and regional law and decisions of public authorities.[366] The judges to the FCC were elected by parliament with presidential proposal. After the Yeltsin's ban case of the Communist Party in 1991[367] the election proceedings of the candidates to the FCC became little manipulated by politicians.[368] This led to admit the fact that list of the candidates was politicized and brought to fail the Court power in 1993.[369]

Russian's Soviet constitutionalism ended in 1993. In December 12, 1993 the citizens of the RF of full legal age were called to significant political events on two issues: first, a referendum regarding an adoption of a new *Constitution* of Russian Federation and at the same time called an election to the State Duma and Federation Assembly. [370] This 1993 *Constitution* compared with the past constitutions represents interests of all people, not those of particular classes. The Russian *Constitution* has superior legal effect and no other law can contradict it, except international law and agreements.

More than 57 percent from 54 percent of all participated citizens voted for the ideas on both issues.[371] "The *Constitution of the Russian Federation* was adopted on December 12, 1993. The *Constitution* came into force on the day of its official publication. The text of the document was published in Russia Newspaper (*Rossiiskaya Gazeta*) on December 25, 1993."[372]

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[365] "Познер" (Pozner), with Владимир Познер (Vladimir Pozner) and Михаил Горбачев (Mikhail Gorbachev), "Монополия на истину, на политику и идеологию опасна для страны" (Monopoly of Truth, Politics and Ideology is Dangerous for the Country) in *1tv.ru*, http://www.1tv.ru/prj/pozner/vypusk/7761 (accessed December 24, 2013).
[366] Trochev, *Judg. Rus.* (2008), 66.
[367] Yuri Feofanov, *The establishment of the Constiutional Court in Russia and the Communist Party Case* (The National Council for Soviet and East European Research, 1993), http://www.ucis.pitt.edu/nceeer/1993-808-02-Feofanov.pdf (accessed Deember 24, 2013).
[368] Trochev, *Judg. Rus.* (2008), 71.
[369] See *Витрук, Николай* (Vitruk, Nikolai). Конституционное правосудие в России: 1991-2001 гг. (Constitutional Justice in Russi: 1991-2001), 2001.
[370] Сборник законодательства Российской Федерации [SZ RF] [Collection of the Laws of the Federation of Russia], 1994, No. 1, 1.; 2009 No. 4, 445.
[371] Nekrasov, *Const. Law* (2012), 45.
[372] Конституция Российской Федерации [Konstit. RF] [Constitution of the Federation of Russia] 1993, http://www.constitution.ru/en/10003000-01.htm, available in English http://www.constitution.ru/en/10003000-02.htm (accessed September 29, 2013).

The strong ethnic origins of the *perestroika* process is reflected in the words found in the 1993 Russian *Constitution*; "(t)he bearer of sovereignty and the only source of power in the Russian Federation must be its multinational people."[373] This means citizens of a particular territory, or a particular group who participated in the elections, and made legal protests against the old state regime, cannot be targeted under post-Soviet constitutional law, which establishes democracy.[374]

The content of this 1993 *Constitution* compared with other previous instruments, was based on a France (presidential system) and German (political parties control system) models. Democratic principles such as pluralism and multiparty representation, separation of powers were adopted in the 1993 *Constitution* and the socialist was strongly rejected. The monopolization of power by one particular political association was prohibited. Human rights were given top priority and more protection than before. People with different issues can struggle for their rights through democratic institutions such as judicial bodies, including CC RF on the national level, and European Court of Human Rights on international level. On this issue, the 1993 *Constitution* introduced a special *Chapter on Rights and Freedoms of Man and Citizen* (Articles 17-64).[375]

Russian election system was completely changed on the constitutional level. First, the presidential office was established as the highest position in the country.[376] Second, a bicameral parliament with representative chamber - Congress of People's Deputies - and legal chamber, the Supreme Assembly of the RF was established.[377] Last, a new judicial institution in the form of the Constitutional Court was also established as the main protector of the *Constitution*.

Procedures of amending and changing the 1993 *Constitution* were notably difficult. This is clear from the financial and procedural aspects. Looking from the financial aspect, provisions related to constitutional order, human rights and freedoms, constitutional amendments may be amended only by adopting a new *Constitution*. This can be done through a referendum. Another way would be using the democratic institution of the Russian Parliament, which would also be difficult and unpredictable. The second, procedural aspect shows that a limited number of offices and institutions such as the President, the Parliament, including regional bodies, and the Federal Government – which means the ministries included in the Cabinet - can initiate a bill.[378]

The intention behind this apparently difficulty in amending and changing the *Constitution* was to ensure the stability of constitutional provisions, political and legal stability, and preserve the basic constitutional order of the country. At the same time, there is no guarantee of stability in provisions of other constitutional laws, which should correspond word for word to the *Constitution*.

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[373] Konstit. RF (1993).
[374] Trochev, *Judg. Rus.* (2008), 29.
[375] Avakian, *Const. Rus.: N.E.M.* (2nd ed. 2000).
[376] Konstit. RF (1993), art. 81, part 4.
[377] Konstit. RF (1993), art. 96, part 4.
[378] Nekrasov, *Constit. Law* (2012), 77-78.

Constitutional laws play a role of the democratic instrument to amend, change or add the *Constitution* without high cast to the state, as during the referendum.[379]

3.2 Present Legislative Framework: Constitutional and Other Regulations

Modern constitutionalism in Russia protects pluralism - participation in political process - but still doesn't adequately protect freedom of association in ALL circumstances - some exceptions remain, for example ethnic and religious political parties. Russian Federal Constitutional Court (FCC) has unusual granted power that did not exist previously in the old constitutions. This court able to supervise the Presidents decrees and the Duma laws, as well as the constitutionality of provisions about political parties.

All state bodies are required to protect the *Constitution* without any exceptions, but FCC plays the leading role, which is a specific judicial body charged with checking constitutionality. RSFSR based on the Austrian constitutional model in 1990 introduced this constitutional checking function.[380] The RSFSR was the first republic in USSR to established constitutional checking. It was then reproduced in other republics, such as in Uzbekistan in 1995.

The status of FCC was provided for in the 1993 *Constitution RF*,[381] but the basic legislation regulating all details of its functions are written in the 1994 *Federal Constitutional Law on Constitutional Court of RF*.[382] It is the first law in Russian history to introduce constitutional procedures on protecting the Constitution. Since 1990, the status of FCC has been somewhat diluted through amendments and additions and a case involving President Yeltsin.

The FCC judges elected to the term continuing until the age of 70 years old. This term before the amendments was limited to 15 years. The FCC consists of 19 judges nominated by the Federation Assembly with candidates chosen by the President.[383] The Parliament, Courts, and Ministries can also suggest candidates for the position of constitutional judge. The Constitution stipulates that the majority of judges should be popular scientists and lawyers, with other minimum criteria such as being a citizen of RF, no less than 40 years old, with highest law education, and practical experience in the legal sphere of no less than 15 years, with a perfect reputation.

The FCC can review the questions on constitutionality of the laws and regulations giving his interpretation with 1993 *Constitution*.[384] The grounds to review requirements, complaints must

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[379] Cf. Ibid., 47.
[380] Ibid., 90.
[381] Konstit. RF (1993), art. 125.
[382] Ibid.
[383] Konstit. RF (1993), art. 82, 83, 125, 128.
[384] Закон о конституционном суде [Zak. KS] [Law on Constitutional Court] 1994, Art. 21 in Otec. Const. Yustic (2010), 618.

be unclearness of the provisions that questioning their constitutionality.[385] The President, the Federation Assembly, the State Duma, the Federal Government, the Supreme Court, the High Arbitration Court, legislative and executive bodies of the subjects of RF have the right to file a motion on checking constitutionality of the laws and banning political parties to the FCC.[386] The FCC rejects to hear the case if no constitutional issues required.[387] The FCC can merge cases with the same subject of the issue.[388] All decisions by the FCC must be open to the public.[389]

3.2.1 Constitutionality of Political Parties under the 1993 Constitution

Turning to a detailed examination of how modern Russian constitutionalism is generally sound but fails to protect freedom of political association in some circumstances. The main sources of constitutional law in Russia include the *Russian Constitution*, federal constitutional laws and federal laws, [390] laws on amendment to the *Constitution*, laws of other republics that are part of the Russia, decrees of the President, decisions of the Russian Government,[391] decisions of the Federative Assembly and State *Duma*.[392]

Interruption to the economic and political sphere of citizen's lives by state bodies' is prohibited by the 1993 *Constitution*. It regulates the political system of society according to the principle of political change being effected through free initiation by citizens. Any attempts to suppress that initiation, for example, the initiation to form a public association by administration bodies must be recognized as limitation of citizen's rights and freedoms, which is unconstitutional. The rights and freedoms may be limited only by decision of the court and base on the legislation of the State. [393] The 1993 *Constitution* proclaims, from one side, the principle of separation of power; from another side, ideological and political diversification or pluralism as an essential principles of Russian constitutional order.

This principle of constitutional order includes constitutional rights such as freedom of conscience and religion, freedom of speech and ideas, freedom of information, freedom of association – including specific provisions on the freedom to meet, demonstrate, and protest.

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[385] Zak. KS (1994), art. 36.
[386] Zak. KS (1994), art. 84.
[387] Zak. KS (1994), art. 43.
[388] Zak. KS (1994), art. 48.
[389] Zak. KS (1994), art. 78.
[390] Konstit. RF (1993), art. 76, parts 1, 3.
[391] Konstit. RF (1993), art. 90, part 1.
[392] Konstit. RF (1993), art. 102, part 2; art. 103, part 2.
[393] Постановление Конституционного Суда РФ "По делу о проверке конституционности Указа Президента Российской Федерации [Postan. KS] [Decision on Checking the Constitutionality of the Decree of the President of RF by the CC of RF] October 28, 1992, No. 1308 'О мерах по защите конституционного строя Российской Федерации' [on Measures for Protection of the Constitutional Order of RF]" February 12, 1993, No. 3-P in *Ведомости СНД и ВС РФ* [Vedom. SND & VS], 1993, No. 9, 344.

Ideological persecution is prohibited officially in the sphere of science, religion, and art. Public associations, mainly political parties plays a significant role base on the ideological pluralism as public associations.

Under the 1993 *Constitution* only those officials appointed to do so can be a part of constitutional procedures. These include a person who has special status such as the President, a parliamentary deputy, a voter, an election observer, judges of the Constitutional Court and others.[394] The status of legal entities[395] such as political parties, public associations, election committees, state bodies and local authorities also regulated by constitutional enactments. These institutions of civil society help to tie the relationships between government and person. The 1993 *Constitution* protects the equal rights of political parties and groups, including municipal bodies, candidates for electoral positions, political parties, and public associations. However the mechanisms in Russia for enforcing this equality are weak.[396]

Constitutional law is the most politicized sphere of law. Politics gradually became the issue of the constitutional law in Russia.[397] Constitution has different mechanisms how to influence to the society and relations inside of it. The legislation regulating election procedures includes some prohibitions related to how to hold canvass. The specific characteristic of the method of constitutional regulation in Russian consists in the next order. Hardness and imperiousness is the main first specific character of Russian constitutional regulation. It is difficult to underline only constitutional law as regulator of the fundamental principles and rights of a person, public associations and other public institutions in Russia.

Turning on to the detailed examination of the constitutional provisions about political freedoms of people and public associations, the next comes Article 1 of the 1993 *Constitution* saying:

> "1. The Russian Federation – Russia is a democratic federal law-governed State with a republic form of government."

This provision says about new terminology for Russia state "democratic" that never existed before. This terminology comes from the general structure of the *Constitution* that includes democratic instruments and separation of power of three branches, pluralism, multiparty system and other bestowed protected by law. Also, the definition "democratic federal government" identifies the regime or constitutionalism adopted by the state and the procedures of control constitutional order through the judicial mechanisms.[398]

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[394] Nekrasov, *Constit. Law* (2012), 28.
[395] Гражданский кодекс Российской Федерации [Grajd. Kod.] [Civil Code of RF] 1994, Part 1, art. 48, parts 1, 3; art. 61, part 4; art. 65, part 1; art. 117, parts 1-3.
[396] Nekrasov, *Constit. Law* (2012), 29.
[397] *Степанов, И.М* (Stepanov, I.M.). Конституция и политика (Constitution and Politics), Наука (Science), 1984.
[398] Cf. *Лазарев, Л.В.* и *Зорькин, В.Д.* (Lazarev, L.V. & Zor'kin, V.D.). Комментарий к Конституции

Article 2 ,

> "Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State."

This provision includes the word "obligation" that can be met only once in the Constitution. All public authorities are obliged to protect fundamental rights and freedoms. Also, there is line between the obligations and values that must be always be considered in all cases. This means that the natural sense of the bestow rights by all public authorities increase the respect to the rule of law and human dignity.[399]

Article 13,

> "1. In the Russian Federation ideological diversity shall be recognized.
> 2. No ideology may be established as state or obligatory one.
> 3. In the Russian Federation political diversity and multi-party system shall be recognized.
> 4. Public associations shall be equal before the law.
> 5. The creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited.

Part 3 of Article 13 guide Russian state how to guarantee the equality for political parties and ensure the respect of the rights and legal interests. The natural difference of opinions always exists in society. These different views create conditions for establishing new political parties. Another essential criterion for multi-party system is the legal guarantee of political competition. Base on this competition, the space for debates in the parliament opens for more than one political party. Multi-party system expects the possibility for changing a ruling party by another one or opposition.

Article 14,

> "1. The Russian Federation is a secular state. No religion may be established as a state or obligatory one.
> 2. Religious associations shall be separated from the State and shall be equal before the law."

This provision declare that there is no a religion in the secular country that must be officially be a state religion. The principle of secularity can be ensured if the religion association doesn't interfere to the state work, and backwards. Russian constitution does not provide equality for all religion organization on political arena. Any attempts to create religion political parties prohibited by law and must be ban by the FCC. At the same time constitution guarantee the protection of freedom of faith and conscience under the specific laws.[400]

Article 15,

> "4. The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those

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Российской Федерации (Commentary to the Constitution of RF) [Comment. Const. RF], Eksmo, 2010.

[399] Cf. Lazarev & Zor'kin, *Comment. Const. RF* (2010).

[400] Lazarev & Zor'kin, *Comment. Const. RF* (2010); Judgement of the FCC of RF (2004), No.18-J; Федеральный закон о свободе совести и религиозных объединениях [FZ Svob. Sov. I Relig. Obed.] [Federal Law on Freedom of Conscience and Religion Association], art. 27, part 3 para. 3 and 4; art. 11 part 5; art. 9, part 1.

envisaged by law, the rules of the international agreement shall be applied."

According to this provision in 1998, the Russia had signed the *European Convention on Human Rights* (*ECHR*),[401] which provides a broad range of rights and freedoms, including freedom of association for everybody. According to Article 34 of the *ECHR*, public associations, including political parties can appeal to the European Court of Human Rights (ECtHR) on state legislation or action against the rights and freedoms specified in the *ECHR*. Another significant international document that Russia had succeeded from the USSR in 1973 was the *ICCPR*.[402]

Under both documents the freedom of association can be restricted. Under Article 11 (2) of the 1950 *ECHR* this freedom can be restricted if: the first, necessary in a democratic society in the interests of a national security or public safety; the second, for the prevention of disorder or; the third, necessary in the interest of public safety; the fourth, necessary for the protection of health or morals; the fifth, for the protection of the rights or freedoms of others. The same restriction of the 1966 *ICCPR* provided in Article 22 (2) additionally saying if restriction is necessary in the interest of public order. All those restrictions must be supported by law and proceed in a democratic way.

These two international documents became the base for protection of freedom of associations in the national level under the 1993 Constitution and the federal laws regulating public associations, including political parties. As a logical continuation of this provision come another, Article 17,

> "1. In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present *Constitution*.
> 2. Fundamental human rights and freedoms are inalienable and shall be enjoyed by everyone from

This means that all rights and freedoms must be under the control of the people and associations. Only they can ensure the protection of their rights through the rule of law. If not then the supremacy of the public authorities comes over the society and its values. Universally recognized rights have all people without exceptions and the law or decisions must explain their limitations legally and openly for public review.[403]

Article 19,

> "2. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned."

This provision develops the ideas about how necessary to understand equality of rights and freedom,

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[401] European Convention on Human Rights [ECHR] is an international agreement signed by the member states of the Council of Europe in 1950.
[402] International Covenant on Civil and Political Rights [ICCPR], Resolution 2200A (XXI), December 16, 1966 available in http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (accessed December 22, 2013).
[403] Lazarev & Zor'kin, *Comment. Const. RF* (2010).

their broad implementation, antidiscrimination conditions. Also this provision is compulsory for all regulations as a value, which measuring the equality and its freedom level.[404]

The 1993 RF *Constitution* has no special regulations on political parties, but only bestows the freedom of association. Article 30 regulates some of those freedoms in the next context,

> "1. Everyone shall have the right to associate, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.
> 2. No one may be compelled to join any association and remain in it.

This article does not directly provide the right to associate in to political parties. However, the right of association in this provision provides essential right to establish political party and to take part in its activities.

Article 55,

> "1. The listing in the Constitution of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as a rejection or derogation of other universally recognized human rights and freedoms.
> 2. In the Russian Federation no laws shall be adopted cancelling or derogating human rights and freedoms."

This provision recognize the fundamental rights of the person, and the list of this rights and freedoms must not be close. Even constitution not include all types of rights, but they must be ensure without doubt. It is not permited to adopt constitutional law, laws that limits any rights. Constitutional law can change the content of the constitution, which means all changes and amendment to the constitution. Even these amendement to the constitution must not derogate fundamental rights and freedoms.

3.2.2 The Federal Law on Political Parties (FLPP)

Following the main principles of the 1993 Russian *Constitution* such as freedom of associations, until 2001, procedures for establishing public associations, including political parties in Russia were regulated by the 1995 *Federal Law of the Soviet Union on Public Associations*.[405] Soon after, the *Federal Law on Noncommercial Organizations*[406] and *Federal Law on professional units, and rights and guarantees of their activities*[407] were adopted in 1996. Starting from 2001 into force comes the *Federal Law on Political Parties*[408] *(FLPP).*

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[404] *See* Judgments of the FCC of RF (1998), No. 7; (2004), No. 18; (2006), No. 16; (2007), No. 4, No. 11; (2008), No. 5; Decisions of the FCC of RF (1995), No. 126; (1997), No. 40; (2000), No. 276; (2003), No. 435, No. 415; (2004), No. 298; (2005), No. 361; (2006), No. 17.

[405] Федеральный закон об общественных объединениях [FZ Obsh. Ob'ed.] [Federal Law on Public Associations], May 19, 1995, No. 82-FZ (amended), http://i.garant.ru (accessed December 4, 2013).

[406] Федеральный закон о некоммерческих организациях [FZ NKO] [Federal Law on Noncomercial Organizations], January 12, 1996, No. 7-FZ (amended), http://i.garant.ru (accessed December 4, 2013).

[407] Федеральный закон о профессиональных союзах, их правах и гарантиях деятельности [FZ Prof. Soyuz] [Federal Law on Professional Unities, Their Rights and Activities Guarantee], January 12, 1996, No. 10-FZ, http://i.garant.ru (accessed December 4, 2013).

[408] Федеральный закон о политических партиях [FZ PP] [Federal Law on Political Parties (FLPP)],

The adoption in 2001 of a specific law regulating the subject of constitutional law such as political parties was due to the need for clarification of the role of political parties and their place among other public associations or institutions in civil society. It was obvious that the role of public associations should be distinguished from the role of the main actors in the political arena, namely political parties. Communism and democracy have very different understandings of the role of political parties.

Regulations about political parties are provided for in the *FLPP*.[409] A political party is required to be a public association with the purpose of participating in the political sphere through public and political activities, elections, or referenda, with the purpose of representing the interests of citizens in state and self-governing bodies. A political party that has no political goals prohibited to registered.

There are two regulating matters of the *FLPP* provided in the Article 1.[410] The first, guaranteed constitutional rights of association and freedom of activities in the form of political parties emerged by Russian citizens. This matter, however, can also include:

(a) the right to establish political party by free will and according to own belief;
(b) the right neither to enter political party or forbear from that;
(c) the right to take part in the activities of political party according to their charter;
(d) the right to exit from political party by free will,

which mentioned in Article 2.[411]

The second matter in Article 1, guaranteed features of establishing, activities, reorganization and dissolution of political parties based on pluralism in Russia.[412] This matter is not only about relations in the different conditions, but about:

(a) structure and territorial localization;
(b) usage of the name and symbols;
(c) dissolution procedures;
(d) internal structure, membership and governing divisions;
(e) rights and duties;
(f) usage of the property and relating to that activities;
(g) state support and financing, participation in elections and referenda.

The activities of political parties are multilateral, for this reason, there are many other laws regulate political parties activities. See more in the Section 3.2.3 of this paper.

Article 3 of the *FLPP* defines the meaning of the political parties, which is a public

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July, 11, 2001, No. 95-FZ (amended 2013), http://i.garant.ru (accessed December 4, 2013).

[409] FZ PP (2001), No. 95-FZ (amended 2013).

[410] Постановление Конституционного Суда от 15 декабря 2004 года № 18-П по делу о проверке конституционного пункта 3 статьи 9 Федерального закона “О политических партиях” в связи с запросом Коптевского районного суда города Москвы, жалобами общероссийской общественной политической организации “Православная партия России” и гражданин И.В. Артемова и Д.А. Савина; абзац третий пункта 3 мотивировочной части [Postan. KS] [Judgement on Examination of Article 9 Part 3 of the FLPP of the FCC of RF, December 15, 2004, No.18-J], art. 1.

[411] Postan. KS (2004), No. 18, art. 2.

[412] Section 3.2.1 of this paper.

association. The aim of this public association is active participation in the political life of society through the representation in the state bodies the will and interests of the people. Political parties participate in the referendum, parliamentary and presidential elections.

The requirements to political parties provided by law relates to their internal organization, in particular details on restrictions where criteria must be met – 1) not less than 42 regional divisions (50%); 2) 500 initiators; 3) warning/attention to the words in the name, symbols of party; 4) diversity of experts; 5) no divisions of political parties in the government bodies, local self-government, military forces, education institutions; 6) no activities of political parties in mentioned before state institutions; 7) no formation of political parties from foreign countries; 8) registration. The Supreme Court and the Constitutional Court of Russia have the power to use these limitations.

Specific characteristic written in Article 4 of a registered political party is its legal capacity in the political arena. Political parties may legally struggle for political power. They give a political education to their voters and members. Political parties build self-confidence of the people during exercising the rights and freedoms of speech, press and research. The *FLPP* divides the stages where political party realizes its goal as association.

According to the Article 6 of the *FLPP*, only political parties have the right to put forward a candidate in elections. Moreover, political party representatives elected to parliamentary seats can participate in the state governing process. All political parties must follow their own charters, the *Constitution* and other special laws (Article 7).

A political party can be formed and registered with a particular ideological platform, except a specific identification with a profession, race, nationality, or religion in the name of the party. One political party must not be made up solely of members with the same profession. The structure of a political party must be organized in a way, which can include experts from different spheres. One party must consist of no less than 40,000 members. Before January 1, 2012, the number was 45,000. Russian legislation prohibits registering religious political parties. Political associations that seek registration should be ‘All-Russian’, having regional branches in more than half of the republics in the RF, with no less than 400 members. Before January 1, 2012, the number was 450. In other territorial zones there must be no less than 150 members; before January 1, 2012, the number was 200.

