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SOCIALIST FEDERATION — A LEGAL MEANS TO THE SOLUTION OF THE NATIONALITY PROBLEM: A COMPARATIVE STUDY

*Viktor Knapp**

I. HISTORICAL AND THEORETICAL BACKGROUND

A. *Origin of Federations*

The history of federations is both long and short. It is long in that the federation originated with the Swiss Confederation, which dates back to the 1291 defense confederacy of the cantons of Uri, Schwyz and Unterwalden;¹ it is short because the second federation in world history, one that has become a model for many others, did not come into being until almost five centuries later in America.²

Both the Swiss confederation and the American federation had “synthetic” origins. Certain relatively weak state or territorial units joined to form a stronger community, which was later joined by further states or territorial units to form, together with the historical kernel, the contemporary entirety. The original multiplicity of power gave way to unity of power.

After the Second World War several new federations emerged, both within Europe (particularly in the territory of the war-destroyed Nazi state) and elsewhere. The historical origin of these new federations, however, was fundamentally different from that of the old federations: it was based on an “analytic” rather than a “synthetic” principle. A certain state territory — for example, the Federal Republic of Germany, India or Nigeria — was divided into the member states of the federation in accordance with historical and partly artificial territorial boundaries.

Regardless of whether its principle of origin is “synthetic” or “analytic,” the structure of a federation generally incorporates geographic, historical, administrative, ethnic, and perhaps other factors. In any particular federation, those factors prevail which correspond to the political motives for the federation’s origin.³ In this connection it is worth noticing that, apart from the socialist countries, the ethnic element either played no role at all in the origin of federations (because the ethnic problem did not exist in the affected country, as in the Federal Republic of Germany), or was approached in some other way (for example, by legislation on national minorities, as in

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1. See C. GIGNOUX, *LA SUISSE* 6 (1960).

2. See Rheinstein, *United States of America*, in 1 *INTL. ENCYC. COMP. L.* at U131, U136-38 (V. Knapp ed. 1976).

3. See *COLLOQUIUM OF MOSCOW, FEDERALISM AND DEVELOPMENT OF LEGAL SYSTEMS* 11-14 (J. Hazard ed. 1971); M. JOVIČIĆ, *SAVREMENI FEDERALIZAM* 12-41 (1973); G. ALEKSANDRENKO, *BURZHUAZNYI FEDERALIZM* 33-63 (1962).

Austria), or was not a decisive factor in the federalization of the state, even though its political importance was considerable (for example, in Canada, where in spite of the importance of the nationality problem, the federal organization is based on historical and geographic factors rather than the ethnic factor).⁴

B. *Federation in Socialist Countries*

In socialist countries, on the other hand, the ethnic factor represents the principal and decisive motive for the origin of federations. The first of these federations was the Soviet Union (or, initially, Soviet Russia), the federal organization of which became the model for the creation of further socialist federations.

The theoretical foundations of the Soviet federation were laid down by V.I. Lenin. As a theorist of proletarian revolution, and its political leader in Russia, Lenin considered the federation as a method for the organization of a state not abstractly, but concretely and from the viewpoint of the revolution.⁵ From this viewpoint Lenin perceived two aspects of the multinational state: the necessity of unity of the working people, and the national and territorial autonomy of the individual nations living in the territory of the multinational state. Thus, in the theoretical foundations of the origin of the Soviet and any other socialist federation, the unity of the people and the diversity of nations meet and merge dialectically.

It follows from this theoretical and political approach that the federal system is applied only in multinational or plurinational socialist states, such as the USSR, Czechoslovakia and Yugoslavia, where the federation is one of the fundamental legal means of resolving the nationality problem. Two examples illustrate this ethnic, as opposed to historical or territorial, approach. The German Democratic Republic's territory consists of several historical territorial units of the former Germany (as does the Federal Republic of Germany's territory); it is, however (in contradistinction to the FRG), not a federal, but a unitary state. The Czechoslovak federation consists geographically of four historical territories (Bohemia, Moravia, part of Silesia, and Slovakia) but has only two member states — the Czech Socialist Republic, covering the historical territory of Bohemia, Moravia and Silesia and inhabited by the Czech nation, and the Slovak Socialist Republic, inhabited by the Slovak nation.