The principles of voluntarism, equality, self-governing, legality and openness must guide political party in its activities. Base on these principles political parties must ensure the protection of rights and freedoms of all people (Article 8). It is prohibited to create political parties base on religion, nationalistic, racial and professional features because they makes barriers for protection equally multinational and confessional society in Russia (Article 9).

The Constitutional as well as FLPP guarantees protection of freedoms from interference of the public authorities (Article 10). For this reason the party membership of the President, Public

Prosecutors, Judges must be suspended (Article 10 (4)).

There is no need for permission if party wish to be created. The evidence of the legal creation of political party must be the decision of the party congress. After party was created, by organizational committee of the party (Article 12) must manage the registration procedures by the party as legal entity (Article 11).

State registration must be done during 6 months from the date of its creation according to Article 15 of the FLPP and of the 2002 Federal Law on State Registration of the Legal Entities and Individual Entrepreneurs under the order of the Federal Government. Other regional divisions of the party may be registered during 6 months after party registration. After registration political party must receive in one month a document as evidence for proceedings at the court.

The Ministry of Justice may suspend the state registration with motivation letter about grounds for suspension, missed documents necessary for registration. When procedures are fully completed in one month by political parties and there are no more reasons of suspension, registration may be successfully complete. Otherwise the MoJ decide on rejection to register.

For registration procedures political party must introduce to the MoJ all personal information of the registering person, paid bill of the registration fee and contact information of the party office. Information regarding registration or dissolution of political party must be publicly open (Article 19). This means the Federal Ministry of Justice must update information every year about registered, rejected to register and suspended to register political parties with all grounds (Article 20).

Basic ground for rejection to register political party according to the FLPP must be: statutes of the party, name and symbols of the party that contradicting to the constitutional provisions, also absence of necessary documents and reports about party, violation of the deadlines for introducing documents to the public authorities, and all other grounds disturbing to register. Political parties may file all decision on registration to the court.[413]

The state financial support is ensured by the FLPP. There are different categories of the state support. The first support ensures the access the main mass media and giving time on the state channels. The second is ensuring using of the state property, buildings for the political aim of the party. Also political party must receive a financial support if the presidential and parliamentary

[413] Cf. *Воробьев, Н.И* и др. (Vorobyov, N.I. et al). Комментарий к Федеральному закону от 11 июля 2001 года № 95-ФЗ "О политических партиях" (Commentary to the FLPP of Russia), Система GARANT, 2013; *Григорьев, В.В* (Grigor'ev, V.V.). Комментарий к Федеральному закону от 11 июля 2001 года № 95-ФЗ "О политических партиях" (Commentary to the FLPP of Russia), "Деловой двор", 2013; *Юдина, А.Б.* (Yudina, A.B.). Комментарий к Федеральному закону от 11 июля 2001 года № 95-ФЗ "О политических партиях" (Commentary to the FLPP of Russia), Система GARANT, 2012; Научно-практический постатейный Комментарий к Федеральному закону от 11 июля 2001 года № 95-ФЗ "О политических партиях" (Commentary to the FLPP of Russia), "Право и жизнь", 2012, № 11 и 12.

election results no less than 3%: 20 RUB for each valid vote, and in spite of the elections results 5 RUB for each valid vote.[414]

Information about state finance must be regulated base on Articles 33-35 with all deadlines and necessary documentations. The procedures about participation in the election by political parties must be followed Articles 36-37 of the 2001 *FLPP*. The suspension and dissolution of the party and their deadlines must be proceeded base on the instructions in Article 38-44 of the 2001 *FLPP*.

3.2.3 Other Provisions Regulating Political Parties and Their Activities

In this section you can find other legislations that regulate mainly some restriction for political parties. For example, the 1995 *Federal Law on Public Associations* regulates all public association including political parties. This law defines types of public associations that are different with political parties base on their structure, membership, disciples and requirements.

Concerning the membership, the 1992 *Law on Judges Status* prohibit judges to be member of any political parties, to take part in any events and activities of the party, publicly make speech showing his relation to particular political party and their thoughts. Judges must not accept any honors and attention from political parties without permission of the Judges Committee.[415] The 1994 *Law on Constitutional Court* also prohibits the political party membership of constitutional judges and any connection with or through the political party. It must not represent the interests any political party or movement[416]

The 2012 *Federal Law on Education*[417] says that formation and activities of political parties, religious organizations (associations) in the state and municipal educational organizations is prevented.[418] The *Civil Code of the Russian Federation*[419] regulates the rights of the legal entities and their procedures on registration. The *Tax code*[420] reminds political parties about the registration fees and how much each regional division of that political party must pay: 2,000 RUB (equivalent to 60.105 US Dollars).[421] The *Labor Code*[422] regulates collective negotiations and making an agreement on behalf of the representatives of an employer, organizations or state bodies interests,

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[414] FZ PP (2001), art. 33-35.
[415] FZ PP (2001), art. 3 parts 2, 3 and 11.
[416] FZ PP (2001), art. 11, 29.
[417] Федеральный закон от 29 декабря 2012 года № 273-ФЗ "Об образовании в Российской Федерации" [FZ Obraz.] [Federal Law on Education in the Federation of Russia, December 29, 2012, No. 273-FZ] (amended), http://i.garant.ru (accessed December 4, 2013).
[418] Article 1 part 5.
[419] Гражданский Кодекс Российской Федерации от 30 ноября 1994 года № 51-ФЗ [GK RF] [Civil Code of RF, November 30, 1994 No. 51-FZ], Parts 1-4 (amended).
[420] Налоговый Кодекс Российской Федерации от 31 июля 1998 года № 146-ФЗ [NK RF] [Tax Code of RF, July 31, 1998 No. 146-FZ] (amended).
[421] Exchange Rate, Google.com (accessed December 4, 2013, 3:44 pm).
[422] Трудовой Кодекс Российской Федерации Кодекс Российской Федерации от 30 декабря 2001 года № 197-ФЗ [TK RF] [Labor Code of RF, December 30, 2001 No. 197-FZ] (amended).

which neither established or receiving a financial support from employers, executive bodies, local self-government bodies, political parties, except some occurrences regulated by Labor code.

The *Federal Law on Accounting*[423] according to Article 6 regulates a duty to make an accounting by any economic subject (part 1), including political parties (part 4.2). The *Federal Law on Presidential Elections*[424] regulates the candidates nomination to the presidential office and who can be nominated by political parties, participation in the elections."[425] The *Decree on Financial Report and Application Procedures of Political Parties*[426] stipulates provision about those legal entities, which made a donation transaction without any violations[427] to the political party.

The *Federal Law on Municipal Service*[428] says that municipal worker as head is obligated to not allow occurrences of compulsion of the municipal workers to participate in the political parties activities, other public and religious associations. The *Federal Law on Internal Body Affairs Service*[429] notes that it is prohibited to consist in the membership, financially support and take a part in the activities of political parties by the authorities from the internal body affairs. A public authority must not be bound with decisions of political parties and other public associations during public service.

The *Federal Constitutional Law on Referendum*[430] according to the *Federal Constitutional Law* (FCL) *on Referendum RF* allow the President to apply with request on checking the constitutionality of referendum and all materials related to this political event to the FCC. Also according to the federal and regional constitutional laws, President can voluntarily resign before the expiration of the term of office.[431] The FCC bases on Article 74, part 3 of the FCL makes dispositions and final conclusions only on stated and questioned constitutional matters by applicant.

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[423] Федеральный закон от 6 декабря 2011 года № 402-ФЗ "О бухгалтерском учете" [FZ Buh. Uchet.] [Federal Law on Accounting of RF, December 6, 2011 No. 402-FZ] (amended).
[424] Федеральный закон от 10 января 2003 года № 19-ФЗ "О выборах президента Российской Федерации" [FZ Vib. Prez.] [Federal Law on the Election of the President of RF, January 10, 2003 No. 19-FZ] (amended).
[425] FZ PP (2001), No. 95-FZ (amended 2013).
[426] Приказ Министерства по налогам и сборам Российской Федерации от 31 января 2003 года, № БГ-3-06/41 "Об утверждении формы свободного финансового отчета политической партии и порядка заполнения сводного финансового отчета политической партии" [Prikaz MNS RF] [Order on Approval the Form and Procedures for Filing Free Finantial Statement of Political Parties by the Ministry of Taxes and Duties, January 31, 2003, No. BG-3-06/41].
[427] FZ PP (2001), No. 95-FZ, art. 30, part 3 (amended 2013).
[428] Федеральный закон от 2 марта 2007 года № 25-ФЗ "О муниципальной связи" [FZ Munic. Svyaz.] [Federal Law on Municipal Communications, March 2, 2007 No. 25-FZ] (amended).
[429] Федеральный закон от 30 ноября 2011 года № 342-ФЗ "О службе в органах внутренних дел Российской Федерации и внесение изменений в отдельные законодательные акты Российской Федерации" [FZ Slujb. OVD I Vnes. Izmen. Otdel. Zak.] [Federal Law on Dervice in the Internal Affairs of RF and Amendments to Some Legislative Acts of RF, November 30, 2011, No. 342-FZ] (amended).
[430] Федеральный конституционный закон от 28 июня 2004 года № 5-ФЗ "О референдуме" [FKZ Referendum] [Federal Constitutional Law on Referendum, June 28, 2004, No. 5-FZ] (amended 2008), http://i.garant.ru (accessed December 4, 2013).
[431] Federal Constitutional Law on General Principles of the Organization of Legislative (Representative) and Executive Bodies of the Government of Subjects of RF, October 6, 1999, No. 184-FZ.

All these legislations are part of those regulations that control political parties through complicated and sometimes uncertain provisions. Some of these provisions were filed with motion on unconstitutionality to the FCC. However, not always the results of the hearing show clear interpretation and even more constructive proceedings by the FCC. For more information about some of the cases see section below.

3.3 Implementing Constitutional Review of Political Parties

Since the first half of the 2012, the amount of new established political parties have been increased, because of the increased political activities of the citizens. Up to December 10, 2013, MoJ of Russia registered 76 political parties.[432]

For example, there was a 2004 case on checking the constitutionality of Article 9, part 3 of the Federal *Law on Political Parties* about the types of restricted political parties in Russia.[433] The FCC declared the law and the provisions, which prohibit the forming and registering of religious political parties to be constitutional. There were two more cases on the same issue, which also were unsuccessful.[434]

The FCC declared in these cases that the RF is a democratic and secular country, where religious political parties cannot be represented on the state level. Summarizing the ideas behind the decisions of the FCC on this issue, the FCC reasoned that religious organizations must exist independently of political parties and be apolitical. The historical development of the RF should be recognized as multinational and confessional by nature. Political parties cannot be allowed to influence this aspect of Russia, as it will destabilize the constitutional order of the country.

The 2004 Case that examined below shows one example of how the FCC gives its interpretation about the constitutionality of particular type of political parties. The argumentation comes from historical analyses of the nature of Russian people who always lived among different nationalities with different believes and religion. For this reason, current legislation was viewed as most workable one to prevent any nationalistic and religious strives in the country.

3.3.1 The 2004 Case: Examination of the Constitutionality of Article 9 (3) of the FLPP

Soon after adopting the FLPP in 2001, the Congress of the "Orthodox Party of Russia" (OPR) – a Russia-wide public political organization[435] – made a *Decision on Reorganization to Political Party "Orthodox Party of Russia.*" The 2001 *FLPP* provides a provision that allows

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[432] Министерство Юстиции Российской Федерации (Ministry of Justice of RF), http://minjust.ru/nko/gosreg/partii/spisok (accessed December 10, 2013).
[433] Postan. KS RF (2004), No. 18-P.
[434] The cases of Russian Christian Democratic Party, Russian All-Nations Unity.
[435] Общероссийская общественная политическая организация "Православная партия России" (Orthodox Party of Russia is a Russia-wide Public and Political Organization).

political organization to reorganize into political party and register in the MoJ. Citizen Ilyukhina, member of the OPR, disagreed with that decision of the congress, because for registration political parties must not include any signs or labels emphasizing religious features of the organization in the name of the party. The OPR wished to leave the same name for political party including word "Orthodox." Ilyukhina decided to file a complain on canceling the decision of the congress, becase it violated Article 9 (3) of the 2001 *FLPP* in the part of requirement to the name of political parties. For this reason, Ilyuxina filed a complaint to the *Koptevskii* District Court in Moscow city to cancel decision of the congress that contradicting to the law. After reviewing the matter of complaint, District Court suspended the proceedings and sent a request to the FCC on matter of uncertainty of the Article 9 (3). At the same time citizen Sipachev, representatives of the OPR, filed a constitutional complaint to the FCC on the same issue as Ilyuxina.

Another citizen Savin, member of the Russia Christian Democratic Party (RCDP) applied to the MoJ documents for party registration, but received a decision on rejection to register. The MoJ motivated his decision with Article 9 (3) saying that provision prohibits to register political parties with words such as "Christian," because it emphasize the religious feature of the party and indicates the creation of political party base on the religious factors. After that citizen Savin filed a constitutional complaint to the FCC to cancel the decision of the MoJ, because it violates constitutional rights of freedom of association.

Third citizen Artyomov, member of the Russian Nation-wide Unity (RNU), also applied to the MoJ to register his party and received decision rejecting to register. The MoJ motivated his decision with Article 9 (3) of the *FLPP* and found in the name of the party a word "Russian," which indicates nationality, which includes the elements of nationalistic features of the party. This is violating the constitutional principles and requirements for political parties. After that citizen Artyomov filed a complaint to the Taganskii Destrict Court in Moscow city to cancel the decision of MoJ. The District Court judged that the decision of the MoJ was made according the *Constitution* and the *FLPP* and there is no need to cancel it. Citizen Artyomov disagreed with District Courts decision and filed a constitutional complaint to the FCC to cancel District Court's decision and the MoJ decision because they are violating the rights of freedom of association.

The 2004 *Case on Examination of Article 9 (3) of the 2001 FLPP*[436] was reviewed in open session[437] by 10 Justices of the FCC of Russia by Chairman Justice Jilina, Justice Baglai, Justice Danilov, Justice Jarkova, Justice Zor'kin, Justice Kazancev, Justice Kleandrov, Justice Luchin, Justice Seleznyov and Justice Xoxryakova. There were several grounds to examine the provisions of

[436] Postan. KS RF (2004), No. 18-P.
[437] Konstit. RF (1993), art. 125 (4); Федеральный конституционный закон от 21 июля 1994 года № 1-ФКЗ "О Конституционном Суде РФ" [Federal Constitutional Law on Constitutional Court of RF, July 21, 1994 No. 1-FKZ], art. 3 (1.3, 3, 4), art. 22 (2.3), art. 36, art. 74, art. 86, art. 96, art. 97, art. 99, art. 101, art. 102 and art. 104.

the 2001 FLPP. One was a request of the District Court and three constitutional complaints.

All these cases questioned the constitutionality of same provisions of the *FLPP* that makes difficult pass the registration process thought the MoJ that makes impossible to register political parties and fulfill the constitutional right to associate. They argued that the provisions of the FLPP contradicted to constitutional provisions in Article 19 (2) freedom of association, Article 30 (1) principle of equality, and Article 13 (5) grounds for banning the creation and activities of public associations. For this reason, they asked the FCC to examine Article 9 (3) of the 2001 *FLPP* and give an interpretation of the contradicting parts.

The FCC heard all above complaints in one proceedings making one case on checking the constitutionality of Article 9 (3) of the *FLPP*. The FCC reminds sides that it will make a judgment only on the constitutional issues, but not making a judgment on cancellation any decisions made by particular public authorities or judges. The FCC started its examination and interpretation of Article 9 (3), saying that:

> "it is not admitted the creation of the political parties with professional, racial, nationalistic and religious features"[438]

The professional, racial, nationalistic and religious features are indicators of something narrow like profession, race, nationality and religion. This kind of indicators in the charter, program and name of a political party are prohibited. Because, they emphasize clearly the interests of the party to express political will of the people from particular professions, race, nationality and religion.[439]

According to the *Constitution* Article 30 (1) – right to associate, Article 1 (1) – democratic state, Article 2 – values of the people, Article 13 (5) – prohibited political parties, Article 14 – religious organizations – all these rights must be protected, but with respect to other rights and freedoms, constitutional order and moral code. These provisions were designed on the constitutional principles such as rule of law, democracy; freedom of association; freedom of activities by public associations, including political parties. The purpose of designing such principles was to ensure protection of the people's interests and freedoms for safe and peaceful society. These constitutional principles were modeled base on the provision of the *ICCPR* – Article 22 (1) and the *Convention on Protection Human Rights and Fundamental Freedoms* (*CPHRFF*) – Article 11 (1), in particular every person has the right for free association with others.

The FCC mentioned that Article 30 of the *Constitution* provide the right of association, but with support of general principles provided in Article 1, 13, 15 (4) – international law and fundamental principles, Article 17 – rights and freedom of other people, Article 34 – protection from monopolization. These provisions guarantee the right of association without monopoly by one religion, nationalistic party, without violation of other rights and freedoms. They protect the right to create and register political party too. Moreover, the FCC argue that the guarantee of the

[438] FZ PP (2001), art. 9 (3).
[439] Postan. KS RF (2004), No. 18-P, Part 1.

representative democracy; ideological and political pluralism, without giving priority to any specific political party with nationalistic and religious identification.

The *Constitution* also provides the protection of the principle of separation of the state and religion. It protects the secularity of the state under Article 13 (1-4), Article 14, and Article 19 (2). For this reason, Article 13 (5) of the 1993 *Constitution* prohibits the creation and activities of political parties, which aims to: forcibly change of the constitutional system; violate the integrity of the Russia; undermine its security; sett up armed units; instigate social, racial, national and religious strife.

Also, the FCC reminds about Article 55 (3) of the 1993 *Constitution* that allows some limitations of the rights and freedoms to such extent, which is necessary to: protect of the constitutional system/order; morality of the people; health; the rights and lawful interests of the other people; ensure defense of the country; secure of the state. These provisions were also designed based on Art.22 (2) of the *ICCPR* and Article 11(2) of the *CPHRFF*, which prevents social disorder and violation; protect health and morality; the rights, freedoms and interests of other people. These international laws and the 1993 *Constitution* designed conditions to regulate legal status of political parties; conditions and procedures for creation political parties; principles for their activities; rights and duties; necessary limitations; grounds and procedures for their registration as legal entities. All these may allow relative limitations by laws.

Of course, says the FCC, legislative and executive authorities must not abuse the existing rights and freedoms of political parties. Their limitations through the laws and decisions must not create barriers for realization of the rights and freedoms of political parties. However, some limitations must be necessary to balance the social life in Russia where live different nationalities and confessions, where would be difficult to control extremist groups and nationalistic thoughts against the constitutional order. The 2001 *FLPP* provides a provisions about legalization of political parties passing some formal procedures, which are also designed base on the constitutional provisions provided in Article 1 (1), Article 3 (1, 2), Article 13 (3), Article 30 (1, 2); Article 36 (1), Article 2, Article 11(1); Article 23 (1, 10).

The representatives from many nationalities and religions on political arena must be protected if they are not indicating to them with symbols, words, and song. All nationalities and religious people can be member of political parties. There is no restriction to that case. The religious organizations under Article 28 and 30 of the Constitution with aims to fulfill the freedom of consciences, right to assembly with other religions and hold any events, ceremonies, spreading religion, their believes, education about religion, charity. must have status of religious organization. All clergymen may realize their rights as citizens and members of political parties. They must not to change their status to political party with the same content as religious organization, otherwise it will violate Articles 13, 14 (1, 2), 11, 12 of the *Constitution*.

In case of professional groups and political parties, which struggles for the seats in the parliament, government. They are also may be representatives of any political party as a member abut not as a majority or absolute majority members. The constitutional right to associate ensure to all nationalities to be involved into the political live of the country, but without indication to particular profession.

In concluding parts of the judgments, the FCC repeats about main values of the constitution: pluralism; multiparty system and secularity. These principles must be interpreted with consideration of the peculiarities of Russian historical development from the constitutional perspective, but not limiting with the context of national, religion, and racial and professional features. The preamble and Article 3 (1) of the 1993 *Constitution* underline the importance of the multinational and confessional state to democratic society in Russia.

Ways of exercising the principle of secularity in European countries (must be German) and Russia are different, mentions the FCC. The values and traditions relating to religion in European countries are on the level of common sense that always must be protected equally. In Russia, people have more dogmatic understanding of nationality and religion.

Russian politics are not ready to compete with each other, because of their lazy nature to understand each other on the sense of values and traditions that must be always be ensured by them. The indications to slogans, labels, words like Christian, Muslim, Russian, Tatar on the elections may lead to Russian democracy to the complete chaos. This risk of nationalistic, religion strives, and instability in the country, division people into different small and big groups, giving priority to one of them may bring back to the past of the revolutionist time. This means, that the violation of all recognized principle and fundamental rights may occur in a huge scale. To not allow these events to happen, present Constitution of Russia protects Russia society from risky political forces that comes to the political arena with their monopolistic ideology.

All procedures that were designed for political parties in the FLPP may be used by the MoJ when decides the question to register or not, to make that party legal or not. The MoJ base on its functions may ask political parties to make some changes in the documents, including in the name of the party in that way to protect everybody from negative consequences. All methods used by the MoJ to protect constitutional order from illegal political actions will not measured as violation of the rights and freedoms of associations.

Consequently the FCC made judgment on 2004 case in the next context. The provisions of Article 9 (3) of the *FLPP* are fully reflecting the constitutional principles of Articles 13, 14, 19 (1, 2), 28, 29 and do not violate any rights and freedoms of the people. The appellation of the District Courts' decisions and of the MoJ must be preceded according to the special federal laws on appellation, which is not the responsibility of the FCC according to Article 125 of the *Constitution* and Article 3 of the *Federal Law on FCC*.

3.4 Summary and Reflections

Constitutional development was always a product of struggle between particular social groups and classes in pre-revolutionary Russia. New political ideas against absolute monarchy were developed later in 18th century and continued until the 1917 revolution. In the struggle against absolute monarchy the most active were the *dekabrists*. They have played a great role in the challenging new movements that somewhere even brought to changes. This was a time when constitutionalism was not even used as a terminology.

The Russian constitutionalism in Soviet period was in the most centers of discussions, because the proletariat did everything to replace the bourgeoisie. When they gained the power, the representatives of workers and peasants under the Lenin's supervision designed one of the most powerful regimes called communism. This regime opened for many peoples new challenges under the Communistic Party. The Constitutions in the period of the USSR 1924, 1936, and 1977 were the reflection of the idea of welfare socialism.

Some reflections of the democratic principles were provided by the Constitutions. Among all freedoms and rights was the protection of the freedom of word, press. People were active as never before. They elected their representative Russian-wide Soviet Congress, which controlled almost all spheres and appointed ministers, courts. The role of the workers and peasants was absolutely high. The Constitutional ensured elections not only in the federal level but also in the regional in all divisions.