State sovereignty in socialist states is based on the sovereignty of nations, from which follows two of the fundamental political principles of socialist federations: the equality of nations, and their right of self-determination and self-management. From these principles it follows that the liberation of oppressed nations, such as the non-Russian nations in the USSR and the non-Serbian nations in Yugoslavia, is one of the motives behind the origin of socialist federations. In Czechoslovakia this liberation

4. See C. GIGNOUX, *supra* note 1, at 5-32; P. TRUDEAU, *LE FÉDÉRALISME ET LA SOCIÉTÉ CANADIENNE-FRANÇAISE* 7-59 (1967).

5. See Knapp, *Lenin a Socialistický Federalismus*, 1970 *PRÁVNÍK* 259-68; COLLOQUIUM OF MOSCOW, *supra* note 3, at 147-52.

is represented by the liberation of the Slovak nation from the political and economic hegemony of the Czech nation.

In the system of socialist federations, the aforementioned dialectical principle of the unity and diversity of opposites (antitheses) is expressed, on the one hand, in the ethnic diversity of nations associated in a federation and in the unity of the federal state, determined primarily by the unity of federal state power. This is expressly proclaimed by section 1 of article 70 of the Soviet Constitution, which states that "[t]he Union of Soviet Socialist Republics is a unitary, federal, multinational state, formed on the basis of the principle of socialist federalism."⁶ From the different viewpoint of state sovereignty, this relation of unity and diversity is characterized by the Constitutional Law on Czechoslovak Federation, which states in article 1(5): "Both Republics [i.e., the Czech Socialist Republic and the Slovak Socialist Republic] mutually respect their sovereignty, as well as the sovereignty of the Czechoslovak Socialist Republic; the Czechoslovak Socialist Republic likewise respects the sovereignty of the two national states."⁷

The unity of state power in the federation, i.e., the inner homogeneity of the socialist federal state, is further expressed politically in the principle of democratic centralism. This unity also has social roots, determined by the social homogeneity of the state, as expressly recognized in article 19 of the Soviet Constitution.⁸ This social homogeneity is demonstrated by the political and economic unity of the state and, in particular, by the leading role of the Communist Party in the state.⁹

The unity and diversity of opposites manifests itself further, as we have already suggested, in the state and social systems of socialist federations through the relation between the terms "people" or "working people," on the one hand, and "nation" or "nationality," on the other hand. These

6. KONSTITUTSIYA (OSNOVNOI ZAKON) (Constitution (Basic Law)) art. 70, § 1 (U.S.S.R.) [hereinafter cited as Soviet Constitution], translated in THE CONSTITUTIONS OF THE COMMUNIST WORLD 368 (W. Simons ed. 1980) [hereinafter cited as Simons]. For another English version, see Hazard, *Union of Soviet Socialist Republics*, in 16 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1978).

7. ÚSTAVNÍ ZÁKON O ČESKOSLOVENSKÉ FEDERACI (Constitutional Law on the Czechoslovak Federation) art. 1, § 5 (1968, amended 1970, 1971 and 1975) [hereinafter cited as Constitutional Law on the Czechoslovak Federation], in SBÍRKA ZÁKONŮ ČESKOSLOVENSKÉ REPUBLIKY, reprinted in J. GROSPIC, ČESKOSLOVENSKÁ FEDERACE 141 (1972), translated in Simons, *supra* note 6, at 583. For another English version, see Flanz, *Czechoslovakia*, in 4 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1974).