The interesting moment during the formation of the constitutionalism in the USSR was the intensive work among different republics unifying them under the labels "peoples' friendship."
Political system under the different communistic constitutions was in the form of federation, which consisted almost fifteen countries from Central Asia and Caucasus, the West side of the Russia. Each country include it representative bode and executive body which were responsible before the people for the whole power in the country.

The highest judicial body in the USSR was the Supreme Courts, which was elected on 5-year term. Even in the judicial system the role of the communist party was very high, because the nomination of the judges was by the decision of the Congress of the CPSU. The core role of the CPSU was reflected in the education system and academic sphere. Always demanded the high level of learning of theory of Marx and Engels. Everybody must know the main program of the Communist Party.

When Stalin came to the power began another regime of the communists, sometimes with repressive views, sometimes with reformists' views. Under Stalin's regime the Central Asian countries were clearly divided, but mixed in the content. Many Russians, Tatars, Uzbeks and Tajiks lived in the territories of each central Asian country. His program of internationalization aimed to

keep people in ties. Because when they're many different nationalities and people with different confessions then there are less assemblies and unifications, less opponents to the existing regime.

Post Soviet Constitutionalism was famous with two main people Gorbachev and Yeltsin. They were those who divided the idea about democracy into to sides. The Gorbachev's democracy existed in the form of the communistic republic but with protection all fundamental rights where people having those rights could feel the responsibility for their activities. Yeltsin's democracy emphasized the possibilities to gain the power and caring on the people by one democratic tsar. This was impossible to imagine, but after the collapse he showed how it works well.

Present regime of Russia shows the really passive and really active not happy with life in the country people. Even there were establishes many democratic institutions this country passing now the time when everybody wants to be heard. The common fear about future with current France regime of the presidential power can be met with new and more difficult problems that may led to new revolutions.

Chapter IV: Legal Framework Regulating Political Parties in Germany

4.1 Historical Development from a Constitutional Perspective

Germany locates in the center of the Europe, which makes it a pivotal state from the German Empire period. This means that the military strength or militarism was a natural tendency from that period. Germany constitutionalism has been influenced by democracy ideas from the West and autocracy from the East, depends on the period of time and geographical location.

Historical path of the constitutionalism relates to dominate German discourse about such key concepts as unity or liberty. In simple terms the unity and liberty question is the issue of the proper distribution of power between the people and the throne.[440] These concepts persisted for almost two centuries, from August 6, 1806, when Franz II, the last Emperor of the Holy Roman Empire of the German Nation (*Heiliges Römisches Reich Deutscher Nation*), submitted to Napoleon,[441] laid down his crown, and thereby dissolved what had been thought of as the 'Old Empire.'

When the medieval Holy Roman Empire of the German Nation collapsed, the removal of foreign rulers led to the German Confederation (*Deutscher Bund*) in 1815.[442] The Confederation

> "despite the existence of a permanent deliberative body composed of representatives of the member states (the *Bundesversammlung* or *Bundestag*) was largely a defensive alliance among autonomous autocrats – antiliberal, antinational, and dominated once again by Austria."[443]

Prussia gradually moved to realize the policy of economic unity, receiving the response from its subjects – a number of constitutions imposed from above, but not by the people. Some of them contained elements of a *Bill of Rights*. Their purposes were directed to increase the position of monarch, but with some limitations.[444]

Alarmed Germans by events in France in February 1848,[445] made a revolution in March 1848 in Germany too.[446] These events opened new conditions to hold the election of a national assembly (*Nationalversammlung*). As a result, in 1848 the Frankfurt Parliament was established.[447] Men who had reached their majority elected the parliament on the basis of universal and equal suffrage.

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[440] Janet Schayan and Sabine Giehle Peter Hintereder. "Political System" in *Facts About Germany*, trans. Jeremy Gaines (Frankfurt: Societats-Verlag, 2008), 29-49.
[441] Napoleon Bonaparte (1769-1821), Emperor of the French 1804-1814.
[442] Schayan and Hintereder (2008).
[443] Currie, David P. *The constitution of the Federal Republic of Germany* (University of Chicago Press, 1994), 2.
[444] Ibid.
[445] See Sewell, William Hamilton, ed. *Work and revolution in France: the language of labor from the Old Regime to 1848*. Cambridge University Press, 1980.
[446] Holborn, Hajo. *A history of modern Germany: 1840-1945*. Vol. 3. Princeton University Press, 1982.
[447] Verfassung des Deutschen Reiches vom 28 März 1849 [RV] [Constitution of German Empire, March 28, 1849], http://www.documentarchiv.de/nzjh/verfdr1848.htm (accessed December 18, 2013).

A popular demand was directed to control government through their representation in one house of a legislature. For this reason, a need to bill a *Constitution* for entire nation was highly demanded by representatives in the parliament.[448] As a result, three fundamental changes met German Confederation. The first, a real German state (First *Reich*) was created in the form of federation, with all required authorities to have power over all state affairs and initiate legislation.[449] The second, the 1849 *Constitution* (*Paulskirchenverfassung*) was promulgated that institutionalized democracy with bicameral parliament,

> "one branch of which the *Reichstag* was to be popular elected, the other to represent the legislatures and executives of the individual states (*Länder*)."[450]

Finally, the rule of law (*Rechtsstaat*) that included a *Bill of Rights* binding all branches of state authority, with an independent judiciary, designed as American model, was established.[451]

According to § 186 (2) of the 1849 *Constitution*,

> "1. Every German state shall have a constitution with representation of the people.
> 2. The ministers are responsible to the people's representatives."[452]

As a result, the German Parliament was entitled to a major share of executive power.[453] Notwithstanding with this fact, the 1849 *Constitution* vested executive authority to a hereditary emperor (*Kaiser*).[454] This means that significant changes toward democracy during the fervour of the revolution, which constitutionally allowed the separation of powers, were done under the 1849 *Constitution*. This story, however, finished unsuccessfully to the 1849 *Constitution* that was never put into force.

Old order came back to Germany under the dominant power of Prussian *Constitution* in 1850.[455] From one side this document contained extensive rights and freedoms for people, including freedom of consciousness (Article 12), freedom of expressions, freedom of words, freedom of press (Article 27) and right to associate (Article 30).[456] From another it was imposed from above to strengthen the power of monarchy.[457] Criminal and other legislations limited most of the rights and freedoms and "required approval by the *Reichstag*."[458] The 1850 Prussian *Constitution* provided such a voting system that divided legislatures to "reactionary and submissive."[459]

In the 1860s Otto von Bismarck, the prime minister (later *Reich* Chancellor, known also as

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[448] 3 Holborn, Hajo. *A History of Modern Germany* (Princeton University Press, 1982), 1840-1945.
[449] Currie (1994), n.7.
[450] Ibid., n.8.
[451] Ibid., 3, n.11.
[452] RV (1849), § 186, parts 1 and 2.
[453] Kommers, (2012), 436.
[454] Currie (1994), 3, n.12.
[455] Verfassungsurkunde für den Preußischen Staat vom 31 Januar 1850 [PßS] (Prussian Constitution of January 31, 1950).
[456] PßS (1950), art. 3-42, sect. II.
[457] PßS (1950), art. 42-59, sect. III.
[458] Currie (1994), 4.
[459] Ibid.

the 'Iron Chancellor') after his "series of military victories over Denmark, Austria, and France,"[460] increased his idea to unify Germany. The result of this idea was dissolved the German Confederation[461] and the North German Confederation (*Norddeutscher Bund*) was formed in 1867, following the war between Austria and Prussia in 1866.[462]

In 1871, it was opened a new way to the foundation of the Second German *Reich*, which composed of twenty-five German states except Austria.[463] The *Constitution* was proclaimed at Versailles in 1871 and provided provisions on the federal state that composed of such institutions as: overall *Kaiser*, *Reich* chancellor, a bicameral legislature with legislative house (*Reichstag*) and federal council (*Reichsrat* or *Bundesrat*).[464] All other states had own governments and elections for assemblies too.

The role of *Kaiser* was one of the influential as chief executive; he appointed and dismissed the *Reich* chancellor. This means that chancellor, a head of the imperial administrative system, was responsible to emperor only. *Kaiser*, in turn, was restricted in orders that needed to countersign by the chancellor. Chancellor was also prime minister, who had authority to nominate minister.[465] This interdependence of *Kaiser* and Chancellor made a great concentration of power in executives.

The federal council was composed from the representatives of the states, with greatest of them from Prussia (17 votes out of 58).[466] In compare to the Reichstag the position of the federal council was more influential.[467] Any attempts to make constitutional amendments could be prevented by any of the states either alone or unified together with others.[468]

The *Reichstag* contained different of independent political parties elected by universal male suffrage in single member constituencies for three years.[469] It had a power to question neither Chancellor nor government's policy, but with a great risk to be dissolved by them after emperor approval.[470] Deputies of the *Reichstag* enjoyed their rights to speak freely. Moreover, the *Constitution* kept silent about the right to introduce candidates for the position of Chancellor and form government by lower house, which emphasize its limited power to do so.

In spite of the absence of the provisions about political parties in the 1871 *Constitution*

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[460] Ibid.
[461] 3 Holborn, Hajo. *A History of Modern Germany: 1840-1945* (Princeton University Press, 1982).
[462] Verfassung des Norddeutschen Bundes vom 16 April 1867 [NDB] (Constitution of the North German Confederation of April 16, 1867), http://www.documentarchiv.de/nzjh/ndbd/verfndbd.html (accessed December 19, 2013).
[463] Currie (1994), 4; Schayan & Hintereder (2008).
[464] Gesetz betreffend die Verfassung des Deutschen Reiches vom 16 April 1871 [RV] (Constitution of German Empire of April 16, 1871).
[465] Fritz Morstein Marx et al., "The German Empire and the Weimar Republic," in *Foreign Governmnets: The Dynamics of Political Abroad* (New York: Preintice-hall, Inc., 1949), 312.
[466] Ibid.
[467] Wehler, Hans-Ulrich, ed. *The German Empire, 1871-1918*. Berg, 1985.
[468] Fritz (1949), 312.
[469] RV (1871), art. 24, part 1; Cf. Fritz (1949), 313: The *Reichstag* was elected for 5 year-term office.
[470] RV (1871), art. 20, art. 24, part 2.

political system was split with different political parties. The rapid industrialization of the country brought people from agricultural areas to the rural districts by emerging along ideological, regional and religious parties. The party system could be divided into four main interests: conservatives, liberals (left and national), a catholic center and social democrats.[471]

The German Conservative Party (*Deutschkonsevative Partei*) and the German Imperial Party (*Deutsche Reichspartei*) were the representatives of conservatism thoughts.[472] The main supporters of them were the influential owners in agricultural areas and aristocrats who controlled Prussia until 1918. They did everything to prevent liberalization of the constitutionalism.[473]

The German Progress Party (*Deutsche Fortschrittspartei*), the German Liberal Party (*Deutsch-Freisinnige Partei*), the Liberal People's Party (*Freisinnige Volkspartei*) and the National Liberal Party were left liberals and supporters of strong government and compulsory militant service.[474] However, the middle-class supported them introduced their hopes about political changes in programs, mainly increasing the parliamentary control over the government.[475]

Not less known the Centre (*Zentrum*) Party or representatives of political Catholicism that included a wide range of members from different social levels. The Party advocated the rights and freedoms of religion people, Catholic Church.[476] Even more, this party was popular among people and was unique in its feature keeping the neutral center position. A significant factor mentioned by the history that the Centre Party was

> "a strong opponent of Marxian socialism, which had been condemned by the Popes as being incompatible with the Catholic faith."[477]

Even the Center Party was not teaching socialism to the voters, the government under the Bismarck's policy gradually legally restricted the "religious schism in the country."[478]

By contrast to all above-mentioned parties, the Social Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands – SPD*) began with strong roots of Marxian political thoughts and shared the ideology with the Communistic Party of Germany (*Kommunistische Partei Deutschlands – KPD*). Then it was split into extreme left socialists emerging the creation of the National Socialists (*Nationalsozialistische Deutsche Arbeiterpartei – NSDAP*).[479] Gradually, some

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[471] Fritz (1949), 313; Skach Cindy. "Parties, Leaders, and Constitutional Law in Ebert's Republic," in *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton University Press, 2005), 30-48.
[472] German Bundestag, *Politiacal Parties in the Empire 1871-1918* (2006), http://www.bundestag.de/htdocs_e/artandhistory/history/factsheets/parties_empire.pdf (accessed December 19, 2013).
[473] Fritz (1949), 314.
[474] German Bundestag (2006).
[475] Fritz (1949), 314.
[476] Skach (2005), 35.
[477] Fritz (1949), 314.
[478] Ibid., 315.
[479] Skach (2005), 36.

representatives of the SPD turned to insist the principles of democracy.[480] This division of the SPD became a popular party among industrial labors, distinguished German intellectuals.[481] The SPD actively advocated democratic rights and freedoms that opposed to the controlled government by *Kaiser* and chancellor. [482] A difficult path through the banning and repression under the 1878 *Anti-Socialist Law*[483] from one side and not banned parliamentary caucus[484] from another, made this political party one of the most powerful in the *Reichstag* increasing votes from 1890 until 1912.[485]

Concluding about the 1871 *Constitution* only arguments about how was powerful emperor and chancellor's position comes to the surface. On this background, the bicameral parliament was controlled from different sides preventing it the concentration of people's power.[486] This means that the 1871 *Constitution* did not face any positive changes or development in the content of constitutionalism. In this frame, it was survived until the end of World War I,[487] when the country was collapsed completely.

During WWI, many movements by different political parties such as the Social Democrats, the Independent Socialists, the Liberals and the Nationalists emerged their demonstrations on the question of constitutional changes. As the military condition was unstable, *Kaiser* appointed the first head of a parliamentary government – Prince Max von Baden – in which above-mentioned parties were represented.[488] The military defeat of Germany was followed by political upheaval that caused in November of 1918, *Kaiser* Wilhelm II to sign a *Declaration* of abdication his throne [489] and the leaders of the Social Democrats proclaimed the establishment of a German federal republic. [490] This was the start of the transition from German *Kaiserreich* to a Republic.

4.1.1 German Constitutionalism in the Weimar Republic

After WWI and the revolution, after dishonor and abdication of the monarch in November

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[480] Fritz (1949), 314.
[481] Skach (2005), 36.
[482] German Bundestag (2006).
[483] 4 German History in Documents and Images [GHDI]. *Anti-Socialist Law, October 21, 1878*, http://www.germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=1843 (accessed December 20, 2013), § 1: "Societies [Vereine] which aim at the overthrow of the existing political or social order through social-democratic, socialistic, or communistic endeavors are to be prohibited."
[484] GHDI, Anti-Socialist Law (1878), Preambule.
[485] Fritz (1949), 315.
[486] Currie (1994), 5.
[487] WWI (1914-1918) was fought between the German Empire and Austria, on the one side, and France, Great Britain and Russia together with Serbia, on the other, with further countries in Asia, Europe, Africa, and USA joining the conflict. It cost 15 million people. WWI caused of contradictions between those unwilling to subordinate the military to political control and Reichstag representatives.
[488] Fritz (1949), 316.
[489] World History Project [WHP]. *World War One, Kaiser Wilhelm II* (USA, 1995-2007), http://history-world.org/kaiser_wilhelm_ii.htm (accessed November 8, 2013).
[490] Fritz (1949), 317.

1918, forces in favor of political rights had a new mission in Germany – to build a new order, establish a new government and proclaim a new *Constitution*. It should a document that could struggle against both Western democracy and Eastern Bolshevism. The coalition of three political parties – the Social Democrats, the Centre Party and the German Democratic Party – challenged to take those tasks on their hands.[491] On June 18, 1919, the first German Republic formed Friedrich Ebert (Social Democrat), which power obtained from the people and lasted fourteen years until 1933.[492]

"A new government called itself a people's council. During spring 1919 Germany escaped Communist domination and instead was directed into the parliamentary democracy. At the same time a revolutionary movements in Bavaria speeded up spreading communistic messages and reactions to them by nationalists, giving a birth to Nazism. Considering general conditions, the most remarkable period was the elections in January 1919. More than 16 million voters expressed their wish supporting the Centre Party (supporter of religious interests) by electing 89 deputies, Social Democratic Party (reformist group) with 74 seats, and Nationalistic Party with 42 seats, and the German National People's Party (conservatives) with 22 seats. The parliament included a large number of workers, writers, journalists university professors and relatively few jurists."

Soon after the elections, the parliament adopted a law that made a provisional government responsible to it. Friedrich Ebert was elected as the first President of a new Republic and started drafting a new *Constitution* under the leadership of the Hugo Preuss, who was a professor of a constitutional law. After scrupulous work on the draft, and broad discussions, the Constitution was adopted in August 1919.

The new *Constitution* was designed base on the Western political experience of such countries as America, French and Swiss. It included a broad range of the Bill of Rights and reflected liberal ad socialistic ideas about society. The volume of this document compare with other revolutionary constitutions was relatively big.

Under the *Versailles Treaty*[493] it lost territories; inhabitants (6 million people)[494] and raw materials, [495] but gained an exemplary democratic *Constitution*, also known as Weimar *Constitution*.[496] The 1919 *Constitution* provided proportional representation of the *Reichstag*.[497] The

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[491] Skach (2005), 30.
[492] Fritz (1949), 317.
[493] Museum of Australian Democracy. Treaty of Peace between the Allied and Associated Powers and Germany, June 28, 1919, http://foundingdocs.gov.au/resources/transcripts/cth10_doc_1919.pdf (accessed December 20, 2013).
[494] Skach (2005), 30.
[495] Fritz (1949), 309.
[496] Die Verfassung des Deutschen Reichs vom 11 August 1919 [WRV] (Constitution of Germany Republic of August 11, 1919), http://www.documentarchiv.de/wr/wrv.html#ZWEITER_ABSCHNITT (accessed December 19, 2013).
[497] WRV (1919), art. 22.

nomination of a candidate to the president office by representatives for a term of seven years and it was not limited the rounds of the term by the same person. The president had a great power as a Commander-in-Chief of the armed forces. He had the power to appoint the *Reich* Chancellor.[498] The only barrier to full power of the president was the countersignature by the *Reich* Chancellor, who in turn was responsible before the *Reichstag*.[499]

When the first term of the President had finished, for the second term was elected Marshal Paul von Hindenburg in 1925 and re-elected in 1932. Further the president's power increased and he could dissolve the Reichstag in two conditions. The first, if voters reflect their opinion against the government, then it must be resign and dissolve Reichstag and dismiss the Reich Chancellor too. Another condition was the resignation of the Cabinet by presidential decree, which also could dissolve of the *Reichstag*. This experience the *Reichstag* had passed in 1932, under Article 48 of the 1919 *Constitution*, which affected fundamental rights.

The reaction to that Article 48 was immediate, providing constitutional power to the *Reichstag* to repeal of emergency decrees by President and Cabinet of Ministers, but it was only formal provision. Gradually, the parliamentary government leaved the priority of power to the Chancellor, which was negatively effected to the democratic system of government itself. The multiplicity of parties in the *Reichstag* was changed to the composition of Socialists and Nationalist.

The *Reichsrat*, or the Federal Council, was another legislative body that composed of appointed representatives of the states. The *Reichsrat* was very influential institution that could question the Cabinet of Ministers. It was not affected by changes in the government, which gave them power to deal with complex problems between the states.

The Supreme Court was one federal court and the highest court of appeal. The state governments appointed the judges, and could be removed only by court decisions. The *Constitution* guaranteed court independence.

The party system in the Weimar Republic was organized well. All parties had continuously represented active participation in the formation of the government. Membership fees and no legal limitations in case of any campaign contributions by friends or interested parties financed parties' activities.[500] The function to regulate of the internal organization of the parties was leaved to parties themselves. Freedom of speech was permitted by the constitution.

This lead to held eight national elections in thirteen years base on proportional representation by the list with candidates.[501] It was a system of not individual representation, but

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[498] WRV (1919), art. 48.
[499] *Крылов, Б.С.* и др (Krilov, B.S. et al). Буржуазные конституции в период общего кризиса капитализма (Bourgeois Constitutions During the General Crisis of Capitalism), ред. И.Д. Левин и Б.С. Крылов (Москва: Наука, 1966), 49.
[500] *See* James K. Pollock. *German Election Administration* (New York, 1934).
[501] *See* Ferdinand A. Hermens. *Democracy or Anarchy? A Study of Proportional Representation* (Notre

collective and under the name of the party. The voter had no choice, but to vote for the party list with numerous unknown names there. This was a sign of instability in the states and people's mind, from one side, and the pick of free wave of democratic deliberation from another.[502]

The decreased influence of the parliament no longer played any role in running the country. This tendency increased forces against parliamentary by Adolf Hitler's[503] National Socialist Party that won the election race to the *Bundestag* on September 14, 1930 and became the second biggest party.[504] Hitler was able to present his party as the people's only alternative to all forms of Marxism.

The battle for the power between the right-wing (National Socialists) and left-wing (Communists) lead the next 1932 *Bundestag* elections to win majority of seats in the parliament by Nazi Party.[505] This became another tool for Hitler to use to gain powerfully allies, particularly among the powerful conservative elite.[506]

Finally, in 1933 the National Socialists gained the most votes in the Parliament. On January 30, 1933 the *Reich* President appointed Adolf Hitler to the position of *Reich* Chancellor.[507] Hitler won the support of large sections of the working class because of his program against unemployment. And he had major successes in foreign policy when headed of the de-militarized Rhineland in March 1936 and annexed Austria in the *Anschluss* of March 1938, Czechoslovakia in 1939.[508] Hitler managed to form his own employed militant party, known as the *Sturmabteilung* to struggle on public meetings against its opposition, especially of the Communists and Social Democrats.[509] Nazi propaganda had no limits to speech making. All instruments such as press, movie, schools, and radio were used intolerantly to other parties by creating conditions of inequality.

These events increased the popularity of Hitler in all classes of society. This person influenced whole Germany. His slogans would not have won him many votes among the working classes, something he was extremely keen to do. But among educated, property owning classes, small businessmen and farmers, anti-Jewish prejudice was widespread.[510]

Hitler established a political system with complete renunciation of rule of law and any legal methods of governing.[511] It was a totalitarian regime under Hitler, with subordination to him of the

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Dame, 1941).
[502] Fritz (1949), 319-328.
[503] Adolf Hitler (Führer) – the head of the state from 1934 untill 1945; the head of National Socialistic German Workers Party from 1921 untill 1945.
[504] Janet Schayan et al. "Political System" in *Facts About Germany*, trans. Jeremy Gaines (Frankfurt: Societats-Verlag, 2008).
[505] Amos J. Peaslee, "German Federal Republic," in *Constitutions of Nations* (3rd ed., Martinus Nijhoff, 1974), 358.
[506] Ibid.
[507] Fritz (1949) 329-333.
[508] Peaslee (1974), 358.
[509] Fritz (1949), 330.
[510] Cf. William Ebenstein, *The Nazi State* (New York, 1943).
[511] Krilov (1966), 52.

whole state bodies such as parliament, courts.[512] All constitutional provisions that relatively blossomed before he came and the principle of constitutionalism, including the constitution itself were ignored and sometimes denied.