8. See Soviet Constitution, *supra* note 6, art. 19; Simons, *supra* note 6, at 358.

9. "The Communist Party of the Soviet Union is the leading and guiding force of Soviet society and the nucleus of its political system . . ." Soviet Constitution, *supra* note 6, art. 6, translated in Simons, *supra* note 6, at 355. The Party also plays a leading role in Czechoslovakia and Yugoslavia. See ÚSTAVA ČESKOSLOVENSKÉ SOCIALISTICKÉ REPUBLIKY (Constitution of the Czechoslovak Socialist Republic) art. 4 (1960, amended 1968, 1969, 1971 and 1978) [hereinafter cited as Czechoslovak Constitution], in SBÍRKA ZÁKONŮ ČESKOSLOVENSKÉ SOCIALISTICKÉ REPUBLIKY, reprinted in GROSPIC, *supra* note 7, at 270, translated in Simons, *supra* note 6, at 143; USTAV SOCIALISTIČKE FEDERATIVNE REPUBLIKE JUGOSLAVIJE (The Constitution of the Socialist Federal Republic of Yugoslavia) Osnovna Načela (Basic Principles) VIII SLUŽBENI LIST SFRJ No. 9 (1974) [hereinafter cited as Yugoslav Constitution], translated in Simons, *supra* note 6, at 441-43. For another English version of the 1960 Czechoslovak constitution, see Flanz, *supra* note 7. For another English version of the Yugoslav constitution, see Flanz, *Yugoslavia*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (SUPP.) (A. Blaustein & G. Flanz eds. 1974).

terms are accurately distinguished in the constitutions of the states we are dealing with. Nations or nationalities in a state may be distinguished, but the people are always one. This is expressed with particular clarity by the Soviet Constitution, which consistently differentiates between the Soviet people and the nations (or nationalities) of the Soviet Union. For instance, article 70, section 2 of the Constitution provides: "The USSR embodies the state unity of the Soviet people and brings together all the nations and nationalities for the purpose of jointly building communism."¹⁰

Hence, in the dialectical relations between the unity of the people and the diversity of the nations, as expressed in the quoted provision of the Soviet Constitution, it is the unity which clearly dominates in a socialist federation. This idea is expressed with no less clarity in another provision of the Soviet Constitution: article 19, section 2 expresses the fact, as well as the postulate, that the Soviet state "promotes the strengthening of the social homogeneity of society . . . [through] effacement of class differences and of the essential differences between town and country and between mental and physical labor . . . [leading to] the all-round development and rapprochement of the nations and nationalities of the USSR."¹¹

C. *The Origin of Socialist Federations*

Socialist federations came into being by the aforementioned "analytical" method and partly, in the USSR, simultaneously by the "synthetic" method.

The analytical element of the origin of these federations lies in the fact that the original states in the territories in which the federations (Russia, Czechoslovakia, Yugoslavia) arose were generally unitary states. A particular feature of this historical process is the fact that the federations did not originate through a simple decomposition of former states. Rather, these states were first destroyed by the revolution; on their territories, new states of a new social quality and a new federal form were then established.

The original Russian federalization¹² took place in a rather confused revolutionary situation which, due to civil war and foreign intervention, became even more confused shortly afterward. Federalization first took place on a part of the territory of the former Russian empire — that part populated mostly by the Russian nation. Thus, the Russian Soviet Federative Socialist Republic (then the Russian Socialist Federative Soviet Republic) arose as a kernel of the future Soviet Union. This federalization took place immediately after the Great October Socialist Revolution, first through the Declaration of the Rights of Nations of Russia of November 15, 1917,¹³ which had the character of a political declaration. The Declaration of the Rights of the Working and Exploited People of January 25, 1919,¹⁴ adopted by the third All-Russian Congress of the Soviets, in addi-

10. Soviet Constitution, *supra* note 6, art. 70, translated in Simons, *supra* note 6, at 368.

11. Soviet Constitution, *supra* note 6, art. 19, translated in Simons, *supra* note 6, at 358.

12. See PERVAYA KONSTITUTSIYA SSSR (A.Y. Vyshinsky ed. 1948) [hereinafter cited as Vyshinsky].

13. *Id.* at 146-78.