After the death of Hindenburg, the conception about separation of power had no mean to the combined Hitler's system of the office of president and of Chancellor. He abolished the presidential office and instead established the combined position of *Führer* and Chancellor.[513] Hitler appointed all Ministers, judges and even dominated in power before the *Reichstag*.

Under the 1933 *Enabling Law*, the *Weimar Constitution* was empowered. Under the 1934 *Reconstruction Law*, government adopted a new constitutional document that provided *Führer* to abolish federalism and create a centralized unitary state.[514] The 1935 *Reich Governors Law* provided functions to appoint state governors by *Führer*, which further became state representatives in the *Reichstag*.[515]

The absolute support of the *Reichstag* leads to new changes in the party system. The parliamentary deputies adopted the *Law on Formation of Political Parties.*[516] This law closed the doors for all types of political parties except Nazi Party, which was the only party allowed to be represented in the parliament. The suffrage age was changed to twenty years old; women could vote but not be elected.[517] Consequently, the *Führer* became a source of law not only for voters, but also for Judges, and parliamentary deputies.

From the start of WWII through his invasion of Poland on September 1, 1939 Hitler unleashed WWII, which cost the lives of 60 million people.[518] In particular the Nazi extermination policy resulted in the murder of six million Jews. In the fall of 1943, when German armies were still fighting, the British, American and Soviet Union government decided to assign occupation zones of German territory. In February 1945, Winston Churchill, Franklin Roosevelt, and Josef Stalin adopted proposal on this issue.[519] A little after, President Roosevelt shared some of southern and western parts of the US zone with France.[520] On June 5, 1945, this lead the four Allied Commanders met in Berlin and proclaimed the assumption of control over a united Germany with occupied four zones.[521] The twelve years of National Socialist rule ran from 1933 to 1945. This period is remembered as the Third *Reich*, where Nazi party hold the youth against the old generation of all

[512] Ibid.
[513] Fritz (1949), 333.
[514] See Arnold Brecht, *Federalism and Regionalism in Germany* (New York, 1945).
[515] Fritz (1949), 335.
[516] Cf. Alfred V. Boerner, "The Position of the NSDAP in the German Constitutional Order," *American Political Science Review* (1938), 32.
[517] Fritz (1949), 337.
[518] Schayan (2008).
[519] Hans-Peter Schwarz, "The Division of Germany, 1945-1949," in *The Cambridge History of the Cold War* (Cambridge University Press, 2010), 137.
[520] Ibid, 139.
[521] Ibid, 145.

teachers, destroying the freedom of teaching and research; against German Protestantism dismissing all Jewish ministers from their positions. It was ended with the unconditional capitulation of the German *Wehrmacht*[522] – the armed services of the German Third *Reich* – In May 1945. [523]

In 1946, all zones had long discussions around the idea of joint economic management of Germany.[524] Neutralization formulas proposed by the western zones fused the English and American zone in 1947, and all other western zones in 1948.[525] "The revival of ideological conflict between Western democracies and the Soviet Union made cooperation difficult."[526] Every side pulled the blanket over themselves. The Western zone had attempted to build in Germany democratic regime together with German political parties to prevent spreading of the deep ideological schism in Germany. While, the Eastern zone struggled with Western pluralism and freedom of associations. The Soviet Union was against the capitalist democracy.[527]

In 1948, after long contradictions between eastern and western zones, attempts of the Soviet Union to create Communistic power in the whole Germany made a reaction by Western Germany to convene a constitutional assembly to carry out a separate reforms. On March 31, 1948, after the Stalin's order to block the roads and waterways to Berlin began, the West Germany knew clearly that the division had been unavoidable since the Soviet was not prepare to the true political pluralism, open public opinion.[528] That was the first step to the plan on drafting a provisional division of Germany.

The system of occupation was failed because of multitude reasons. Some of them were breaking up of Germany into four zones of occupation – the British, the USA, the Soviet Union, and France; the ideological differences between the east communism and west democracy; the strategical economic conditions. Finally, a united Germany emerged two parts Western and Eastern: the Federal Republic of Germany (*Budesrepublik Deutschland* – FRG) with 49.8 million inhabitants and the German Democratic Republic (GDR) with 18.7 million inhabitants.[529]

4.1.2 German Constitutionalism in the East Germany

In March 1949, General Clay ultimately brought the plan into the implementation and established the FRG. The majority of inhabitants of western zone were strongly against the Soviet Union, and its Communist regime. The reasons of those feelings against to the Communists come

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[522] *See* Shils, Edward A. & Janowitz, Morris. "Cohesion and Disintegration in the Wehrmacht in World War II," in *Public Opinion Quarterly* (1948), 280-315.
[523] Schwarz (2010), 137-145.
[524] Ibid.
[525] Peaslee (1974), 358.
[526] Schwarz (2010), 135.
[527] Ibid.
[528] Ibid., 148.
[529] Ibid., 145.

from memories about Hitler's concentration camps, Katyn forest. Stalin masterly exploits German nationalistic nature and used it for the Soviet purposes.[530]

Historians mentions about the occupation period as a period of many mistakes made by all sides, mainly made by Stalin.[531] Failed decisions for the Soviet Union was requirements about reparations. The Western counterparts were not agree with this policy and leaved the process into its own way.

The political system in the eastern Germany was modeled as "people's democracy."[532] Stalin's policy to curtail non-Communist parties in the Easter zone pushed them into another spheres such as land reforms, reforms in education, nationalization of large-scale enterprises.[533] It was obvious to western Germany that the strategy leads to transfer Germany into communist power under the repression of Stalin. Different speed and structural reforms created a great gap as economic so political. In the fall of 1949, after the establishment of the West German, Stalin took to form the GDR.[534]

From 1948 until 1952 the state organization was formed, Parliament constituted itself in the form of three Congresses of the German People held in 1947-1949. The Berlin blockade began on March 31, 1948 and lasted until May 12, 1949. On July 1, 1948, the *quadripartite Kommandatura* for Berlin was ended and Berlin was henceforth divided into an East and West Germany.[535]

On October 7, 1949, the Third Congress of the People's Chamber proclaimed the *Constitution* of the German Democratic Republic (GDR). Since that time, it was amended three times in 1955, 1958 and 1960. The 1949 GDR *Constitution* was designed in the way resolved to ensure the constitutional order of society governed by social justice, to serve German people, to promote security of the state and all people in the GDR, stating that:

> "Germany is an indivisible democratic Republic…"[536]

The 1949 GDR *Constitution* provided the principles of equality,[537] the rights and freedoms of speech, press and assembly without arms and censorship,[538] and the right to associate base on democratic thoughts,[539] freedom of conscience and religious belief[540] by German people. "The freedom to form religious associations is guaranteed."[541] Every citizen of the GDR obtained all

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[530] Schwarz (2010), 580-581.
[531] Ibid., 145.
[532] Ibid., 148.
[533] Ibid., 148.
[534] Ibid., 149.
[535] Peaslee (1974), 358.
[536] Ibid., 334: Constitution of the German Democratic Republic [Const. GDR] (October 7, 1949), art. 1 (amended 1960).
[537] GDR Const. (1949), art. 6, art. 7.
[538] GDR Const. (1949), art. 9.
[539] GDR Const. (1949), art. 12-14.
[540] GDR Const. (1949), art. 41-48.
[541] GDR Const. (1949), art. 43.

power through the right and duty to participate in referenda, elect or be elected to the People's Chamber, occupy public posts in administrative and judicial bodies.[542] The 1949 GDR *Constitution* protected democratic institutions and organization, but prohibited the militarist propaganda by criminal law.[543]

The highest legislative state authority was the People's Chamber composed of 400 deputies elected "with the principle of proportional representation on the basis of universal, equal, direct" and secret suffrage for a term of four years.[544]

> Only those associations, which aiming democratic development of political and social life may nominate candidates for the People's Chamber …[545]

The Parliament can be dissolved in two cases: on its own decision with more than one half of the deputies' number and on the result of a referendum.[546] A constitutional committee of the People's Chamber included three judges of the Supreme Court; three experts on constitutional law to review the constitutionality of the laws and solve the disputes between the states. The right to question the constitutionality of the laws had members of the People's Chamber, the Council of State and government. The decision of the constitutional committee came into force after approving by the People's Chamber.[547]

The executive state authority consisted of the Prime Minister, nominated by leading parliamentary group and who forms the Government and the Ministers. The Ministers along with their executive role must take the position of the parliamentary deputies too.[548] Any member of the government can be resigned by the People's Chamber.[549] Another executive institution was the Council of State elected by the People's Chambers for four years.[550] It was respectably accountable to the elected body and promulgates the law of the Republic.[551]

The judicial authority exercised the Supreme Court and other courts of the states.[552] The jurisdiction of the judges was made independently and base on the Constitution and other laws.[553] The right to nominate candidates to the judges' position had democratic parties and organizations. The representative bodies elected the candidates respectively. [554] Judges of the Supreme Court were nominated by the government and elected by the People's Chamber.[555] Judges were not examined

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[542] GDR Const. (1949), art. 3.
[543] GDR Const. (1949), art. 6.
[544] GDR Const. (1949), art. 50-54.
[545] GDR Const. (1949), art. 13, para. 2.
[546] GDR Const. (1949), art. 56, para. 2 and para. 3.
[547] GDR Const. (1949), art. 66.
[548] GDR Const. (1949), art. 91, art. 92.
[549] GDR Const. (1949), art. 96, para. 2.
[550] GDR Const. (1949), art. 101, art. 102.
[551] GDR Const. (1949), art. 104-106.
[552] GDR Const. (1949), art. 126.
[553] GDR Const. (1949), art. 127.
[554] GDR Const. (1949), art. 130, para. 2.
[555] GDR Const. (1949), art. 131.

the constitutionality of the laws.[556] If they act against the *Constitution* and the laws or violate their functions, they can be recalled by the People's Chamber.[557]

After successful proclamation of the 1949 GDR *Constitution*, on March 26, 1954, the GDR declared itself as a sovereign state. On January 25, 1955, the USSR ended the state of war with Germany and abolished the occupation regime after six months.[558] On August 13, 1961, began a physical division of the East and West Germanys. The Berlin Wall was erected through the middle of the city on a long distance. [559]

Soon after, the project on drafting a new GDR *Constitution* with socialistic principles was discussed on big sessions. Millions of citizens took participation in that process, giving high attention to its contents and protecting rights for workers.[560] Each family may receive the draft version to read and make any comments on. The 1968 Constitution was promulgated after 118 additions and changes, and referendum with positive respond of 11 million people or 94,49 %.[561] This means that German citizen of the GDR accepted a new *Constitution* and its socialistic regime.

Under the 1968 *Constitution*, the GDR was proclaimed as the socialistic state of the workers realizing their political rights through representative institutions democratically elected.[562] Any attempts to spread military and nationalistic fights were punished by law. All people must live according to the principles of socialistic internationalism.[563]

The role of the Socialistic Unity Party (SUP) that cooperated with the Communist Party of the USSR[564] was recognized as the leading party from one side. From another side, constitutional provisions provided the rights and freedom to associate in different forms that not violating the *Constitution* and other laws. As a result, along with SUP existed another political parties such as Christian Democratic Unity (CDU), Liberal Democratic Party (LDP), National Democratic Party (NDP), Democratic Peasant Party (DPP) sharing with people their democratic ideological thoughts.[565]

The 1968 *Constitution* protects people's rights and freedoms to speak, publish,[566] and assembly[567] regardless of their nationalities, religions and believes. The freedom of conciseness is

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[556] GDR Const. (1949), art. 89.
[557] GDR Const. (1949), art. 132.
[558] Peaslee (1974), 332 and 333.
[559] Ibid.
[560] "Германская Демократическая Республика" (German Democratic Republic) in *Конституции Зарубежных Социалистических государств Европы* [Konstit. Zar. Soc. Gos. Eur.] (Constitutions of the Foreign Socialist States in Europe), M.: Progress, 1973, 200-263.
[561] Ibid, 206, 207.
[562] GDR Const. (1968), art. 1, para.1, art. 2, part 1, art. 5, part 1.
[563] GDR Const. (1968), art. 5.
[564] Konstit. Zar. Soc. Gos. Eur. (1973), 209.
[565] Ibid., 207.
[566] GDR Const. (1968), art. 27, para.1 and para. 2.
[567] GDR Const. (1968), art. 28, para. 1.

protected.[568] Moreover, the citizens may associate political parties,[569] public associations, and professional unities[570] to protect their interests by law.

The rights of professional unities were separated into the special chapter in the *Constitution*. They played relatively high role in political society than other associations, particularly; no one could limit their activities, because professional unities had a great power to construct a socialistic society in all levels through different representatives. Professional unties had right to initiate any project of the law and controlled over the implementation of the law.[571]

The 1968 *Constitution* regulated the functions of the same state authorities as previous constitution. For example, the People's Chamber composed of 500 parliamentary deputies elected for four years.[572] The Constitutional Committee was responsible before the People's Chamber and their voters for the implementation of all legislation in the state.[573] The Council of State was responsible for the interpretation of the *Constitution* and was elected for four years. It supervised the work of the Supreme Court and the General Prosecutor's office.[574] The Chairman of the Council of State nominated candidates to the Councils of Ministries and the People's Chamber elected them for the term of four years.[575] This means that each minister was responsible before the Chamber according to his or her functions.

Finally, state authorities in judiciary – the Supreme Court[576] and General Prosecutor's Office, which had almost the same functions as before. Moreover, constitutional provisions underlined that judges may be only those candidates who are truly work for the communistic ideas and have a great experience to be responsible before their voters.[577] The General Prosecutor's Office was responsible for the protection constitutional order and supervised the legality of the activities by all citizens and state authorities.[578]

A new change in the system was the emergency of the local people's representatives and their division provided by the constitution. They had the same functions as the People's Chamber but locally.[579] Every citizen or public association had right to complaint[580] on decisions of the central

[568] GDR Const. (1968), art. 20, part 1, art. 39.
[569] GDR Const. (1968), art. 29.
[570] GDR Const. (1968), art. 44, art. 45.
[571] GDR Const. (1968), art. 45, part 2.
[572] GDR Const. (1968), art. 48-65; Cf., GDR Const. (1949), art. 52, para. 3: "the number of parliamentary deputies consisted of 400."
[573] GDR Const. (1968), art. 61.
[574] GDR Const. (1968), art. 66-77.
[575] GDR Const. (1968), art. 80.
[576] GDR Const. (1968), art. 92, art. 93
[577] GDR Const. (1968), art. 94, art. 95.
[578] GDR Const. (1968), art. 97.
[579] GDR Const. (1968), art. 81-85.
[580] GDR Const. (1968), art.103.

divisions of the Council of Ministries to the Council of Ministries;[581] on decisions of the Council of the Ministries, the Supreme Court or General Prosecutor's office to the Council of State.[582]

4.1.3 German Constitutionalism in the West Germany

After World War II in 1945, the Germany questions mainly related to how to restore all damages caused by military government, particularly by Nazi Party. The country needed time to regroup, and change the regime and political system. Some German ministers from the West zones argued for a transition from parliamentary and executive-based governing to constitutional review by the special court.[583] The majority of western German politicians accepted the concept of constitutional review and independent judicial institution and agreed to strengthen the activity of judicial bodies.

In April 1949, under the Washington Agreement was created the West Germany or the FRG.[584] In May, the *Constitution* was adopted and the first parliamentary elections were held in August, where Konrad Adenauer from the Christian Democratic Unity party - which is still the ruling party today – was elected as a Chancellor of the FRG for three years. [585] Adenauer was chosen for three years, and he did everything to turn the policy of Germany and his party toward the western democracy. After the Berlin blockade was finished, the political division between East and West completed and came into new phase of foreign relations under the 1949 *Constitutions* of the FRG and the GDR.[586] About the 1949 GDR *Constitution* see below in the section 4.1.3.

Amid political and economical chaos, the West German adopted post-War *Constitution*, also known as the *Basic Law* (*Grundgesetz*) on May 8 1949.[587] This *Constitution* was prepared as a provisional document to serve Germany after total political and social-economic breakdown. It was an instrument to give some legal framework for reconstruction until the enactment of a new *Constitution* for the whole of Germany.

In 1950, the West Germany had signed the *ECHR*.[588] This document was very much affected German law,[589] because according to Article 34 of the *ECHR* public associations has the right to complain to the ECtHR on state decisions or actions violating constitutional rights and freedoms of the international law. Another signed in 1968 was the *ICCPR*.[590]

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[581] GDR Const. (1968), art. 104.1.
[582] GDR Const. (1968), art. 104.2.
[583] Brigitte Zypries, former German Federal Minister of Justice (2002-2009).
[584] Currie (1994), 343: Grundgasetz [GG] [Basic Law], May 23, 1949 (FRG).
[585] Schwarz (2010),150.
[586] Currie (1994), 343.
[587] GG (1949) (amended 1966).
[588] European Convention on Human Rights [ECHR] (1950).
[589] *See* Andreas Zimmermann. "Germany" in *Fundamental Rights in Europe* (Robert Blackburn & Jörg Polakiewicz ed., Oxford University Press, 2001).
[590] International Covenant on Civil and Political Rights [ICCPR], December 16, 1966,

In consideration of these sources of international law and the *Basic Law* itself,

> "the general rule of public international law are an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory."[591]

The constitutional rights to free development,[592] principal of equality,[593] freedom of faith and of conscience;[594] the right freely to express opinion,[595] the right to assembly,[596] the right to form associations[597] were protected. There were exceptions of those rights and freedoms, which conflicted with criminal law and constitutional order that could be forfeit by the FCC.[598]

The 1949 FRG *Constitution* provided new subject that must be protected by the constitution – political parties, where Article 21 (1) says, "shall participate in shaping the political will of the people. They maybe freely established." This provision was silent in earlier German constitutions.[599] The political parties were institutionalized, as the essential element of the democracy without cannot be protected people's interests in the public offices.[600]

The highest legislative body provided by the *Constitution* was bicameral parliament consisted of the *Bundestag* and the *Bundesrat*.[601] The nomination of the deputies to the *Bundestag* was under the general, direct, free, equal and secret suffrage for a term of four years.[602] The one third of the member of the *Bundestag*, the Federal President, or the Federal Chancellor may demand to dissolve the *Bundestag*.[603] In turn, *Bundestag* elect the Federal Chancellor and impeach the Federal President.[604] Everyone have right to complaint against the *Bundestag* with the FCC.[605]

The deputies' nomination to the *Bundesrat* based on the state proportional representation system. The *Bundesrat* consist of members of the Land Governments, which appoints and recall their representatives.[606] Each state had three, four or five votes depending on the population of that state.[607]

The highest executive authority provided by the 1949 *Constitution* was the position of the

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http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx (accessed December 22, 2013).
[591] GG (1949), art. 25 (amended 1966).
[592] GG (1949), art. 2 (1).
[593] GG (1949), art. 3 (1).
[594] GG (1949), art. 4 (1).
[595] GG (1949), art. 5 (1).
[596] GG (1949), art. 8 (1).
[597] GG (1949), art. 9 (1).
[598] GG (1949), art. 18, art. 28 (1) and (3), art. 33 (1) and (3).
[599] Cf. "Die Politischen Parteien," in *Handbuck des Verfassungsrechts* (Werner Maihofer & Hans-Jochen Vogel, 1983).
[600] "Freedom of Expression," in *The Constitution of the Federal Republic of Germany* 207 (Chicago and London: The University of Chicago Press, 1994).
[601] GG (1949), art. 38-53 (amended 1966).
[602] GG (1949), art. 38 and 39.
[603] GG (1949), art. 39 (3).
[604] GG (1949), art. 45 (2).
[605] GG (1949), art. 41 (2).
[606] GG (1949), art. 50-53 (amended 1966).
[607] GG (1949), art. 51.

Federal President elected without debates by the Federal Convention for a term of five years.[608] The President office exercise power to appoint and pardon.[609] If the FCC finds the Federal President guilty using Article 18 it forfeit his office.

Another executive body is the Federal Government that consists of the Federal Chancellor and ministers. The Bundestag on the proposal of the Federal President must elect the Chancellor.[610] The Federal Ministers must be appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.[611]

The judiciary exercised by independent Federal Constitutional Court (FCC) established in 1951, the Supreme Federal Court, federal courts and courts of the states.[612] The FCC is a body with exclusive responsibility to decide disputes on constitutional issues between the states and questions on constitutionality of the law or the activities of the political parties.[613] The nomination of judges to the FCC is in power of *Bundestag* and *Bundesrat*.[614] The Federal Minister of Justice selects the Supreme Federal Court.[615]

The period from 1951 until 1957 was full of events for the FRG. They started with ending the war between western powers (1951), continued with signing the Bonn and Paris Agreements (1952) on creation of the European Defense Community, London Agreements (1954) on incorporation into the Western Union Europe, and finalized with reintegration of the Saar into Germany (1957). It was a high period of creation the policy also called anti-Sovietism and it had existed until its full collapse in 1991.[616]

In 1989 a peaceful revolution in East Germany leads on November 9 to the Berlin Wall coming down and with it the border between East and West Germany. German political reunification occurred on October 3, 1990, when the GDR has formally ceased to exist as a separate country. Its territory and people integrated into the territory of the FRG and established one single German state.[617]

The political unity introduced to all German people of the rule of law and the achievements of the FRG in fulfillment of the fundamental rights and freedoms. This further lead to the first general elections[618] of the united Germany were held on December 2, 1990 and abolishing of the

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[608] GG (1949), art. 54.
[609] GG (1949), art. 59, art. 60.
[610] GG (1949), art. 63 (1).
[611] GG (1949), art. 64 (1).
[612] GG (1949), art. 92.
[613] GG (1949), art. 93, art. 99 and art.100.
[614] GG (1949), art. 94.
[615] GG (1949), art. 95.
[616] Currie (1994), 150.
[617] Burkhard Bastuck, "Unity, Law, and Freedom: Legal Aspects of the Process and Results of German Unificaton," 25, No. 1 *HeinOnline* (1991), 251.
[618] Bundesverfassungsgericht 1 [BVerfGE] [Federal Constitutional Court], September 29, 1990: First all-German election to the German *Bundestag*: 5% barrier clause, combination of party lists, trans. By

Communist system.[619] Helmut Kohl became the unified nation's first Chancellor.

Unity or liberty question always existed in German as unresolved, until reunification in 1990.[620] Another question that rose during the time of reunification was the constitutional issue. The West side had two ways to solve the issue: the first, adopting a new *Constitution* of the united Germany; the second, the jurisdiction of the GDR and FRG regulates the 1949 *Basic Law*.[621] The final decision was viewed as a mandate for unification and accession of the GDR to the FRG over the 1949 *Basic Law*.[622]

Since 1990, a federal system and a representation of the people and states in the parliament had to be changed.[623] Another difficult task was to establish an independent judicial system based on a free democracy and of the rule of law. For this reason, special committees were established in the East Germany to investigate personal education of their judges. Base on their background and possibility to work, they continued to work or were dismissed.[624]

At the conclusion, thre are some brief moments to remind reader about from this section to make further readings easier. The first was the period of the imperial government under the 1849 and 1871 Constitutions. The second period was characterized as time of democratic blossom under the 1919 Weimar Constitution with high activities of political parties in the public representation. The third period was a shocked time for the whole world remembered not only with WWI, but also with legalization of the enemy party by democratic instruments and constitutional rights and freedoms ignoring them by further reforms. This historical review showed experience of the fallen democratic regime under skilled and strong believers to the constitutional rights and freedoms.

4.2 Present Legislative Framework: Constitutional and Other Regulations

After the reunification of all Germany, the government started the process of adoption a new *Constitution*. The only way to repeal the 1949 *Basic Law* and adopt a new *Constitution* would have been a referendum on the adoption of a new constitution, but this did not happen in 1990. The background showed that Communistic and Nationalistic winds already behind the past, and it was time to build a workable system for the East part of Germany, that already successfully used in Western part. For this reason, the economic and political conditions in two countries were very different, and even less equal. This raised new constitutional issues that were brought to the FCC,

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Raymond Youngs.
[619] Bastuck (1991), 251.
[620] Stefan Oeter, "German Unification and State Succession," in *Zeitschrift für ausländisches öffentliches Recht* 51 [ZaöRV] (Journal of Comparative Public anf International Law 51) (1991), 349, http://www.zaoerv.de (accessed November 8, 2013).
[621] Helga Haftendorn, "The Unification of Germany, 1985-1991," in *The Cambridge History of the Cold War* (Cambridge University Press, 2010), 352-355.
[622] Kommers (2012), 1759.
[623] Bastuck (1991), 258.
[624] Ibid., 265.

including the issue of the constitutionality of political parties. The process of keeping the balance between the two sides was very delicate, in order to prevent any conflict between them.

Critics of restrictions on reign of political parties in West part of Germany emerged from former East Germany. The FCC had to review cases where parties that had existed in East Germany wanted to participate in the first elections after the unification. The Federal Ministry of Justice asked the FCC to review applications to register for election and field candidates. The 1949 *Basic Law* stipulates "freedom of basic order" that is freedom to form all kinds of associations but subject to legally prescribed criteria.

The 1949 *Basic Law* has various distinguishing parts that made it different from other constitutions. It has continued a federal structure after reunification and introduced parliamentary democracy with a federal presidency. Many other elements of constitutionalism such as the rule of law keep the constitutional structure on strong balanced fundament since 1990. Some researches argue that *Basic Law* was influenced in some parts by American model.[625] For this reason the conception of the state governed only by the rule of law. However, some special designs by German scholars such as the FCC showed the feature of the *Basic Law* and became a new model of constitutionalism in present days.

The 1949 *Basic Law* has all elements of a democratic state and establishes all institutions of free suffrage and representative government. The constitutionalism or regime based on the pure principle of separation of powers. It defines all fundamental rights and freedoms of the individuals. The constitutional order relies on a common basis of fundamental principles of equality. The institutional framework designed for the implementation of these principles, particularly in regard to such matter as the constitutional review of motions questioning the constitutionality of the laws, decisions, and the political parties. See in detail the section 4.2.1 of this paper.

The 1949 *Basic Law* provides a great power to the Federal Parliament (*Bundestag*) elected in general, direct, free, equal, and secret suffrage[626] for a four-year term[627] and can be dissolve by the Federal President with the proposal of the Federal Chancellor.[628] The complaints against the decisions of the *Bundestag* may be filed to the FCC.[629] The *Bundesrat* is the council of states, representing on proportional base.[630] Both parliament chambers with the support of one quarter of the member and votes may impeach the Federal President before the FCC.[631]

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[625] Paul G. Kauper, "The Constitutions of West Germany and the United States: A Comparative Study," in *Michigan Law Review*, 1091-1184 (1960), 1152.
[626] GG (1949), art. 38 (1) (Amend. 1968).
[627] GG (1949, art. 39 (1) (amended 1973) Bundesgesetzblatt [BGBl] (Official publication of federal session laws) 2381.
[628] GG (1949), art. 63 and 68 (1).
[629] GG (1949), art. 41 (2).
[630] GG (1949), art. 50 (amended 1992), BGBl 2086.
[631] GG (1949), art. 61.

The Federal Convention must elect the Federal President, for the five-years term with permission for one only reelection.[632] The Federal President is not a member of the government or of the legislative body of the Federation or of a state.[633] Moreover he required countersigning his orders and directions by the Federal Chancellor or appropriate ministers.[634] The Federal President must appoint and dismiss federal judges, exercise the right of pardon in individual cases.[635] This meant that law protects the separation of the powers.

The Federal Government consists of the Federal Chancellor and other ministers. The Federal Chancellor elected by the Bundestag with the candidate proposal of the Federal President and appointed by him.[636] The Federal President must appoint the minister with candidate proposal by the Federal Chancellor.[637] The judicial power exercises the Judges of the Federal Constitutional Court, of the Supreme Court and other federal courts of the states.[638]

This means that the core fundament of the 1949 *Basic Law* was the Weimar Constitution with some amendment done by cause of the political and economical changed in the country. The essential principles and values of the Weimar Constitution were detailed and ensured with additional institutions to prevent emergency situations occurred by the Nazi Party. Further details see in the sections below.

4.2.1 Constitutionality of Political Parties under the 1949 Constitution

This new constitutionalism, which began in 1949 have changed the understanding of participatory democracy in Germany. The 1949 *Constitution* has adapted flexibly to the rapid and sustained changes in the society and politics. The *Basic Law* has been amended 55 times, so around half of the articles have been changed since 1949.[639] The first half of the changes related to the federalism issues, emergency regulations, secret societies. The second half of the *Constitution* designed in the content about Federal Constitutional Court (FCC).

Turning to the content of the Basic Law, it is reasonable to start from the statements of basic principles that serve the German society.

Article 1 provides the protection of human dignity

> "(1) Human dignity is inviolable. To respect and protect it is the duty of all state authority.
> (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

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[632] GG (1949), art. 54 (1), (2).
[633] GG (1949), art. 55 (1).
[634] GG (1949), art. 58.
[635] GG (1949), art. 60 (amended 1956), BGBl 111.
[636] GG (1949), art. 63 (1).
[637] GG (1949), art. 64 (1).
[638] GG (1949), art. 92-104 (amended 1968), BGBl 657, 658, (amended 1969), BGBl 97, 363, 1357, (amended 1971) BGBl 206.
[639] Grimm (2010), 33-46.

(3) The following basic rights shall bind the legislature, the executive, and the judiciary as directly enforceable law."

All these fundamental principles framers of the *Basic Law* awarded to each person that ignored by the Nazis. This provision asks people to respect and protect them even against constitutional amendments that Article 79 (3) protects from. Respect and protection of the people prevent authorities to misuse them locally or federally.

Article 2 provides the protection of the rights of liberty,

"(1) Everyone has the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law."

The provision guarantee people their free actions to develop their personalities through the education and work. However this right is limited with the rights of others, with constitutional order and the moral code that provided by Article 18 with the purpose to guarantee of human dignity.

Article 3 general principles of equality before the law,

"(1) All persons are equal before the law.
(3) No one may be disadvantaged or favored because of his … religious or political opinion."

This provision requires equality without any justification that in opinion of the FCC not needed.[640] The (3) gives some of that justification including religious or political opinion, that makes no need to be justifies with other more details, because they provided by other Articles 2, 4, 5, 8, and 9 in the *Constitution.* This provision limits political opinion with forward to the Article 18 and 21, when opinion of the individuals or political parties violates the rights of others, constitutional order and moral code.

Article 5 provides the protection of the freedom of expression,

"(1) Everyone has the right freely to express and disseminate his opinion in speech, writing, and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship.

This provision requires the state to provide balanced necessity during licensing private associations wishing to express their opinion through the speech. It says about guarantees of protection by the FCC in some cases that need to be supervised, otherwise it will violate to human dignity of this Constitution.[641] This part, the FCC emphasized as not a restriction of the government, but the impact could be done upon the benefits of the press, which is not allowed by the law.[642]

(2) These rights find their limits in the provision of general statutes, in statutory provisions for the protection of youth, and in the rights to respect for personal honor.

This part requires any influence from the content of the individual work to the rights of others must be avoided.

(3) Art and science, research, and teaching shall be free. Freedom of teaching shall not release anyone from his allegiance to the constitution."

This provision is very important in the context of expressing the research ideas, criticism of the

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[640] BVerfGE 1, 14. Südweststaat (1951).
[641] BVerfGE 57, 1. NPD (1981), BVerfGE 73, 40 – 3. Parteispenden-Urteil (1986).
[642] Cf. Currie (1994), 240.

government by academic workers of the universities, schools. This norm was prohibited before WWII. This protection of the right to be heard through the researches significantly increases the role of the universities in developing the political system of the country.[643] The (3) is the subject of the militant democracy concept, where the protection of the individual scholars need to be guaranteed by the government and from their interference.

Article 9 provides the protection of the freedom of association,

> "(1) All Germans shall have the right to form associations and corporations.
> (2) Associations whose purposes or activities conflict with criminal statutes or that are directed against the constitutional order or the concept of international understanding are prohibited."

This says that political parties are associations and the law prohibits them under the conditions mentioned in Article 21 (2) and would subject the, to public authorities under the FCC decisions.

Article 18[644] provides the forfeiture of basic rights,

> "Whoever abuses freedom of expression of opinion, in particular freedom of the press (para. (1) of Article 5), freedom of teaching (para. (3) of Article 5), freedom of assembly (Article 8), freedom of association (Article 9) … in order to combat the free democratic basic order shall forfeit these basic rights. Such forfeiture and the extent thereof shall be determined by the Federal Constitutional Court."

This provision requires to double check all fundamental rights and use them in a maximum size until they are not violating the rights of others, constitutional order and moral code. This article can be interpreted as contradicting provision to the fundamental principles and freedoms ensuring the Constitution. The feature of this provision is to increase the constitutional complaints regarding the rechecking the rights and find possibility to forfeit some of them.

Article 19 restrictions of basic rights,

> "(1) Insofar as basic right may, under the Basic Law, be restricted by or pursuant to statute, such statute shall apply generally and not solely to an individual case. Furthermore, such statute shall name the basic right, indicating the Article concerned.
> (4) Should any person's rights be violated by public authority, resource to the court shall be open to him."

This provision guarantees of judicial review to anyone whose rights are ignored by public authorities. Anyone can file a constitutional complaint to the FCC.[645] Moreover, reviewing constitutionality of the acts must determine what kind of law was violated and what are the facts of this violation. Otherwise, it could not be defined is violation of the rights.

The provisions of Article 20 are stated as follows:

> "(1) The Federal Republic of Germany is a democratic and social federal state.
> (2) All state authority emanates from the people. It is exercised by the people through elections and voting and by separate legislative, executive and judicial organs.
> (3) Legislation is subject to the constitutional order; the law and justice bind the executive and the judiciary.
> (4) Any Germans have the right to resist any person or persons seeking to abolish this constitutional order, should no other remedy be possible."

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[643] Ibid., 7.
[644] GG (1949) (amended June 24, 1968), BGBl 710.
[645] Currie (1994).

This provision seemed to be saying that the instrument to determine the abolishing of the constitutional order is people's attention to the public affairs, their sovereign powers to exercise their rights and freedoms. Only their strong collaboration with the public authorities assist to keep constitutional order to be protected. The constitutional order is bound with all branches by statute and law here.

Article 21 includes provisions about political parties, which says:

> "(1) Political parties shall participate in the formation of the political will [*die politische Willensbildung*] of the people. They may be freely established. Their internal organization shall conform to democratic principles. They shall publicly account for the sources and use of their funds and for their assets.

This is the reflection of the Bill of Rights, which guarantee to form political parties, but with some exceptions. This provision recognize the risk of the influence of political parties, for this reason, the provision requires that the internal organization must be conform to democratic principles. Internal organization in this context means careful choosing the members, checking their impact to the general principle work of the party and many other impacts that can be done from inside of the party.[646] Obeying this requirement by political parties open doors to fulfill their tasks of the formation of the political will of the people.

Another value of this provision is that political party must introduce all information to public for the sources and uses of their funds. This part was designed to increase public knowledge about all large influences that may come through the party policy, including their financial conditions. This means that anyone can question parties' constitutionality base on their funds to the FCC.[647]

> (2) Parties that, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality."[648]

This provision makes responsible the FCC to determine the antidemocratic political party. The principle of the "free democratic basic order" is the instrument of the 1949 *Basic Law* to protect Germany from the lessons learned from the failed of Weimar Republic and the rise of National Socialism by Hitler's party. The basic order appears in the context of the constitution several times, particularly, in the provision of Article 5 (3) about the loyalty to the constitution, Article 9 (2) about other associations conflicting with constitutional order, Article 18 about forfeiture of certain basic rights in the interest of protecting the basic order, Article 28 about the states conformity to the principles of the republic.

Article 28,

> "(1) The constitutional order in the *Länder* must conform to the principles of republican,

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[646] Currie (1994), 207-213.
[647] *See* BVerfGE 24, 300. Wahlkampfkostenpauschale [Election Compaign Fee] (1968), BVerfGE 20, 56. Parteienfinanzierung I [Party Financing I] (1966).
[648] GG (1949).

> democratic and social government under the rule of law, within the meaning of this Basic Law.
> …
> (3) The Federation shall ensure that the constitutional order of the *Länder* conforms to the basic rights and to the provisions of paragraph (1) and (2) of this Article."

The provision repeats about constitutional order to the states, in particular it requires similar legislative bodies. It says how significant are the statutes and laws, and need to be protected. It guarantees some autonomy of the states through their check on federal legislation.

Article 38 provisions for equal elections

> "(1) The deputies to the German Bundestag shall be elected in general, direct, free, equal, and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and shall be subject only to their conscience."

The requirement of this provision is direct elections designed to prevent the clarity of the candidates to their voters. The voters must elect representatives. This means that candidate list prepared by the political parties should be fixed that people could make a decision.[649] The provision requires measuring the equal and proportional representation.

Article 139 provided continued validity of denazification provisions,

> "The legislation enacted for the 'Liberation of the German People from National Socialism and militarism' shall not be affected by the provisions of this Basic Law."

The purpose of this provision related to the Allied occupation period after WWII, when expected a need of denazification of the laws, even it was contrary to the fundamental rights and freedoms. Another interpretation can be done to this provision that it has no negative effect, but suggesting not exercising the political discrimination.

The concept of militant democracy (*Wehrhafte Demokratie)*[650] is the fundamental concept behind postwar German experienced of the Weimar Republic. Antidemocratic political forces used the advantages of political freedoms and misused the constitutional order. The term militant democracy was introduced by dissident scholar Karl Loewenstein in 1935[651] and developed by another, Karl Mannheim in 1943.[652] It was pointed out about the previous kind of European democracy had allowed totalitarian forces to destroy political systems. Allowing the misuse of democratic rights in the interest of protecting principles such as freedom of association and pluralism can bring about the destruction of the State.[653] These arguments based on Germany's experiences during the Weimar Republic, opened a new way of thinking about democracy in Germany – militancy. Theory militant democracy developed techniques and measures to protect the constitutional order from enemies of democracy. Karl Mannheim describes militant democracy as

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[649] BVerfGE 47, 253. Gemeindeparlamente [Community Parliaments] (1978).
[650] Markus Thiel, "Germany," in *The 'Militant Democracy' Principle in Modern Democracies* (ASHGATE: Heinrich-Heine-University of Dusseldorf, 2009).
[651] Karl Loewenstein, a native German legal and political scientist of Jewish origin, who immigrated to the United States in 1933.
[652] Karl Mannheim, a Hungarian-norn Jewish sociologist, who fled to Britain in 1933.
[653] *See*, Karl Loewenstein, "Militant Democracy and Fundamental Rights," in *American Political Science Review* (1937), 580.

another way to think about the balance between non-intervention in the freedom of association and state dictatorship.[654]

None of the mentioned above fundamental rights and freedoms are absolute. Even more, some of them designed to restrict some freedoms as a fact of historical experience from Weimar Republic.

4.2.2 Regulations of Political Parties under the 1949 Constitution

The activities of political parties *de facto* and *de jure* form that constitutional order and politics of the FRG. Political parties represent the interests of particular social groups that can be represented only through their parties or inside of them. This interrelationship between political parties and inside of it can be considered as a key issue of political system.

In 1967, the *Bundestag* adopted the *Federal Law on Political Parties* (*FLPP*). The role of the political parties was highly increased in the state vital activity; special laws were adopted with explanation and basic criteria of political parties as component of constitutional structure of the society. This section selectively choose the provision from the *FLPP* that most related to the content of this paper. Fore example, constitutional status of political parties can be seen in the Section 1 of the 1967 *FLPP*:

> "(1) Political parties are a component of the free democratic basic order required under the Constitution. Due to their free and continuous participation in the formation of the political will of the people, they perform a public function which is incumbent on them under the Basic Constitutional Law and which they undertake to fulfill to the best of their ability."[655]

This section requires political parties to pay attention to their internal structure, which sometimes can be risky with ensuring the protection of the democratic order. The importance of the party must be judges from the results of previous parliamentary elections (Section 5 (1)).

Section 2 gives a definition of political parties as representatives in the *Bundestag* and states legislatures influence on the formation of political will of the people. Political parties offer a sufficient realization of their aims through party organization, members. If political party does not participate in any elections than it loses its legal status base on motions by public authorities and by decision of the FCC.

Section 4 mentions about designations that political party should has as association. For example, the name of the party must be clear and distinguishable with other names. Only registered name of political parties admit to the elections race.

Section 6 of the *FLPP* provides some requirements to the political parties that must be done. The first, political party must have a written form of their statutes and program. The statutory

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[654] Thiel (2009), 110.
[655] Parteiengesetz vom 24. Juli 1967 [PartG] [Act on Political Parties of July 24, 1967], part I, sect. 1, (amended 2004), trans. Federal Ministry of the Interior of the FRG (2009).

provisions must ensure the right to file motions, to ensure a democratic formation of will (Section 15 (3)). The second requirement relates to the documentation content about registered name, members, their rights and duties, disciplinary measures, and general organization. Relevant documents must be submitted to the Federal Returning Officer. In case of dissolution, political party must inform the same office. All information regarding political parties must be open to the people and copies of the relevant documents must provided free of charge.

Section 7 provides provisions about organizational structure of the party. The size and scope of the party depends on its development. Sufficient development must be recognized as creation comfortable conditions for individual members to participate in the political events of the party. Providing members with information about political will of the party, also emphasize party's sufficiency.

Section 9 provides the information about political parties internal organization consisting of the party convention and general assembly. The party convention decides significant issues of the party such as party program, statutes, subscriptions, arbitration procedures, the dissolution of the party and mergers with other parties, financial report on high level. The party convention elects all members of the party and subjects them to disciplinary measures.

Section 10, provides neither the general nor temporary bans on admission of a new members. Persons who violate the statute or principles of the disciple in the party, have been deprived of the rights to vote by the FCC may not be a party member. The right to appeal with constitutional complaint is guaranteed by the Constitution.

Section 11 provides regulation on executive committee elected base on secret and open suffrage (Section 15 (2)) for two-year term and consisted at least from three members. The executive committee of the party manages the organizational work in the states' braches. It represents the results of the states' branches in the party convention level. The executive committee must be informed about donations to the party (Section 25 (1)). Party must have general committees regulated by the Section 12.

Section 14 regulates provisions about Party Arbitration Court elected for four-year term. It makes decisions on disputes between the parties, their branches, and disputes over the interpretation and implementation of the statutes. The members of the Party Arbitration Court must be independent. This means they may ensure a democratic formation of the will of the party members.

Section 16 regulates measures against regional branches of the party. Subordinate regional braches of the may be dissolve only if they make a serious disciplinary infringements. All disciplinary measures must be written in the statutes and explain conditions when and which measure permissible to use. Only the high level regional branch may pass disciplinary measures. The law protects the right to appeal against the decision on disciplinary measures.

Section 17 shortly informs about the right to nominate candidates for elections to the

Bundestag and *Bundesrat* by secret ballot. The electoral laws and party statutes regulate all details about proceedings for elections.

Section 18, 19 and 19a reminds about principles and volume of state funding.[656] The financial support by the federal state ensured by the 1949 Constitution with some nuances. The financially support depends on the political party's achieved success in European, Bundestag and Landtag elections. The parties may receive: if European or *Bundestag* elections results at least 0,5% or a Landtag election at least 1% then 0.70 euro for each valid vote cast for list; if in a constituency or polling district elections results at least 10% then 0.70 euro for each valid vote cast for a party; if European or *Bundestag* elections results at least 0,5% or a Landtag election at least 1% then 0.38 euro for each euro obtained as bestowals only up to 3300 Euros per person; in Land elections the state fund must be 0.50 euro per vote; 0.85 euro for every vote obtained up to 4 million valid votes (Table 1).

Table 1.

No.	Elections	0.70 euro/1 vv	0.70 euro/1vv	0.38 euro/1euro bestowals (up to 3300 euro/1 person)	0.50 euro/1 vv	0.85 euro/1vv (up to 4 million vv)
1	European, *Bundestag* at least 0,5%	○		○		○
2	Landtag at least 1%	○		○		○
3	A party constituency or polling district at least 10%		○			○
4	Land				○	

Note: vv – valid vote

The fund must calculate gained votes on the sum the membership and deputy fees, on amount of money obtained from donations. The total volume of state fund must be no more than 133 million Euros and must not exceed the annual income of the party. The state funding must be stopped if the FCC made a decision on dissolution or banning of the party. The Federal Statistic Office must submit all reports regarding the foundation must be submitted to the *Bundestag.* Parties entitled to receive the state funds must be granted with installments not exceed 25% for the total sum for the preceding year. Parties may accept donations in cash up to 1,000 euro. If amount excess 10,000 Euros then it must recorded in the statement of account; if excess of 50,000 Euros then must be reported to the President of the German *Bundestag*. There are also some limitations in acceptance of donations by parties, which stipulated in the Section 25 (2).

[656] BVerfGE 8, 51. Parteispenden-Urteil [Party Donations Rating] (1958), BVerfGE 20, 56. Parteienfinanzierung I [Party Financing I] (1966).

The *FLPP* has long regulations about income, audit, penal provisions for unpublished accounts, but these provisions are not really relevant to the content of this paper than provisions about unconstitutional parties in the Section 32 and 33 of the law. If the FCC declared party unconstitutional under the Article 21 (2) of the *Basic Law* then the State governments must adopt the law on enforcement. The supreme State authorities must give instructions ordered by the FCC on proceeding. If the FCC declared the organization or activities of the party or of the party unconstitutional then the Federal Ministers of the Interior must issue the order on enforcement. The supreme State authority or the Federal Minister of the Interior is responsible to impose the ban of the political party.

The procedures on prohibition political parties are provided for in Articles 42-47 of the 1951 *Federal Constitutional Court Act*. The FCC starts its procedures only if the *Bundestag*, the *Bundestrat*, the federal government or government of the *Lander* files an application to ban or restrict the activities of a political party. The implementation of the FCC's decision that a party is unconstitutional is provided for in the 1967 *FLPP* (Section 6). If an unconstitutional political party continues its activities even after the implementation of the FCC's decision, the penalties stipulated in Articles 84-86a of the *Criminal Code* are imposed.