14. *Id.* at 154-56.

tion to being a political declaration, served as the first constitution of Soviet Russia.

In article 1 of the latter Declaration, Russia was proclaimed the republic of the soviets (councils) of workers', soldiers' and farmers' deputies, while article 2 stipulated expressly that "the Soviet Russian Republic is established on the basis of a free association of free nations as a federation of Soviet national republics."¹⁵ An almost identical formulation can be found in the January 28, 1918 resolution of the same Congress of the Soviets, *On Federal Authorities of the Russian Republic*,¹⁶ which laid the foundations for the central authorities of the then federal state power and state administration.

The Russian Socialist Federative Soviet Republic (R.S.F.S.R.) was later joined by the further Soviet republics that came into being on the territory of the former imperial Russia. By the treaty of December 30, 1922,¹⁷ they associated themselves with the R.S.F.S.R. to form the Union of Soviet Socialist Republics (USSR). That Union began as a federation of the then four member states (two of which were themselves denominated as federations — the Russian Socialist Federative Soviet Republic, the Ukrainian Socialist Soviet Republic, the Byelorussian Socialist Soviet Republic and the Transcaucasian Socialist Federative Soviet Republic (comprising the present-day Soviet Socialist Republics of Georgia, Azerbaidzhan and Armenia). The Union of Soviet Socialist Republics was later joined by other Soviet Republics so that at present the Union has fifteen member-states.¹⁸

In Yugoslavia, the origin of the socialist federation coincided with the revolutionary renewal of the Yugoslav state.¹⁹ The first Yugoslav constitution, which had declared the establishment of the Yugoslav federation, was the Constitution of the Socialist Federal Republic of Yugoslavia of January 31, 1946.²⁰

Czechoslovakia at first remained a unitary state even after the socialist revolution. The Constitution of 1948 afforded the Slovak people some autonomy but retained the unitary character of Czechoslovakia. This character was also retained in the Constitution of 1960, which remains partially valid. It was not until the adoption of the Constitutional Law on Czechoslovak Federation of 1968 which entered into effect as of January 1, 1969, that the Czechoslovak Socialist Republic was transformed into a federal state.²¹ In contradistinction to the multinational federations of the USSR and the S.F.R. of Yugoslavia, the Czechoslovak federation is a federation

15. *Id.*

16. *Id.* at 158-59.

17. Treaty forming the Union of Soviet Socialist Republics (USSR), approved by the 1st Congress of the Soviets of the USSR Dec. 30, 1922. The parties to the treaty were the Russian Socialist Federative Republic, the Ukrainian Socialist Soviet Republic, the Byelorussian Socialist Soviet Republic and the Transcaucasian Socialist Federative Soviet Republic. For the text of the treaty, see Vyshinsky, *supra* note 12, at 341-45.

18. See Soviet Constitution, *supra* note 6, art. 71; Simons, *supra* note 6, at 368-69.

19. See Simons, *supra* note 6, at 424-26; Blagojević, *Yugoslavia*, in 1 INTL. ENCYC. COMP. L. at Y5, Y14-15 (V. Knapp ed. 1975).

20. See Blagojević, *supra* note 19, at Y15.

21. See J. GROSPIC *supra* note 7, at 7-28; Československá Federace 7-28 (1972); Knapp, *Czechoslovakia*, in 1 INTL. ENCYC. COMP. L. C111, C114 (V. Knapp ed. 1979).

of only two, in the words of the law, "autonomous, sovereign nations" — the Czechs and the Slovaks. Some of the specific features of the federal system of Czechoslovakia are due to the very bipartite character of the Czechoslovak federation.