The 1949 *Basic Law* and the 1967 *FLPP* does not have any provisions that require registration of political parties or collecting signatures. Political parties that participate in the election are required to give a notification to the Federal Returning Officer before the election, except experienced political parties who have at least five representatives in the Parliament since the last election. In the election process a significant role has the Federal Electoral Committee (FEC) that has the power to decide the legality of particular political party under the 1967 *FLPP*. The FEC identifies the participation of the public associations in the last six years in the federal or local elections. In case absence of any records than the FCC can restrict the activities of association in the elections.

At the conclusion of this section, the *FLPP* is a detailed document, which provide many instructions to political parties willing to activate their political rights through the creation of political parties or becoming a member of some of them. The *FLPP* includes details regarding the internal organization of the party and financing. Moreover, *FLPP* extends the constitutional provisions of Article 21 (2) showing the proceeding passing by banned party. The next section shows other provisions regulating unconstitutional political parties.

4.2.3 Other Provisions Regulating Political Parties

Another specific laws such as the *Federal Law on FCC* regulate the activities of political parties in Germany. The FCC, which was created in 1951 in, has engaged in "basic rights jurisprudence that has most changed the meaning of the constitution as an instrument to constrain

political actors."[657] The FCC,

> "has opened a way from traditional legal positivism to a method of interpretation that makes it possible to bring constitutional principles to bear on the life world of the ordinary citizens."[658]

Cases illustrating this rights jurisprudence are introduced in the section 4.3.

The *1949 Basic Law* grants a special competence to the German FCC to make an interpretation of the free democratic basic order of Germany and declare it in its decisions. It is direclte relavent issue to this paper, in particular the judgements of the FCC, which are constitutive. Therefore, the *Basic Law* does not allow any administration and executive measures against the illegal parties until the FCC has ruled them to be unconstitutional. The government officials can submit their motions to the FCC, while they do not exercise any measures against the leaders and members of the parties. Some critics note that constitutional provisions on FCC increase the power of executive body, mainly Federal Chancellor. [659]

The German FCC has to protect the federal system as it is provided in the 1949 *Basic Law*. The idea of the constitutional court system in Germany comes from pre-war time, when the Empire's High Federal Court [*Reichsgericht*] existed in the Weimar Republic.[660] It was modified after WWII with regard to the needs of the state of the rule of law. This system was modeled based on the systems in Switzerland, Austria and the United States.

Another a significant regulation of political parties stipulated in the Federal Law on

The next section shows the cases studies based on above-mentioned legislative provisions over the political parties.

4.3 Implementing Constitutional Review of Political Parties

The 1949 FRG *Constitution* survived a period of radical criticism in the late 1970s. There are still many opinions about whether it will survive in its current form at present too, given the appearance of neo-fascist groups seeking to form political parties, which are also discussed below.[661] These significant issues depend on the FCC as the sole authoritative institution, which has a moral and legal duty to serve the people. This study takes the view that the FCC is appropriately powerful but should take note of changing social mores in German society.

In November 1951, the Federal government submitted two motions to the FCC and asked to review the constitutionality of the Socialist *Reich* Party (*Sozialistische Reichspartei – SRP*) and Communist Party (*Kommunistische Partei Deutschlands – KPD*). The FCC declared both political

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[657] Baer, Susanne et al. "The Basic Law at 60," in *German Law Journal* (Vol. 11 No. 1 January 1, 2010), 4: The contribution of former Federal Minister of Justice, Bridgitte Zypries.
[658] Ibid.
[659] Krilov (1966), 75.
[660] Zacharias, Diana. *Australian High Court and German Federal Constitutional Court: A Comparison With Regards to Status and Procedures* (Aachen: Shaker Verlag, 2005).
[661] Baer (2010).

parties as unconstitutional under Article 21 (2) but giving different reasoning. The first opinion, the court used the historical impotency of the Weimar Republic and the fights of the National Socialist against the constitutional means. In the second opinion, the court built arguments in the context of the aim of activities of the communist party as essential problem feature to the democratic state.[662]

4.3.1 The 1952 Case: Socialist Reich Party

The first case of 1952 was filed against the right extremist Socialist *Reich* Party; also know as neo-Nazi organization into the dispute by the FCC.[663] It was founded in 1949 and "obtained 11 percent and 7.7 percent" in the parliamentary elections in Niedersachsen and Bremen in 1951.[664] The Federal Government filed a motion on unconstitutional political party under Article 21 (2) to the FCC finding that the SRP "seeks to impair democratic order."[665] Soon after the elections the FCC banned it in 1952.

The constitutional review of Article 21 (2) by the FCC expanded the interpretation of that provision saying that general democratic principles of the 1949 *Basic Law* permit the formation of the parties of any orientation. Not every of them, however, seeking to respect and not misusing the constitutional basic order.[666] Article 21 (2) was introduced as a preventing measure of neo-Nazi activities.

There is a high risk of creation of internal structure of the party, which can raise the authoritarian thoughts from inside of it and then wish to impose the same structure to the whole state.[667] The FCC, base on all facts of the considered case, concluded that the activities of the SRP was composed of the authoritarian structure of former Nazis Party.[668] Moreover, the members of the SRP were successors of the Nazis Party.[669] Their program aimed to overthrow of existing free democratic order.[670]

The FCC defined the free democratic basic order and its fundamental principles as follows:

> The free democratic basic order can be defined as an order which excludes any form of tyranny or arbitrariness and represents a governmental system under a rule of law, based upon self determination of the people as expressed by the will of the existing majority and upon freedom and equality.
> The fundamental principles of this order include at least: respect for the human rights given concrete form in the basic law, in particular for the right of a person to life and free

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[662] Niesen, Peter. "Anti-Extremism, Negative Republicanism, Civic Society: Three Paradigms for Banning Political Parties- Part I," in *German Law Journal* (2002), 13, http://www.germanlawjournal.com/index.php?pageID=11&artID=164 (accessed December 23, 2013).
[663] BVerfGE 2, 1. SRP-Verbor [Socialist Reich Party (SRP) Ban] (1952), trans. by Kommers (2012), 733.
[664] Thiel (2009), 121.
[665] Kommers (2012), 384.
[666] Ibid., 12-13.
[667] Ibid., 14.
[668] Ibid., 23-47.
[669] BVerfGE 2, 1 (1952).
[670] BVerfGE 2, 1 (1952).

> development; separation of powers; responsibility of government; lawfulness of administration; independence of the judiciary; the multi-party principle; and equality of opportunities for all political parties.[671]

The opinion of the FCC on a collective responsibility of all members who engaged into the SRP activities was quite enough rather than individual.[672] Moreover, the anti-constitutional bearing of the SRP showed the attempts to weaken the multiparty system itself through the dictatorship, thereby rejecting the most fundamental principles of democracy.[673] The signs taken as evidence by the FCC were the unfavorable comments by the members about the colors of the flag.[674]

That 1952 case was more than natural reflection of the Article 21 of the *Basic Law*. The FCC decided that the political direction of the SRP, their political philosophy of suppression was the same as the Nazi Party, in particular using the constitutional provisions and then breaking them from the top.[675] The SRP was dissolved and elected representatives were disposed of their parliamentary seats.[676] This decision was perceived as common sense.

4.3.2 The 1956 Case: Communist Party

The idea to manage the political system as Germany did by adding a powerful independent FCC raised intense criticism after some unpopular decisions were made, including the 1956 case on the Communist Party of Germany (KPD). This case is regarding banning activities of the Communist Party in the 1951 Parliamentary elections, which gathered much criticism around. The problem was related with the constitutional justification that bans Communist Party.[677] All around this case discussions continued until 1956 when finally the KPD was banned.

In this case the FCC implemented the idea of a militant democracy as constitutional theory.[678] The FCC found the KPD unconstitutional[679] and had a great tension on designing the grounds for decision base on militant democracy and the basic constitutional values.[680] The opinion of the FCC was under the risk of violation of the freedom of association and expression during the proceedings. It explained that the public platform of the KPD aimed to fulfill a revolution and establish a dictatorship of a proletariat in the state, while the fundamental rights and democratic state will leave the stage.[681] In this decision, the FCC explained:

> The FCC has to answer the question, if the fundamental importance of the basic right to

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[671] Baer et al (2010), 116.
[672] BVerfGE 2, 1 (1952).
[673] BVerfGE 2, 1 (1952).
[674] BVerfGE 2, 1 (1952); Cf. GG (1949), art. 22: "The federal flag shall be black, red and gold."
[675] BVerfGE 2, 1 (1952).
[676] BVerfGE 2, 1 (1952).
[677] *See* Maurner 1971.
[678] Thiel (2009), 111.
[679] BVerfGE 5, 85. KPD-Verbot [Communist Party of Germany (KPD) Ban] (1956).
[680] BVerfGE 5, 85 (1956).
[681] BVerfGE 5, 85 (1956).

> freedom of political expression for the free democratic basic order permits a regulations like Article 21 (2) of the Basic Law at all…[682]

The FCC explained that questioning the constitutionality of Article 21 (2) is possible, because *Constitution* provided some kind of a "hierarchy of provisions,"[683] which subordinate to each other. However, Article 21 (2) limits only the freedom of those political parties who destroy the basic principles,[684] and not giving the scene to the enemies of those principles.[685] The FCC said that *Basic Law* makes a great protection of the freedoms, and not allows to legitimate opposition of the democratic order by giving the authority to the FCC to determine those risky associations.[686] This means that,

> Article 21 (2) … does not conflict with a fundamental principle of the constitution; it is an expression of the conscious constitutional political will to solve a border problem of the free democratic form of state, a reflection of the experiences of the constitutional legislator, who thought he could be not realize the principle of neutrality of the state towards political parties in a pure form in a specific historical situation, a confession to a 'militant democracy.' This decision is binding the FCC.[687]

For this reason, the FCC narrows the question of constitutionality and defines the KPD as seeking "to impair or abolish the free democratic order."[688] It concludes with the paragraph,

> "The party must in addition take an actively belligerent, aggressive attitude toward the existing order; it must plan as well as desire to impair the operation of this order and eventually to set it aside entirely. That is to say, the free democratic state does not take out after parties with inimical aims on its own initiative. Rather it behaves defensively; it merely wards off assaults upon its basic order.[689]

The FCC added that Article 21 (2) intervene the creation of anti-democratic party as measure ensuring a safe future for the people.[690] This position of the FCC to make measures for the future thought to think, if there is no clear risk for the society and people show that society is changing then the party can operate safely.

The 1956 case changed the organizational order of the KPD and changed its initial from KPD to DKP and only after that allowed operating legally.[691] However, recent time decreased the necessity of prohibition of communist parties and increased the confidence in the solidity of people to ensure democratic stability of the country. The supporters of old regime obviously decreased in numbers. This fact makes clear reason why KPD is not prohibited now.[692]

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[682] BVerfGE 5, 85 (1956); Thiel (2009), 111.
[683] Currie (1994), 218.
[684] BVerfGE 5, 85 (1956).
[685] BVerfGE 5, 85 (1956).
[686] BVerfGE 5, 85 (1956).
[687] BVerfGE 5, 85 (1956); Thiel (2009), 112.
[688] Currie (1994), 220.
[689] Cf. BVerfGE 5, 85 (1956).
[690] BVerfGE 5, 85 (1956).
[691] Currie (1994), 221.
[692] Statut von Kommunistische Partei Deutschlands [KPD] [Charter of the Communist Party of Germany], 2009.

4.3.3 Case Following

In the contrast to above-mentioned cases, there were many attempts by the government to ban different left- or right-wing parties. For example, in 1993, the Hamburg Senate filed to ban the National List (*Nationale Liste - NL*), which is a very small right-wing party. In the same year the Federal Government and the *Bundestag* filed a new motion to ban the Free German Worker's Party (*Freiheitliche Deutsche Arbeiterpartei*). The FCC dismissed two motions explaining that Article 21 cannot review the status of both associations, because they are not political parties.[693]

Recent researches has emphasized that the integration of nationalistic groups into German society and political party system increases as well as motions against them.[694] Another motions filed against the right-extremist National Democratic Party of Germany (*Nationaldemokratische Partei Deutschlands – NDP*). It was founded in 1964. This party has several successful parliamentary elections in the 1960s. In 1970s the Federal Ministry of Interior published a report describing the unconstitutional activities and radical views to the rights and freedoms based on democratic order in Germany. Then the attempt to ban NDP repeated the Chancellor Gerhard Schröder along with Federal Parliament under Article 21 (2). The tendency of spreading the racist and neo-Nazi messages rapidly increased in Germany, which made all public authorities to pay attention to any nationalistic parties including NDP. The platform of the NDP was questioned on constitutionality.[695]

In 2001, the German Government, the *Bundestag* and *Bundesrat* filed motions with the FCC seeking to review the constitutionality of the extreme right-wing NPD and ban its activities. The FCC decided that the motions were acceptable.[696] After FCC recognized that the members of secret services worked within the NDP to collect information and feeling the danger that that state agents might manipulate all evidence and party itself, in 2002 the FCC suspended the decision on holding hearing.[697]

In 2003, the FCC applied to the procedural question on the case go forward because of the state agents membership in the NDP. The FCC explained that Article 15 (4) provides the protection from the "disadvantageous decisions" that may negatively influence a legal position of the respondent.[698] The FCC checks the contact between the party members and state agency that might file a motion in order to protect the constitutional order even intervening the party' work. The FCC

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[693] Thiel (2009), 121.
[694] Peter Niesen, "Anti-Extremism, Negative Republicanism, Civic Society: Three Paradigms for Banning Political Parties- Part I," *German Law Journal* (2002), 13.
[695] Kommers (2012), 376.
[696] Felix Hanschmann, "Federal Constitutional Court to Review NPD Party Ban Motion," *German Law Journal* (2001), http://www.germanlawjournal.com/index.php?pageID=11&artID=104 (accessed December 22, 2013).
[697] Alexander Hanebeck, "FCC suspends hearing in NPD Party Ban Case," *German Law Journal* (2002), 1-3.
[698] Kommers (2012) 7743, BVerfGE 107, 339 (2003).

feels responsibility to determine if political party is really unconstitutional too in order to guarantee the observation of the constitutional requirements. For discontinue the case, the FCC must make a decision on the fact of constitutional violation, the cast damages for conduct the proceedings, the results from the constitutional violations.

The FCC accepted the fact of reviewing the constitutionality of the party as the last chance to determine the enemy of the democratic order and of the state. However, the falsified evidence about NDP is necessary to the court to proceedings that effects to the decision to ban NDP or not. The FCC declared that Federal Law on FCC strictly imposes freedom from state interference. It is a powerful instrument to ban political party without detailed legal certainty of the facts. For this reason, the FCC feels not possible to continue proceedings where no actual dangerous in evidence existed. The majority of the FCC disagreed to ban NDP.[699]

4.4 Summary and Reflections

Historical development of Germany from constitutional perspective showed the existence of the Frankfurt *Constitution* (1848), the Prussian *Constitution* (1950), and the Weimar *Constitution* (1919) that brought to the final unpredictable results of democracy to WWII. The struggle for the unity or liberty brought to nothing but occupation of Germany by four Allied countries. This way of using all instruments of democracy alarmed German scholars to worry about the future context of the constitutionalism and how goes the protection of the fundamental rights allowing the maximum of freedom for all political activists. They adopted 1949 *Basic Law* as a temporary document to govern western occupied zone of Germany and then became the constitution of all Germany.

The society changes naturally should reflect to the Constitution and other necessary legislation. Two centuries has left to find the German way of increasing the significance of the *Basic Law* and protection people from their selves. The experience of the Weimar Republic with the most democratic *Constitution* at that time and the shifting the power to the enemies of the people was the biggest tragedy and crucial for the constitutionalism, which could not be protected over by any of the branches of power other than be destroyed.

For this reason, the innovation way of protection was by establishing an independent institution such as – FCC. Many discourses around this institution rose for and against arguments about its effectiveness. The guardian of constitutional order decides only constitutional issues, provides the consistent reading of the *Basic Law* by all public authorities. The FCC that never makes a precedent law, but decisions born thinking's about new role of Constitutional Court.

The *Basic Law* controls and protects the fundamental rights of the people through the constitutional complaints. German *Constitution* vested the power to declare the unconstitutionality

[699] Ibid.

of the public authorities' decisions, or to forbear from realization of the rights and freedoms by the FCC. This function of the court might contradict to the consensus as to the value of human dignity, rule of law, and met criticism from time to time.

The *Basic Law* was designed in the way that helps to increase the responsibility of the people toward policy-making process. For this reason, the constitutional morality comes to help in this idea with its principles militant democracy and constitutional basic order. These principles became the most reviewed hypothesis in most of the judgments by the FCC.

The 1949 *Basic Law* says no for realization of the fundamental rights and freedoms, when people violate the constitutional order, the rights and freedom of the other people and morality code. This function is not just vested to the executive branch as it was during the Nazism, and even more not vested to the Supreme Court as regular institution in many democratic countries, but was vested to the specialist with a long experience in justice. Moreover they are representatives elected from the parliamentary members without appointment. The FCC members are truly independently elected justices.

The *Basic Law* was designed base on the Weimar *Constitution*. It was changed according to the new conditions. The base included the structure to refrain from establishing substantive barriers and was clear about the functions of each branch. The restrictions of the freedom of associations particularly most violated and not enough protected, as well as it were misused by the enemies.

The experience of Germany constitutionalism in Weimar Republic and after WWII teach to think about extra instruments that can balance the use of the fundamental rights and their control and restriction of them under the judicial detailed and long proceedings. The true evidence and fact analyses by the apolitical court prevents people from damaging their values recognizing the responsibility for all activities directed to change the society for better life. The controlling instruments of the constitutionalism such as the FCC sometimes can be too much formulated and framed with phrases about what interrelationship with democracy and security, or human dignity. However, the feature of balance of the freedoms consists in its elegant limitations with logical argumentation in the review process and precedents like Nazism must be interpreted with principles of militant democracy every time even if the society is stably changing.

Chapter V: Implications of the Russian Federation and German Models for Uzbekistan

5.1 Shared Political Crisis, Divergent Paths

Uzbekistan, Russia and Germany, countries that shared historical crisis such as WWII, Communism and the Soviet collapse. In other words, it was a crisis in the period of existance of the USSR. Some countries (Germany) struglled against the territorial domination in the Eurasia, another (Uzbekistan) subordinated to implimented communistic regime, and thirds (Russia) just followed its legal system under periodicaly succeeded leaders.

Common people of these three countries shared not only economical, political and legal emaciation, but estrangement from their environment. The capture of the power by one (Hitler) and than by another political criminals (Stalin) turned west democratic ideologies about human rights and liberties against the people. People became the instrument for manupulating with artificialy adopted constituional rights by extramistic or even more monopolistic political parties which further gained the absolute power for a long time.

Some people can say that the history can not teach anything but remember of happended facts and not repeating. The law, however, simplify or makes complicate all procedures of life to not to lead to the chaos or complete destroyment of the state. And all three countries experienced during existense of the USSR relatively difficult path of exercising the rights and fundamental freedoms can just show cause and effect of thus crisis.

Uzbekistan had communism, WWII, autocratic regime but without its own leadership in the past. People were learned to subordinate to all kind of changes nether good or bad, weak or strong legal base. Constitutionalism and all connecting to this word institutions were only the ties that helped to use human resources to get more capital to make more war.

All constitutions that had Uzbekistan in the history address different content about freedom of associations. Only the 1992 *Constitution* is somewhat more democratic and detailed than the others but actually gives just a little protection. This is because there were no true struggles between civilians and government in the past. They had a parallel path, which never crossed with each other.

Uzbekistan has historically experienced strikes of different Islamic groups before communism came under the rule of Stalin in 1917 and after the communism had leaved under the leadership of Karimov in 1991. This was because the inhabitants who lived in the territories of Uzbekistan where the strong believers of Islam, but with different usage. The principle of secularism was not a real need for the people with Islamic faith. When the communism came to Uzbekistan with the conceptions of communism, socialism and modern democracy, there was no choice but to subordinate to the new policy of the government. People were easy to be manipulated by any of those concepts. However, they could not really put the ideas about them into their minds in that level that could make them stronger in protecting their rights and freedoms.

The ideas about democracy introduced by the first ‘democrat’ President Islam Karimov. The most positive sides of his regime are that Uzbekistan people know rights now about their rights to be independent. He introduced to the people the constitutional instruments that work better than any revolution if people want to change anything in their country. This recognition of the plurality of ideologies, equality of the people with different nationalities and confessions affected civil society and peoples’ ability to participate in their own governance. The old traditions and values of Sharia legal regime were already too narrow to compete with the huge democratic regime where blossoming such fundamental rights of each person as the right to speak, vote, form a political party. All this makes a great sense of new values where not only one person, but also whole *demos* can be part of the state.

Central Asian countries, including Uzbekistan followed an unnaturally smooth transition to top-down rule through a presidential democracy. The Cabinet of Ministries alone makes principal decisions that might be decided by intense popular debate or referendum in Uzbekistan. The Parliament does not check the executive but instead serves as an instrument of the Cabinet of Ministers. The most recent example of this is the changing of the term of the president from 7 to 5 years, without referendum. In contrast to a referendum was held in 2002, when the term was changed from 5 to 7 years.

In case of Russia there is along way with many of things related to the imperial governmnet and proletariat. A great experience of changing the society from top-down and from down-top build an ‘iron heart’ society in Russia. This society that may live in different regimes under different tsars and authoritarian presidents. The Russian society never stops to appeal against uncertainty and violation.

Gorbachev was the person in power, who reached the position of the General Secretary of the Central Committee of the CPSU in 1985, introduced new reforms in the period of political and economical instability in the USSR. This process was not directed to the complete change of the state structure, but to intensify the reforms started with the 1978 *Constitution*.

In 1988, the constitutional changes established a new parliament – the People’s deputies Congress of the USSR with the majority of seats gained by the CPSU. The significant development in the political system was the first in open discussions of the election programs by different wings of the CPSU. Broad discussions around political programs increased the freedom of words among nationalists and democrats. They won the majority of seats in the parliament. This means that two oppositions against to the policy of the CPSU already increased their power legally. Among all democrats the most active was Yeltsin.

The 1990s were remembered with the massive meetings in Moscow and other republics. Yeltsin with the support of democratic parliamentary block introduced the project of the law regulated the limitations for government military service to be the member of the CPSU. After this

project, followed the right to legalize the multiparty system in the country. Gradually, parliamentary representatives introduced a new project of the law that increased the functions of the President. The 1990s were really crucial for the system that gradually collapsed after the resignation of Gorbachev and self-dissolve of the Soviet Parliament.

Russia had a great and powerful state that was colapsed by uncompetent governers who monopolised the whole state by freezing all workable public institutions like courts, parliament. Territorial greatness gradually decreased because of the absence of common unity, legal unity, ideological unity, and even mental unity of the people. Russia spent the coldest historical moments in the attampt to have more without organizing the stability in all other territorial unities that further turned against or just lead to happen the colapse.

The Russia had different challenges with creating most competitive to the west democracy constitutions. Slowly creating all conditions for dictatorship of the proletariat and increasing the control over public authorities led to the strong totalitarian regime and repressions. The hard-fought desire of the people for political freedoms finished with instability of the system.

The constitutions took into their provisions the voice of the people. The collapse of the Soviet Union produced chaos in Russia on the one hand, and new free way of designing peoples' state from the other. Russians created a powerful presidential machine where the full work of other democratic element just cannot find the place.

Germany is the country of great changes from imperialism to the parliamentary, from parliamentary to the dictatorship. This is the country that challenged the most democratic constitution and the worse dictatorship that changed the whole world. Germany had constitutions that most countries using up today as a model for their systems as the most experienced and most protected from uncertainty.

The Weimar Republic "lure of the political and economic experiments associated with the democracy."[700] The shock of the dictatorship that people experienced from Germany affected many democratic constitutions with the norms and limitations against the militant democracy. The Germany builds its historic reputation with enemies and heroes who designed the one of the most powerful Constitutionalism that keeps under the control all public authorities trying to violate fundamental rights.

From a constitutional perspective the historical development of Germany contains a few points that can be mentioned as pivotal: the enactment of the 1919 Weimar *Constitution* and the 1949 *Basic Law*. Germany's path to a liberal constitutional democracy and a functioning parliamentary system involved many historical "ruptures."[701] In particularly, in the early of 19th century it was the failure of the 1848 March Revolution. In 1919 the Weimar Republic was emerged

[700] Fritz et al. (1949), 309.
[701] Schayan & Hintereder (2008).

and caused by the rise of the National Socialist German Workers Party (NSDAP or National Socialists) in 1933.[702] These periods have value to see the development of German constitutionalism.

Germany experienced the struggle of ideas much earlier due to the collapse of the old German empire. This means Germany continued the process of transition from constitutional monarchy to republic with a strong parliament, then to republic with a strong government, and finally achieving a balanced separation of powers, which importantly meant great power was given to the FCC after WWII.

During the interwar period with the rise of Nazism the intense resistance to Communist ideology drove the Germans into the arms of Hitler. This formed a base for a new contest of ideas after Hitler's demise, which over around four years led to a robust new *Constitution* where political security and freedoms are balanced. Giving new instruments of constitutional review to the FCC was a significant decision that delivered political stability to the country.

Germany, unless it's the worsest image during WWII, gives response to the broken democratic system with the several legal instruments. The first was signning the international aggreements and conventions. The second, desentralizing the state system by increasing the role of judiciary in the political context when it is relates to some emergency cituations like distroing constitutional order even through the democratic instruments.

5.2 Constitutional Comparison

The 1992 *Constitution* of Uzbekistan was designed under the supervision of Karimov, who is the leader of the country from the period of the USSR. As a guardian of protection fundamental rights in Uzbekistan, he has contributed to the development of the constitutionalism almost 22 years of his presidential life. The most blossoming periods of the constitutionalism was in 1992, 1996, 2004, and 2008.

The 1992nd was remembered with the adoption of the *Constitution* that bestows people with supremacy of power. The contributed ideas of the *Constitution* consisted in its sovereignty. The 1992 *Constitution* declared about the supremacy of the fundamental rights and respectful coherence with democratic ideas. The main purpose of Uzbekistan people is to live in peaceful civil and national consent society.

The guarantees of the freedom in all spheres are ensured. It protects the separation of powers where the majority can rule in the interests of all people. It is the main source of the law under which all public authorities must exercise their power without any violation of rights of others. The freedom of associations protected in the better way then it was before with additions about the political parties, whose political activities are guaranteed with the principles of pluralism, non-

[702] Schayan & Hintereder (2008), 38-39, 40-43.

interference, and secularity.

According to those principles 1996s was remembered with the adoption of the *LPP*, which detailed the role of the principles must work during the registration procedures and activities during the election and other time. The 1992 *Constitution* opened the possibilities for parties' competitive work for creating alternative representation in all three branches. However, the constitutional political parties that must be checked every time by the Ministry of Justice are supervised under the guidelines in the *LPP*.

In 2002 under the referendum the highest representative state body was recognized the bicameral parliament, which consists of the legislative chamber and the Senate. The legislative chamber must be elected in open and equal suffrage, for the term of 5 years. It composes of the 150 parliamentary deputies. The members of the Senate must be elected from each territorial unities in total 84, and 16 people must be appointed by the President. The big achievement of this period was the increasing the parliamentary role and the political parties' representation.

In 2008, political parties were vested in power to select the Prime Minister with presidential proposal, as well as local governors in the regions under the 2007 *Law on Strengthening the Role of Political Parties*. This and more other initiations have been made by the president and always supervised under the Cabinet of Ministries in the matters of the financial support and registration guidelines. The 1992 *Constitution* introduces the system with strong presidential power.

After the collapse of the USSR, Russia started its new life as RSFSR under the same 1977 Brezhnev *Constitution* with the idea to build a communistic society and developing the socialist democracy. Moreover, the CPSU was the core of the political party system and was protected by the Constitution. The representation of the people was realized through the People's deputies Congress.

The direction toward democracy was started with wrong way by amending diversity times of the 1977 *Constitution*. The discussions around new project of the Constitution had been gradually increasing and turning to the form of the president project under Yeltsin. He was a chairman of the Constitutional Supervision Committee. The project had passed many stages before it took a present form. Less of experience in designing a democratic constitution increased.

The democratic process was started without preparation and deliberation process, which lead the result into the crises of the law and passing the power from one political party (the CPSU) to another (The United Russia). There were three steps towards the adoption of the 1993 Russia *Constitution*. The first step, was remembered with continues amendments into the old Constitution. The second step of the constitutional preparation was done under Sobchak and other lawyers who worked on the part related to the fundamental rights. They hardly worked on the text of the Constitution to make it a document of the people, who could be free from the interference by the state bodies. This document was prepared in that way to make it stable to pass the transition period. The third step was remembered with the conflict increased between the President Yeltsin and

Parliament. After the conflict, the President initiated to publish the draft of the Constitution and to hold the referendum on trust to the Government and President, which the majority of the people supported the idea.[703] The support of the people helped democrats to go far away from the one-party system. The presidential unlimited office designed exercised some the decrees to dissolve the legislative chamber. Finally, the constitutional changes were finished with the adoption of the 1993 *Constitution*.

The 1993 *Constitution* of Russia was a result of the constitutional revolution, but not the reform. The process of the constitutional changes brought constitutional provisions with a new social life. This changes were based on provisional project to create any kind of but meeting all new principles of democracy. The transformation was late and lead to the crisis of the political system. The inspirations of the lawyers was hardly directed in the way of creation a real *Constitution* in 1993, which could ensure the most of the fundamental rights for the people.

The transition period included the step-by-step movement from the nominal constitutionalism to a real and trustful constitutionalism. The nominal constitutionalism included the many changes toward the protection of rights and freedoms, but they were not effective, because the public authorities unlimited in power. The 1993 *Constitution* introduced relatively trustful constitutionalism where the protection of the rights and freedoms delegated to the Courts and many other organizations, including the right to apply to the ECtHR against the FCC decisions.

The 1993 *Constitution* of Russia is a document of the people where all rights are like on the hands open, clear and welcomed to be used. There are fewer limitations than the past documents. It demonstrates the combination of rights and freedoms with the powerful branches with great power of the president, with deliberative parliament and relatively independent court. The *Constitution* has a strong and detailed content that can reflect a range of bill of rights. It welcomes all nationalities and confessions to enjoy their life in peace.

The main feature of this *Constitution* that it reflects the combination of the strong presidential power with deliberative parliament, and relatively independent Constitutional Court that makes the constitutional review. This review of all legislations must be preceded with respect to the Russian constitutionalism. The process of transition to democracy in Russia is still not finished. Moreover, it shows some critical moments during its adoption.

There were radical changes in the constitution itself, which were in the formal way and being preserved with old constitution. The radical changes were in political transformation. This transformation met the problem of national identity, political and legal systems that may feet the common democratic level. The transition changed the approach to the constitutionalism respecting the provisions and using them effectively through the democratic institutions.

The 1949 *Basic Law* of Germany has 60-year of experience after WWII. Under this

[703] See about Sobchak in section 3.2 of this paper.

constitution people experience the unification of the whole Germany and recognition of the west values about democracy and constitutional order that must be protected in any emergencies happening in the life. The militant democracy is the measure in all proceedings by the FCC.

5.2.1 General Principles

The 1992 Uzbekistan *Constitution* is a written formal source of the state authority, which establishes a catalogue of the fundamental rights. The fundamental rights include the principle of equality, freedom of religion, opinion, press, word and associations. The classical functions of the fundamental rights in the relationship between the associations and the state can be divided in to: (1) noninterference by the state, (2) interference by the state, and (3) cooperation with the state.[704] These functions have an explanation on how they cooperate according to such functions. The noninterference by the state principle describes free implementation of political party rights without a participation of the State. As example, an establishment of political party on voluntary basis is the free implementation of the right. The interference by the state describes the situation when political party cannot exercise its rights without the State. This right relates with the organization of the elections. The cooperation with the state principle describes the situations when political party freely "operates in or for the State, as in the rights and duties of voter,"[705] candidate or representative. Thus, these functions provide a mechanism for coexistence of political parties and government institutions in such democratic countries as Uzbekistan.

The constitutional provisions and legal norms of Uzbekistan regulate the rights of political parties and attribute them functions such as expressing the political will of a various groups of the population, as representatives, participating in the formation of the state authority. These functions determine the constitutionality of political party, their legitimacy in the country, except some cases, when Constitution prohibits the formation and functioning of political parties. These cases are: when political parties have any national or religious basis, violate human rights; change the existing constitutional order of the country. Constitution and other laws do not contain the definition of what is the constitutionality of political parties. However, based on the Articles 57 and 60 of the Constitution, and law on political parties, constitutionality of political party means the legitimacy of political party that comes from the day of registration of the party and continues until their elimination by the Supreme Court.

Multinational and confessional Russia always pays attention to the nature of the society and its political climate where it needs to survive. The 70-year of the communism taught Russia to respect the values of equality for everybody, except extremist behavior environment. The Russia

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[704] Mathias Reimann and Joachim Zekoll, *Introduction to Germany Law* (Kluwer Law International, 2005), 75.
[705] Ibid.

Constitution had leaned about separation of power and exercising this principle relatively good.

Militant democracy is a significant feature of the 1949 *Constitution* and political system in Germany. It is also the principle behind the jurisdiction exercised by the FCC. This principle is used to protect Germany from the self-destruction experienced during the Weimar Republic. This distinctive German constitutional feature is of interest due the somewhat analogous approach taken in the Uzbekistani situation.

After the experience of fascism across 1939 to 1945 and socialism in Eastern Europe from 1945 to 1990, the contributions of the idea of the militant democracy were in high demanded in Europe. This problem of state self-defense is still relevant in the present time as we witness the emergence of states from socialism. When a new country establishes a democratic regime, the state has to exercise controls to prevent the state turning against itself.[706] This concept of state protection, however, does not always produce perfect results, as is seen in the Arab Republic of Egypt in 2013, where a democratically-elected president was deposed in a chaotic revolution and it was difficult to see which side was violating democratic principles.

The Russia 1993 Constitution provide a huge list of the fundamental rights where all of them bounded with values and principles of tolerance to multinational and confessional society. Social state limits any political parties with religious and nationalistic features to exercise their political rights and freedoms. The tradition of Russia shows that the multinational people living in Russia has still the prerogative to their own roots, which comes from deep past history where was the occupation in different part of Russia by different races.

The principles of equality for every citizen are ensured by Constitution, but it is still on the level textual formula. The reality shows that the extra different community living in Russia makes difficult to keep tolerance in that way to ensure the equality for everybody. The public authorities still guided by the “iron hand” instructions for everybody who disturbing the peaceful behavior of the Russian socialist state.

The Germany 1949 *Basic Law* has a huge repeated range of the principles, which are almost in every decisions repeatedly interpreting by the FCC. The principles of human dignity, equality and militant democracy are the core theoretical disputes in all issues regarding the constitutional order. These principles make constitutional order to be workable and useful in the case reviews when the public authorities using their power to ban or to interfere the activities of political parties.

The main problem is how to make the balance between the past and present by realizing the real coming risks for society in Germany. The disputes about Communist Party are permanently closed for constitutional review. In case of the Nationalistic movements or the fact of increasing the tendency of moving the party members to the nationalistic wings,[707] it comes necessary to follow the

[706] Hermann Jahrreiß, a constitutional law scholar (1950).
[707] See case about National Democratic Party in section 4.3.3 of this paper.

principles of militant democracy and human dignity when the FCC decides the question on withdrawing the rights of particular risky parties.

5.2.2 Regulatory Body

The Uzbekistan historical context the constitutionalism shows the short way of its existence. Almost twenty years from independence were spent to build a regime and constitutionalism in the country. The regime is presidential with a strong executive branch. The constitutionalism is the sort of mechanism for realization of the fundamental rights and their protection through the Supreme Court, President, and Parliament. The idea of such regime and constitutionalism works in reality very slowly and not always successfully. This is because of the short historical experience and long process of train and adaptation to the new traditions and values of Uzbekistan people.

The 1992 *Constitution* of Uzbekistan provides that the people are the only source of the state of power, which fulfills their wish and interests. From this provision comes the question about will and interests of the people. Then, how people of Uzbekistan appeal about their will and interests to the state power? The Constitution says that there are several ways to do that.

These ways must be exercised through public discussions about will and interests in the referendum, mass media, parliament, courts, academic researches, meetings, assemblies, demonstrations and political parties. Of course, their will and interest can be limited with constitutional order and democratic principles proclaimed in the document. For example, establishment of the parallel state of power, monopoly of the state of power by one political party breaking the constitutional system and work of the legal representative institutions such as the Parliament and the President office. Also it makes difficult to ensure the protection of the democratic principles of equality, pluralism, and multiparty system. However, the opposition political parties nay be established, even more they are protected by the *Constitution*.

The 1992 *Constitution* of Uzbekistan ensures the respect of the people, their choice in the referenda, parliamentary and presidential elections and does not allow the interference of the public authorities to the respectful choice of the people. The respectful choice of the people may be changed with referenda, parliament, and president. Also it ensures the freedom of thoughts, words, believes, expressions, conscience, access to the public documents, and access to public positions. Among fundamental rights ensured by the *Constitution* can be underlined the right to appeal with complaint (not specified the type) to the court (not specified), parliament, president, the right to associate in political parties (except religious, nationalistic and professional).

The 1992 *Constitution* ask people to act peacefully, without monopoly of the power, without parallel establishment of the state of power, without unconstitutional acts against interests, will, respect, choice, freedoms and rights, without any exceptions to nationalities, races, religions, professions, educations, confessions, believes, languages, social statuses, and sexes. Only this makes

possible the realization of the rights and freedoms of others, protection of the constitutional order and democratic principles. For this reason, the hierarchic subordination of the public authorities, of the laws must be occurred according to the *Constitution* to make this system workable.

All these findings seem very positive until the practice shows the cases when this system makes difficult to realize in that context as mentioned-above. The cases on political parties in Uzbekistan demonstrate that the realization of the will and interests of the people is not so easy. Even the opposition is permitted and there are many ways to discuss about them; it costs a lot of money and power to prove the sincerity of the will and interests before the president, the parliament, strong executive bodies, such as the MoJ or the Supreme Court (not expert in constitutional review) in case of abuse of the rights. Moreover, to express political will and interests may cost you freedom and even life.

Overall, the 1992 *Constitution* of Uzbekistan has from its inception had key weaknesses, which have prevented it from guaranteeing the kinds of political freedoms mentioned in Articles 29-31, 33-35, 42. Specifically these are freedom of thoughts, words, and believe, expressions, conscience, and access to the public documents, freedom of association, the right to opposition, and the right. These constitutional rights and freedoms, which difficult to realize before the president, the parliament, strong executive bodies, such as the MoJ or the Supreme Court must be shifted to the Constitutional Court. This new special court designed base on the German model as the instrument against militant democracy.

The Russian historical context is that the modern-day *Constitution* was drafted at a time of optimism among the intelligentsia, during the voluntary adoption of democracy after 7 decades of repressive rule. The presidential regime and constitutionalism with Constitutional Court of Russia design inspires observers with the hope that after several more small revolutions in the country the socialist state of Russia will finally became a democratic state.

The 1993 *Constitution* of Russia provides that the multinational people are the only source of the state of power, which fulfills their wish and interests in the referenda and free elections. The multinational people of Russia decides who must be the President, representatives in the Federal Assembly, Federal Government, and Courts. Moreover, they realize their state power locally too and it is protected by the *Constitution*.

The 1993 *Constitution* ensure the creation conditions for a worthy life and free development of the man in the social state. Some of these conditions are the ideological and political pluralism, equality of the public associations, but with some exceptions. It is prohibited the creation of those public associations whose will aim to destroy the constitutional system, security of the country. The 1993 *Constitution* prevents multinational society to capture the state of power. It provides the protection of principle of the separation of power.

The 1993 *Constitution* ensure the principle of secularity of the social state, the principle of

equality of all people without any exceptions to the sexes, races, nationalities, languages, origin, social status, place of birth, religion, believes, connection to particular public associations. Also constitutional provisions regulate the free right to indicate nationality, to communicate, use mother language, education, free movement, free choice of the place to live, free depart and arrive to Russia.

Russian 1993 *Constitution* provides a broad range of political rights to the people to express their political ideas through the instrument like meeting, picketing, forming different types of political parties, but with some restrictions on religious, ethnic and nationalistic groups. On the surface at least, all these rights can be actively enjoyed and reviewed by Constitutional Court in case of abuse. The *Constitution* protects the right to peaceful assembly without weapon. The right to use skills is ensured by law. Every citizen has right to protect their rights and freedoms using all methods not prohibited by law. Citizens have the right to file complaints (including constitutional) on decisions and actions of the state bodies, local government, and public associations to the court are protected.

All above-mentioned fundamental rights and many others are the results of long historical development of the constitutionalism in Russia. In spite of the long constitutional development and traditional feature of multinational and confessional society, Russia passes a difficult period of orientation. It seems from the cases about political parties, that the constitutional system has its pivot, but still stay on the cloud.

The cases from 2004 demonstrate however that constitutional provisions are not a failsafe guarantee of political freedoms in modern Russia. On the contrary, it has unstable political conditions where still maybe unwelcomed some nationalistic, professional, religion or racial political views. The officials explain limitation shifting to the tolerance. The socialist society has still less tolerance feelings to the citizens from Central Asia and Caucasus. The difference in nationalities, religions, races and professions makes people struggle with social problems such as an equal employment conditions, medical insurance in Russia. Yet even so it is fair to say that the Russian *Constitution* recognize for a certain range of dissent – both in the textual formula and in the real implementation.

Russia's 1993 *Constitution* limits the creation and activities of public associations whose aims and actions are directed at changing the constitutional system, and political parties with extremist activities. Particularly, it is prohibited to create professional, racial, national and religious political parties.

Russia's *Constitution* provides a political arena for all registered political parties allowing for diversity of political views, and ideas that make the principle of pluralism work. It clearly separates the role of political parties and government bodies from each other – which is a major departure from the Russia's communist past. Russia sought safety in allowing a plurality of ideas, banning only professional, racial, national or religious groups from forming political parties. These

bans meant it was necessary to give the FCC of Russia power to ban political parties in Article 30 of the 1993 *Constitution*. And the FCC's interpretation of Article 30 worked well for 3 years, until the power of the President increased. The FCC lost some of its independence around 1996-7. Since then several religious parties have tried to register, were denied, and appealed to the FCC, but the Court upheld the decision of the MoJ.

A different political environment can now be observed in the Russian Parliament too. It is a diverse and pluralistic representative body on the surface striking a balance between liberals and communists. But in reality, the Russian Unity Party - Putin's party, heavily dominates Russian politics.

The Germany's 1949 *Constitution* limits political parties under Article 21 with constitutional theories like maintaining the "free democratic basic order" and militant democracy. And the *LPP* provides that parties must publicly account for the sources and use of their funds. The FCC can use this essential limitation to ban political parties. German laws do not have formal registration requirements. This makes formation less pressured with fewer restrictions.

This is the freest system among the three countries analyzed in this paper. Article 21 of the 1949 *Constitution* was written specifically to ensure the Nazi Party could never re-register and uses the description "militant" to describe the parties that should be banned. This dissertation takes the view that the FCC has interpreted this article reasonably, because society is changing but mistakes can be the same. This limitation was implemented with the case of the Communist Party that was banned in the 1950s. German political development and economic development has been very stable under this system of vetting of political parties. Because of this stability West Germany was able to gain the cooperation of East Germany to follow this limitation even after reunification.

Germany has paid much attention to the theoretical context of democracy and how political parties should follow it so as not to harm the constitutional order. This is because of Germany's unforgettable experience of National Socialism, now integrated into constitutional theory and practice. Germany and Russia wanted to avoid Nazism and communism recurring. In Germany's case clear criteria aimed at banning Nazis and communists were set and the FCC was used as the instrument for implementing the ban.

Recently among young German intellectuals[708] a push can be seen for a relaxation of the FCC's interpretation of Article 21. This shows a desire for political parties in Germany to represent a broader range of ideas again. Germany has new problems such as increasing immigrants with different religions and nationalities who wish to realize their political rights too. The FCC may need to develop new interpretations for applying Article 21 in particular to avoid the emergence of radical Islamic parties.

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[708] The doctoral researches of the Institute of German and International Party Law and Party Research (PRuF) team at Heinrich Heine Dusseldorf University.

This means, the Germany *Constitution* prevents the repetition of past mistakes. They used every available instrument of democracy with either less or more limitations. The purpose of all three countries was to prevent any type of war.

The German historical context is that the modern *Constitution* was drafted in extremity, against a backdrop of near annihilation of the country due to the dominance of Nazism, followed by the severing of the state in two due to communist ideology. The 1949 Basic Law declared the human dignity was recognized as the value base, the language as the normative respect.

Turning to Germany, the 1949 *Basic Law* provides brief but powerful statements guaranteeing political freedoms, including the right to form a political party, with two key exceptions. Germans may not form a political party under Nazi or communist principles. Overall the German *Basic Law* has achieved an admirable balance over many decades, allowing for sufficient dissent, but preventing domination of the country by radical forces.

5.3 Implementing Legislation Comparison - Laws on Political Parties

All three jurisdictions have some kind of limitation on freedom of public associations. In Uzbekistan case, the harm in the minds of constitutional drafters was nominally communism, but in reality the prospect of an Islamic state. The provisions impose a broad-reaching categorical ban on ethnic and religious political parties. In spite of giving formal power to the Constitutional Court, there have been no decisions on political parties. What is more the Constitutional Court does not exercise any of the review powers it was given in relation to laws on political parties. Instead the MoJ decides on applications for registration of political parties under Article 9 of the *LPP* behind closed doors.

During *perestroika* Uzbekistan experienced an ideological vacuum and a vague desire for democratic institutions. After independence Uzbekistanis were ill equipped to demand them. People had been in passive mode for a long time and did not seize the moment to demand more robust grassroots participation in their own political future. This created a situation where those who had power and influence during the Soviet regime - Karimov - could take advantage, and mold Uzbekistan’s democratic institutions in a way that suited them.