II. CONSTITUTIONAL GUARANTEES OF THE EQUALITY OF NATIONS²²

A. *Structure of the Federation*

One element of the solution to the nationality problem in socialist federations is the very structure of the federation, which is defined exclusively by the national and territorial principles. The structure thus creates sovereign or autonomous states, or at least autonomous administrative units, for the nations living as homogeneous ethnic communities in a certain continuous territory. (For the nations or nationalities living in diaspora this solution, naturally, cannot be used. In the socialist federations considered here, however, this fact does not play any significant practical role.)

The above mentioned fundamental principles of the structure of socialist federations allow for different technical details in the individual federations. The differences are due primarily to the number of nations and nationalities living in the respective federations. The Soviet Union, for example, is populated by a great number of nations and nationalities, while Czechoslovakia has an ethnic basis of only two nations.

We shall now turn to a brief survey of the state structures of the Soviet Union, Yugoslavia and Czechoslovakia.

1. *The Soviet Union*

The structure of the Soviet Union is more complicated than the structure of "classic" federations based simply on the relation of federation to member state. The complexity is due to the great variety of nations and nationalities (over 130 altogether) living in the USSR, some of which consist of tens of millions of individuals, others of only a few thousand nationals. It is clear that the rights of self-management of these diverse nations cannot be realized by the same methods. Therefore, the Soviet practice has created several levels of national self-management.

The highest level is the union republic which, in the words of article 76 of the Soviet Constitution, is "a sovereign Soviet socialist state which has united itself with other Soviet republics in the Union of Soviet Socialist Republics." A union republic independently "exercises state power within its territory," outside the limits of the direct jurisdiction of the USSR.²³ Thus, a union republic is a member state of the Union in accord with the usual conception of the federation; the USSR is a federation of fifteen such union republics. (One of the union republics — the Russian Soviet Federa-

22. The following sources of law, all presently in force, comprise the basis for this study: — Soviet Constitution, *supra* note 6. See Simons, *supra* note 6, at 351-92.

— Constitutional Law on the Czechoslovak Federation, *supra* note 7. See Grosplit, *supra* note 7, at 139-263; see also Simons, *supra* note 6, at 581-624.

— Yugoslav Constitution, *supra* note 9. See Simons, *supra* note 6, at 427-577.

23. Soviet Constitution, *supra* note 6, art. 76, § 2, translated in Simons, *supra* note 6, at 370.

tive Socialist Republic — is designated a federation for historical reasons rather than because of its present constitutional organization.)

Some union republics are not nationally homogeneous. Alongside the majority nation, whose national sovereignty is expressed through the sovereignty of the union republic, may reside other nations and nationalities. However, even they “enjoy autonomy, *i.e.*, the right to exercise independently state power in matters of internal self-administration within the framework of the Union Republic and within the limits laid down by the Constitution of the Union Republic.”²⁴

These minority nations and/or nationalities enjoy different forms of autonomy corresponding to their population and the conditions in which the national communities have developed. The Soviet Constitution differentiates two principal forms of such autonomy: (1) *autonomous republics*, which possess *legislative autonomy*; and (2) *national territorial formations (autonomous regions and autonomous areas)*, which possess *administrative autonomy*.²⁵

Autonomous republics have the character of a national Soviet socialist state, but rather than being member states of the USSR, they form parts of union republics. They have, however, their own constitutions and supreme state authorities, as well as other formal indicia of sovereignty. At present there are twenty autonomous Soviet socialist republics in the USSR, expressly enumerated in its Constitution. They are located on the territory of four Union Republics: the R.S.F.S.R., the Georgian Soviet Socialist Republic, the Uzbek Soviet Socialist Republic, and the Azerbaidzhan Soviet Socialist Republic.²⁶

Autonomous regions and autonomous areas do not have the character of a state; they are national territorial formations within the boundaries of territorial administrative units of a higher order. According to article 86 of the Soviet Constitution, the autonomous provinces form a direct part of either a union republic or of a region,²⁷ while under article 88,²⁸ autonomous areas form part of a region or of a province. In contrast to the authorities of autonomous republics, the authorities of autonomous provinces and areas do not have the position of central organs; rather, they have the character of local administrative authorities. At present there are eight autonomous provinces in the USSR, again expressly enumerated in its Constitution. Five of them are located on the territory of the R.S.F.S.R., one in the Georgian S.S.R., one in the Azerbaidzhan S.S.R., and one in the Tadzhik S.S.R.²⁹ There are presently ten autonomous areas,³⁰ all located in the north of the R.S.F.S.R. and some including two nationalities.