The needs that this research found from the legal framework of political parties are the procedures for constitutional review of political parties. In particular there in the next three cases: (1) when group of voluntary associated citizens expresses a wish to establish a political party and needs to register it, (2) when the MoJ as an executive government institution should review the application of political party, and register it, at its discretion, (3) when the MoJ files a petition to ban a political party to the Supreme Court. In the first case when group of voluntary associated citizens expresses a wish to establish a political party, these citizens are responsible to abide the constitutionality of political party not only according to the Constitution which protects fundamental rights, but also

according to the laws that provides legal procedures in the registration step, in the elections, and in the representative government institutions. The Constitution even pays political parties' attention to the activities that prohibited to realize and can be prosecuted by executive body.

In the second case, when the MoJ as an executive government institution should review the application of political party, and register it, only laws and decrees, as instructions, guide the ministry. The ministry does not give any explanation or create any law, but the only function is to follow the laws and decrees by implementing them. However, the law on political parties of Uzbekistan contains the provision in the Article 9 in accordance with the ministry can reject application to register the statute of political parties in case: if statutes, goals, objectives and practices of a political party are contrary to the Constitution of Uzbekistan, this Law and other acts of legislation, or political party has the same name with previously registered party or movement.[709]

Thus, this provision means that the Ministry of Juctice should determine what is the contradiction to the Constitution and other laws, at its discretion. This right was vested to the Ministry of Justice by the *LPP*. This provision seemed not effective from the constitutional prospective, because if the constitutional review must be provided by the Constitutional Court. For this reason, Article 9 of the *LPP* has the problem in provisions on checking political parties by the Ministry of Justice, which must exercise the functions of acceptance of the applications by the public authorities.

In the third case, when the Ministry of Justice files a petition to ban a political party to the Supreme Court, the court in the reasoning part of the judgment gives an explanation of factual and legal basis of the finding of the court, gives an estimate to the ministry's petition. The Supreme Court determines the constitutionality of political parties, particularly, in accordance with Constitution and other laws, as guiding instruments. In the review process of the ministry' petition, the Supreme Court can require to the Constitutional Court to give an interpretation of the constitutional provisions relating to the political parties, and then court makes a decision, at its discretion. Thus, the Supreme Court whose decisions for the vast majority handed down in accordance with the procedural rules and substantive law. It seems that the *Constitution* regulating the decisions on constitutional review implementing without Constitutional Court.

Legal barriers are the additional instruments in the hand of executive body against the constitutional rights and freedoms of individuals and associations who realize them. For example, the registration step includes barrier such as collecting signatures. According to the law on political parties, Article 6:

> "the establishment of a political party requires the availability of no less than twenty thousand signatures[710] of citizens living in at least eight territorial entities (regions)."[711]

[709] Trans. by Sapyazova.
[710] The number of signatures increased from 5,000 to 20,000 signatures after the amendments in the Constitution in 2003.

Thus, in contradistinction to the lawmakers, Rabbimov argues that this provision was amended based on political approach than legal, because the requirement had become complicated.[712] It is naturally, that there might be disagreements and it does not mean that there is no rational way "to separate the wheat from the chaff."[713] For this reason, this thesis analyzes the legislation procedures in selected countries with the purpose to find some barriers and improve them though the theoretical discussion.

Thus, according to the Constitution and other legislations of Uzbekistan the legal mechanism works as follows: the parliament adopts law on public association and law on political parties, where it points to the instructions that the MoJ should follow in the registration process. One of this instructions or functions that MoJ has, it is the right to determine the meaning of what is the contrary to the Constitution in the process of registration of political parties. However, even the practice showed that the ministry officially never used this function.[714]

In the case of if the ministry uses this function, it is contrary to the constitution by itself, because the only body that can implement such a function according to the constitution[715] is the Constitutional Court. If, the first, the MoJ or political party breach the legal procedures; the second, the MoJ breach constitutional rights of the political parties; or the third, the MoJ decides that registered political party is unconstitutional then the Supreme Court enters into the legal process.

The role of the Supreme Court is understandable when it relates to the registration process. However, if dispute relates to the question on constitutionality of the political party then according to the constitution of Uzbekistan the Supreme Court does not have the right of interpretation of the constitutional principles without Constitutional Court. However, the interpretation of the Constitutional Court of Uzbekistan has only a recommendatory character, for this reason, the Supreme Court makes a decision at its discretion. Thus, the barriers in the legal procedures, that thesis aimed to indicate, are (1) the absence of the law that can contains an interpretation of the constitutional provisions what is impossible or (2) the responsible government institution' which should rule on the question of constitutionality and unconstitutionality of political parties, that can fulfill the Constitutional Court.

A revolutionary decision was made in 1990s in Russia to abolish Article 6 of the 1977 *Constitution* that provided a central state role to the CPSU. The final democratic multiparty system was established under the 1993 *Constitution*. The 1993 *Constitution* created the conditions for the

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[711] Zak. PP RUz (1996), art. 6, part 1.
[712] Rabbimov (2007), 64-65.
[713] Idiom. It means to separate what is useful or valuable from what is worthless. The thought appears metaphorically in the Bible, where John the Baptist, speaking of the one that "cometh after me," continues (Matthew 3: 12) "Whose fan is in his hand, and he will thoroughly purge his floor, and gather his wheat into the garner; but he will burn up the chaff with unquenchable fire."
[714] Chapter 2, sect. 2.6.1, 31 of this paper.
[715] Konstitut. Uzb. (1992), art. 109.

Federal Government to control constitutional changes. This right was stipulated in the *FLPP* and the *FLCC* among many others. Russian legislation provides more flexible procedures for the formation of political parties. Moreover it ensures to review their constitutionality by the FCC that gives the interpretation of the questioned legislation and gives its final decision about its constitutionality. Finally, the Supreme Court and the Ministry of Justice exercise the implementation of the decision.

The formation of the political parties in Russia and make and start political activities takes not much time as the process of adjustment with the registering state body who is responsible according to the *Constitution* and the *FLPP* check if there are any violations of principles and criteria for registration. The principles that were mentioned before are the equality, secularity.

German 1967 *FLPP* regulates quite detailed organizational formation of political parties. It was designed in the form of self-supervision that may improve the subordination of all members internally and obey the rights and values of the 1949 *Constitution* while implementing the will of the people in their membership. The structure of political parties makes them difficult to not follow the democratic order because they are under the suppressions of the executive bodies as well as parliament, which may file to the FCC and prevent the capture of the power by enemies.

5.4 Recommendations

This research focused on examination of the constitutionalism and controlling functions of the Constitutional Court over political parties in Uzbekistan, Russia and Germany. The analyses ensured this research with facts that the controlling functions of the Constitutional Court must be workable and not to allow usurping the state of power by enemies of the constitutional order, people's freedoms and rights. For this reason, active debates about constitutional reviews and subjects allowed to file constitutional complaints to the Constitutional Court are in a valuable level of seek.

The system of strict registration must to be reviewed in order to improve detailed examination of possible risky political parties in and around Uzbekistan. Accepting the fact that the risky groups are always appealing about their wish to change the political and legal system, the conditions of the legislations must be very stable and clear in the context of constitutional law. For this reason, educated and well-informed scholars about militant democracy must make deep discussions with governmnet officials and other international experts in the sphere.

The freedom and rights of the people are not just textual words, but the values of the present democratic society, which must be respected truly. The no free press conditions, breaking those values from both sides: the first, by unclear provisions in the laws about press and the second, by press representatives, which does not reflect the reality as a "mirror." This means that the discussions must not to be emotive. Internet is the wild card in this equation. This has already started but can be accelerated or enhanced.

For this reason, this paper pays attention to the next options, which may help to develop the constitutionalism and the role of political parties in Uzbekistan. Moreover, these options could be considered in different periodical steps to make logical development of the constitutionalism with judicial controlling functions of the Constitutional Court and increasing the role political parties without risk to the people's freedoms and rights and constitutional order. In particular, these options relate to the amendments to Artcles 109 (1, 3), 62 and 57 of the 1992 *Constitution* and Article 9 of the *LPP*.

Article 109 (1, 3) of the *Constitution* may be expended in the right to political parties to apply to the Constitutional Court to the review of a constitutionality of the legislation. This provision has another part 4, which would seem may give the right to apply on other matters too. This means that this constitutional provision allows supposing the possibilities to extend this part with a concrete phrase, for example "constitutionality of a reign decisions." This phrase may directly be extended in the interpretation of Article 62 (banning of political parties) in the light of "citizens, public associations and political parties may apply a constitutional complaint on constitutionality of a reign decisions to the Constitutional Court."

Moreover, this phrase may achieve clearer demarcation of rights and duties between the Constitutional Court and Supreme Court, so as to elevate the Constitutional Court to its proper functions and enliven the political party formation. Also, it may clarify the role of the Ministry of Justice at the stage of registration of political parties. Usually the Ministry of Justices uses the grounds for registration Article 9 of the *LPP*, which stipulates that party's document checking must be occurred according to the Constitution and the *LPP*. This provision may be clarified with phrase "if there are reasons for questioning the constitutionality of political parties then the Ministry of Justices may send a request to the Constitutional Court on constitutional review."

Article 57 of the Constitution includes the limitations for political parties with religious and national features. This provision needs to amend to strengthen understanding of constitutional order that these types of political parties may put into risk. This amendment will assist political parties to comply with constitutional order in a better way.

The Constitution of Russia has a great range of fundamental rights and all of them can be realized with different democratic institutions such as self-local government, the FCC. The FCC has an experience of work with presidential decrees, with constitutional complaints by political parties. It has quite independent view to the particular cases. The judges' experience and the level of confidence increase the trust to them. If the 1992 Uzbekistan *Constitution* includes more textual formulas about fundamental rights and freedoms, the 1993 Russia *Constitution* provides different ways to use them through free meetings, picketing, elections, referendums, constitutional complaints.

Russia *FLPP* has to offer Uzbekistan about the significance of regulations. The detailed

provisions must include more possible instructions to political parties in order to provide equal conditions for most types of political parties. Russia *FLPP* pays more attention to the internal formation of political parties and subordination all members to them. This train party members to work according to the rule of law and have high discipline in the system.

German has to offer Uzbekistan to keep in mind the lessons of the Weimar Republic, where the most developed at that time democratic *Constitution* was misused in the hands of enemies. Consequently, the *Constitution* must clearify about the constitutional order in all branches and try to keep balance while exercising any powers by public authorities and fundamental rights by citizens and public associations as well.

The 1992 *Constitution* directly point to the political parties that are not welcomed because of their risky feature, while German *Constitution* gently says that any limitations of fundamental rights must exercise the competent FCC. This attempt of the scholars show how to keep balance between the protections of the rights and freedoms of political parties and other people's rights base on constitutional order and moral code.

German *FLPP* has to offer Uzbekistan the ways to organize political parties as organization and control the membership process through parties' executive, judicial and legislative committees from inside. The self-control and disciplinary measures from inside of the party increase the responsibility of all party members as well as the trust to them on the state level.

The constitutionalism shows that it lives not only in the Constitution, but also in the *FLPP*. The rights and freedoms of the party members are introduced with high level of attention. Moreover, they may protect their political activities from inside the party. The description of the parties behavior in different stages and different levels teach party to be more organized and be prepared to be responsible for the ideas and messages, which must be exercised with the respect to the constitutional order and moral code of the people.

5.5 Summary and Reflections

Uzbekistan is approaching transition with the Karimov's age. He makes regime change inevitable. The 1992 *Constitution* brought to people changes in textual forms, but not the practical realization by the people with the different political position. Even though there were any attempts to express the different position toward the government. Many of them were not accepted by the government because of the violation of the law and not respectful attitude toward the constitutional principles about the peaceful transition.

The real crossroad that Uzbekistan passes with stronger struggle will come in the future. This future of various democratic institutions will be decided including the role of the Constitutional Court. The separation of powers and the real multiparty system are in sought for today Uzbekistan. If there are high-speed changes in the constitutional review process, then it lead to ensure the written

fundamental rights and freedoms.

The textual formulas in the constitutions need to level up as well as the level of the ordinary laws. The constitutionalism will live in the regime where is the balance of the fundamental rights illustrated in all levels of the laws. This illustration may make clear the procedural review and make the all democratic instruments be effective and work for the stability, security and peacefulness in the country.

General increase in dissent in Uzbekistan recently, for example, civil rights demand. Economic development not enough – appetite for independent thought – unlike 1990 the Uzbekistan people are ready to consider a range of ideas about where the country should head from here. The Germans actively – if unwisely – chose Hitler. At the time of the coming transition Uzbekistan people might be ready (informed enough through study and travel abroad) to make an active choice for the first time in more than a century.

Founds in section on rights positioned as civil and political rights, defined somewhat narrowly in comparison to Uzbekistan. However, they are not as narrowly as in Germany. The registration process through Ministry of Justice not too onerous but religious and ethnic groups prohibited from forming parties, crucially objections first heard by Ministry panel. If applicant group still unsatisfied, they direct avenue to seek relief from Constitutional Court through a simple, speedy procedure.

Chapter VI: Conclusion

6.1 Statement of the Problem

After the collapse of the Soviet Union Uzbekistan is approaching in terms of its legal development, particularly in the legal framework surrounding political rights. The people of Uzbekistan made an experimental step toward the democracy where the rule of law is the only instrument to change the regime, to change the Constitution. And guarantor or controlling institutions of that was decided to do President, Parliament and Constitutional Court.

The 1992 *Constitution* accepted as the main values of the people human being, life, freedom, honor, dignity and other inalienable rights guaranteed by law. Among all these values that this paper focus was the rights of political associations, mainly political parties to form themselves according to the free will, pluralism of ideas and according to the principles of the constitutional state. For this reason, to keep the respect of Uzbek people's values by any political parties, it was decided to limit some types of political parties to be formed and prevent them from any activities. These parties are religious, national or professional.

Parties with religious features are prohibited because it the church, mosque or any kind of religious is separated from the state. That guarantees the secularity (without identification to that) of the state and the right to follow any religious without any force. At the same time the right of religious organizations are also protected, but under the comprehensive control of the public authorities. The Constitution also restricts the types of political groups that may form political parties, firstly at the stage of registration, and secondly at the stage of undertaking political activities.

The model of guarantees for political rights was based on the German system, and created institutions for ensuring these rights are protected, like the Constitutional Court and the Ministry of Justice. However, the Constitution wording is vague and hortatory and the Constitutional Court is functionally neutralized as a result - has never actually fulfilled a review role of the Ministry of Justice decisions on registration. These two institutions the Constitutional Court and the Ministry of Justice meant to mutually checked and balance each other. However, the Constitutional Court is not independent, and in reality neither checks nor balances the Ministry of Justice.

6.2 Findings

The main findings of this research work were the identification of the level of constitutionalism in three countries examined in this paper. The examination of the historical development showed that the traditions and issues with what struggled each countries are different, but the purpose of the constitutionalism in all three countries to protect peaceful life with respect to the fundamental rights and freedoms of the people. The findings showed the instruments of the constitutionalism in three countries, which are protected with and can be used against the enemies of

the constitutional order.

The Uzbekistan designed the constitutionalism in such way that ties the initiations of the society with Muslims majority in the secular country by different restrictions at the first stage of the formation, when the activities of political parties cannot be examined or be constitutionally review to give the m a chance to appeal with. However, the reforms in the political party system are growing with provisions increasing the role of political parties. This process can be viewed successful if it gives a speed to the liberalization and changing the life style of the people to be more active in the political life introducing the alternative projects for development. The economical crisis can bring the to the political crisis and repeat the history of *perestroika* period in the USSR. To prevent this negative process need to provide more effective and workable judicial and executive branches that were done relatively in Russia and Germany.

However, there are some findings in the political party system in Russia that shows the deep "diving" into the protection of the fundamental rights and freedoms by the FCC, even with some limitations of danger groups (nationalistic, religious, racial and professional) that may bring to the instability in the country. The Russia designed a big list of rights and freedoms that everybody can enjoy freely. The free demonstrations, meetings, assemblies and associations show the civil society's activities against the government and unpopular decisions by the public authorities. The level of the freedom of words is on the highest level that can teach Uzbekistan in designing the legislation about political parties, mass media.

The Germany constitutionalism opened many doors for discussions in Uzbekistan regarding the role of the Constitutional Court in protection of the constitutional order. The role of the fundamental rights and freedoms are ensured in all levels of the laws. The Basic Law represented a constitutional revolution in Germany constitutional theory. This ideological revolution introduced the theory of the party state in a nondemocratic constitutional culture. The political party system teaches to serve members of political parties to the society, but not to the state or public authorities with limited powers. The struggle for power is the same in all time. The Hitler's experience of democracy shows that a regime of warring factions in the parliament can be occurred any time. For this reason the control over the enemies inside and outside the government bodies must be guaranteed and protected by the independent institutions. This institution will guard the values of the people for the future life in the constitutionally effective regime.

This research believes in to the idea that the strong constitutionalism is the reflection of the clear fundamental rights and freedoms in the constitutional and legislative levels. The strong protection of the rights and freedoms must be delegated to the strong and independent institutions, such as Constitutional Court. Unfortunately, the process to make this institution workable today can be just illusion. However, the fact and experience of Russia and Germany may to increase the confidence of idea that the separation of powers in the system is highly recommended. The second

recommendation is the elections of the members in each branches of power independently and by the representatives of people, who by nature of the Constitution of Uzbekistan are the source of the state of power. This must be remembered all the time nether on the stage of the registration of the parties, or the elections of the parliamentary representatives. The constitutionalism in relation with the democracy increases the sense of the responsibility of each citizen of Uzbekistan before his or her true Constitution.

6.3 Limitations

Detailed recommendations on drafting of provisions for constitutional amendment not covered in this study, but discussion at this very practical level needed to move the debate forward. Uzbekistan state universities must provide these debates with experts from different systems and make them periodically and with effective results in the short periods. The deliberative work among professors and students will increase the level of participation in most questionable disputes like this research.

This paper also did not cover a study about the difference between judicial review and constitutional review, but asking whether one court can really perform both functions. For this study needs 3 more years to learn the roots of these reviews and their implementation in the states with other traditions. Challenging both reviews by one institution or by both is a question of time for particular countries with experience or without.

6.4 Broader Applications

Limitation of access to some parliamentary seats in Uzbekistan is a provision that seems ripe for discussion in light of the Russian and German experiences. The electoral system of Uzbekistan provides 135 seats in the legislative chamber for representatives from political parties and 15 extra seats for representatives from ecological movement. Moreover, there are 84 seat in the Senate for representatives from 14 territorial units and 16 extra seats for representatives appointed by President. This electoral law supposes the possibility for manipulation of the deliberation of the significant issues in the parliament.

Contradictions between Constitution and constitutional laws increase the need for discussions in the future researches. For example, A 2002 referendum extended the presidential term from 5 to 7 years. Therefore, the presidential term was finished in January 2007. However, in 2002, the Parliament provided that the 2007 presidential elections must schedule in December 2007 according to the Constitution and the *Law on Date of Next Elections of the Representatives Bodies of State Power and President.* The question about presidential term was raised again in 2011, where the term office was changed from 7 to 5 years with the *Constitutional Law* amendments. Moreover, the coming presidential elections clashed with the parliamentary elections, which both must be hold in

December 2014. The Parliament found the same way for this time too. It adopted the same law, which schedules the parliamentary elections in December 2014 and presidential elections in March 2015. Consequently, the law changing the date of elections seems contradicting the provisions of the 1992 *Constitution*. Of course, the officials have their own interpretation of these changes that stands over the constitutional principles and values that were proclaimed in 1992 under the supervision of the President, who is also the guarantor ensuring the protection of the constitutional order.

Another limitations of the principle of the separation of power have been founded in the functions of the local governor (khokim) in province and Tashkent city. Article 102 of the 1992 *Constitution* provides the right to exercise the executive and representative powers at the same time for local governors. This provision is obviously contradicts to Article 11 that ensure the principle of the separation of power and Article 32 that ensures the political right to govern state affairs directly or through party representatives.

6.5 Suggestions for Further Research

This research paper suggests for further research a comparison study of German and the USA systems of constitutional review. Also to examine the European Court of Justice decisions on implementation of the *ICCPR* obligations in member states. There are lacks of discussions around constitutional reviews in Uzbekistan. This raises a need to make a research on case studies in Germany and the USA.

The purpose why this research was about interralashionships bewtween constitutionalism and political parties became obvious. The political parties are part of the constitutionalism, which have the largest influence to its feature. People must know how to make better choice of their representatives which further designing constitutionalism for them with their own or common values about democratic country.

For this reason, for a successful journey in future study makes important to schedule some research visits to the OSCE, the European Court of Justice, the ECtHR, the FCC of Germany, and the Supreme Court of the USA.

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Российской Федерации" [FZ Vib. Prez.] [Federal Law on the Election of the President of RF, January 10, 2003 No. 19-FZ] (amended).

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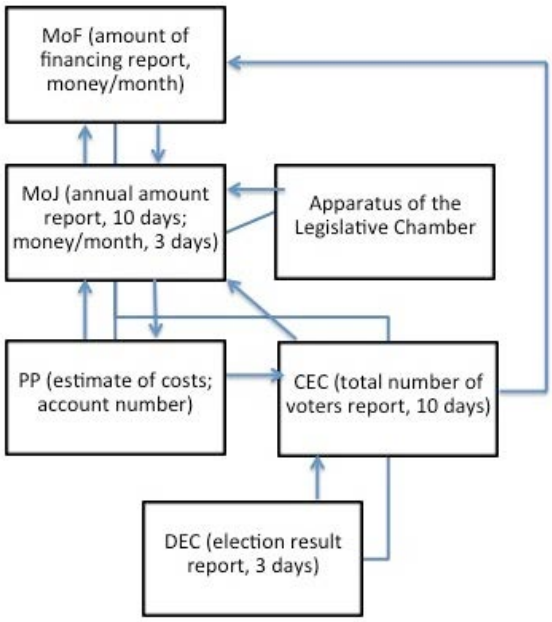
Appendix

Table 2. Financing of political party in the Legislative Chamber[716]



1. Central Election Committee (CEC) within 3 days receives all reports on election results from each District Election Commissions (DEC) and makes a general report on total number of the voters in whole republic. It introduces report within 10 days to the MoJ and Ministry of Finance (MoF) of Uzbekistan;

2. The CEC introduces information about number of parliament deputies elected from each political party to the MoJ within 10 days after their registration;

3. Political party introduces estimate of costs and confirmed by bank an account number to the MoJ until the beginning of the first financial month;

4. The MoF informs MoJ about the amount of allocated funds;

5. The MoJ identify the amount of the annual financing support for each political party and payment schedule within 10 days and informs about final dicision MoF within 2 days;

6. The MoF every month until the 10th transfers fund to the MoJ;

7. The MoJ within 3 days after receiving fund from MoF transfer money to the bank account of political party;

8. Political party introduces estimate of costs and confirmed by bank an account number to the MoJ until December 10 of the preceding financial year;

9. The Apparatus of the Legislative Chamber informs the MoJ about registration or

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[716] Собрание законодательства РУз [Collection of the legislation of RUz], 2005 № 10-11, 75.

abolition of faction or its abolition, and also joinig or leaving parliamentary deputies to faction within 3 days;

10. The CEC informs MoJ about registration of the parliament deputies after repeated turn of elections and election of deputies instead of droped-out, and also early termination of parliament deputy term within 3 days;

11. The MoJ relocates the rest of the fund within 5 days from the date of received information from Legislative Chamber and CEC. It sends decision to the MoF within 2 days.