24. See Institute of State and Law, Academy of Sciences of the U.S.S.R., Moscow, *Union of Soviet Socialist Republics*, in 1 INTL. ENCYC. COMP. L. at U13, U16 (V. Knapp ed. 1976) [hereinafter cited as Soviet Institute of State and Law].

25. See *id.* at U16-17.

26. See Soviet Constitution, *supra* note 6, art. 85; Simons, *supra* note 6, at 372.

27. See Soviet Constitution, *supra* note 6, art. 86; Simons, *supra* note 6, at 372.

28. See Soviet Constitution, *supra* note 6, art. 88; Simons, *supra* note 6, at 372.

29. See Soviet Constitution, *supra* note 6, art. 87; Simons, *supra* note 6, at 372.

30. See Soviet Institute of State and Law, *supra* note 24, at U17. The Institute refers to autonomous areas as “national circuits” in that work.

2. Yugoslavia

The Yugoslav federation consists of six socialist republics and two autonomous provinces (the Vojvodina and the Kosovo), both of which form part of the Socialist Republic of Serbia.³¹ The constitutional position of autonomous provinces in Yugoslavia is approximately comparable to the position of autonomous republics in the USSR.

3. Czechoslovakia

The Czechoslovak Socialist Republic is, in the words of article 1, section 1 of the Constitutional Law on Czechoslovak Federation, "a federative state of two coequal fraternal nations: the Czechs and the Slovaks," formally represented by the Czech Socialist Republic and the Slovak Socialist Republic.³² There are no other national autonomous units in Czechoslovakia, although a special constitutional provision regulates the rights of Czechoslovak citizens of Hungarian, German, Polish and Ukrainian nationality.

B. Supreme Organs of State Power

1. The Concept of the Supreme State Power Authority

The state power authorities in socialist countries consist of *representative bodies*, i.e., collective organs elected by the people and accountable to their constituents. The system of representative bodies is most consistently applied in the USSR, where these organs — uniformly called Soviets of People's Deputies — form a homogeneous hierarchy ranging from the lowest level city district, village and settlement soviets to the very highest soviets. This hierarchical system consists of the *supreme state power authorities*,³³ i.e., the central organs of state power in communities having a state character, and the *local state power authorities* (local state administrative authorities), such as regional, provincial, district and other local soviets in the USSR.

The supreme state power authorities in socialist countries correspond approximately, in their position in the mechanism of the state, with the legislature in nonsocialist countries. Their function, however, is considerably different. The system of state organs in socialist countries is not based on the traditional tripartite character of state power. Rather, it is based on the opposite principle of the unity of the state power of the working people, the inner differentiation of which is based on the rules of democratic centralism. In this system the whole mechanism of the state is so hierarchically structured that it culminates in a single apex represented by the supreme state power organ. The supreme state power authorities have the legislative power and are legislatures; however, they are not only legislatures. They

31. See Blagojević, *supra* note 19, at Y11.

32. See Constitutional Law on the Czechoslovak Federation, *supra* note 7, art. 1, § 1, reprinted in GROSPIC, *supra* note 7, at 141, translated in Simons, *supra* note 6, at 583; Knapp, *supra* note 21, at C111.

33. This label denotes the same concept as the supreme representative bodies (organs), and the terms will be used interchangeably in the following text.

embody, as the supreme representative organs of the people, the entirety of the state power in a socialist state.

This concentration of the state power in a single supreme organ, however, does not imply any elimination of boundaries between individual jurisdictions, such as between legislation and administration, or between administration and judicature. Naturally, these boundaries exist and are strictly respected. However, they are not the boundaries of the different state *powers*, but the boundaries between different *jurisdictions*, based on the division of labor or the division of tasks within a uniform state mechanism.

The unity of state power concentrated in the supreme state power authority manifests itself particularly in the fact that this organ is authorized to elect and to recall other (specialized) supreme state officials, such as the President of the Republic, the Prime Minister and the members of the Government, the President of the Supreme Court, and the Prosecutor General. The supreme state power authority also has the power to establish and disband by law the supreme state agencies, which remain accountable to it.

2. *Hierarchy of the Supreme State Power Organs*

It follows from the character of the federation that the concept of the supreme state power authority is relative. In addition to the supreme state authority of the federation itself, the individual sovereign members of the federation have their own supreme state authorities, as indeed every community that has the legal character of a state also has a supreme state authority. For instance, in the Soviet Union, apart from the supreme state power authority of the Union, the individual union republics and the autonomous republics also have their own supreme state power authorities.

The names of the federal supreme state power authority and the supreme state power authorities of a lower level may be identical. That is the case in the Soviet Union, where there are the Supreme Soviets of both the union and the autonomous soviet republics of the USSR. The names may also differ, as is the case in Czechoslovakia, where the federal supreme state power authority is called the Federal Assembly, and the supreme state power authorities of the republics are called national councils (the Czech National Council and the Slovak National Council).

The supreme state power authorities at different levels stand in a hierarchic relation, but not in the relation of sub- and super-ordination, each of them being sovereign. The hierarchic relation is derived from the democratic-centralist structure of socialist federations and manifests itself primarily through the greater scope of the legislation of the higher level authorities. The difference in scope is due to the fact that the jurisdiction of the lower level state community is determined, among other things, by the constitutional jurisdiction of the state of the higher level, and by the different territorial limitation on the execution of state power.³⁴

It follows from what we have said above that the limits of the jurisdic-

34. The union republic exercises its power "within its territory" and "[o]utside the limits" of the constitutional jurisdiction of the USSR. *See* Soviet Constitution, *supra* note 6, art. 76, § 2, translated in Simons, *supra* note 6, at 370. By analogy, an autonomous republic resolves questions within its jurisdiction "[o]utside the limits of the rights of the U.S.S.R. and the

tion of the supreme state power authorities of different levels are determined by the general constitutional definition of the rights of the federation and, as the case may be, of the individual republics. This definition may be achieved by different methods, although there are no practical differences in their effect. One method is that adopted by Soviet law, in which the Constitution determines exhaustively the rights of the higher state formation (the Union in relation to the individual union and autonomous republics, and the union republics in relation to the autonomous republics), and the lower level state formations exercise their rights outside the rights of the higher state formation.³⁵

An alternative definition of the rights of the federation and the republics is found in the Constitutional Law on Czechoslovak Federation.³⁶ This part of the Constitution expressly outlines the areas of the exclusive jurisdiction of the Federation, the joint jurisdiction of the Federation and of the two republics (those fields in which the law places part of the jurisdiction in the federal authorities and part in the authorities of the republics), and the exclusive jurisdiction of the republics.

The Czechoslovak Constitution respects the priority of the republics by stating in article 9 that "[m]atters which have not been specifically entrusted to the jurisdiction of the Czechoslovak Socialist Republic are under the exclusive jurisdiction of the Czech Socialist Republic and the Slovak Socialist Republic."³⁷

3. *The Bicameral System*

The bicameral system of the federal legislature, which provides for the representation of member states in one house and of the people in the other, is the rule in the socialist as well as nonsocialist federations. However, its meaning is somewhat different due to the ethnic motivation of the socialist federation. While one house directly expresses the participation of the people in the execution of State power, the other house expresses the participation of not only the member states but also — and primarily — the participation of the nations and nationalities.

a. *The Soviet Union.* In the USSR the two houses are called the Soviet of the Union and the Soviet of Nationalities. The former is elected on the basis of constituencies with an equal number of inhabitants and without any regard to the internal division of the USSR into sovereign or administrative units. The latter is composed of thirty-two deputies from each union republic, eleven deputies from each autonomous republic, five deputies from each autonomous province, and one deputy from each autonomous area. The numbers of deputies from the individual communities are mutually independent. For example, the thirty-two deputies of a union republic that includes autonomous republics, autonomous provinces or autonomous regions are in addition to the deputies of these lower communities. Thus, a

[U]nion [R]epublic." Soviet Constitution, *supra* note 6, art. 82, § 2, translated in Simons, *supra* note 6, at 371.

35. See note 34 *supra* and accompanying text.

36. See generally sources cited in note 7 *supra*.

37. Constitutional Law on the Czechoslovak Federation, *supra* note 7, art. 9, translated in Simons, *supra* note 6, at 586.

certain union republic may have more than thirty-two deputies in the Soviet of Nationalities, each representing the interests of various national, state or administrative communities.

Both houses of the Supreme Soviet of the USSR have equal rights and competence; with negligible exceptions, every matter must be discussed in and approved by both houses. Consequently, if the matter has not been approved by one house, it has not been approved by the Supreme Soviet of the USSR³⁸

b. *Czechoslovakia*. The Czechoslovak Federal Assembly consists of the House of the People, whose 200 deputies are elected in a manner similar to that of the Soviet of the Union of the U.S.S.R., and the House of Nations, whose 150 deputies are one half each from the Czech Socialist Republic and the Slovak Socialist Republic. Hence, each national republic is represented in the House of Nations by seventy-five deputies.

As in the U.S.S.R., the competence of the two houses is symmetrical. There is, however, an important feature represented by the so-called prohibition of outvoting which will be dealt with below.³⁹

c. *Yugoslavia*. The supreme state power authority in Yugoslavia — the Assembly of the Socialist Federal Republic of Yugoslavia (S.F.R.Y.) — similarly consists of the Federal Chamber and the Chamber of the Republics and Provinces. The mode of election to these chambers, however, differs somewhat because of the Yugoslav theoretical conception of the right of self-management. Each chamber is elected indirectly, by delegation. The members of the Federal Chamber are selected by the Commune Assemblies, while the members of the Chamber of Republics and Provinces are selected by the republican assemblies or the assemblies of autonomous provinces. Every republic has twelve delegates in the Chamber of the Republics and Provinces and every autonomous province has eight delegates.⁴⁰

Each chamber of the S.F.R.Y. Assembly has its jurisdiction over the matters determined by the Constitution. Only in some matters, likewise determined by the Constitution, is their jurisdiction joint.⁴¹

4. *Permanent Presidential Organs*

Since the supreme representative bodies exercise their jurisdiction only when in session (generally convening for ordinary sessions twice a year), it is necessary to have a permanent organ of state power which may function between, as well as during, the sessions of the supreme representative body. In the Soviet Union and in Czechoslovakia this permanent organ is the Presidium of the supreme state power authority, i.e., the Presidium of the Supreme Soviet in the USSR and the Presidium of the Federal Assembly in Czechoslovakia; in Yugoslavia it is the Presidency of the S.F.R.Y.⁴² All of

38. The Constitution of the USSR provides special rules for disagreement between the resolutions of the two houses. See Soviet Constitution, *supra* note 6, art. 115; Simons, *supra* note 6, at 378-79.

39. See text following note 45 *infra*.

40. See Yugoslav Constitution, *supra* note 9, arts. 291-92; Simons, *supra* note 6, at 542.

41. See Yugoslav Constitution, *supra* note 9, arts. 285-88; Simons, *supra* note 6, at 538-41.

42. The permanent (presidential) organs of the USSR and Yugoslavia also function as

these organs are elected by a joint session of both chambers of the supreme representative body and are accountable to that body, and all are structured according to the nationality principle.

The Presidium of the Supreme Soviet of the USSR consists of a Chairman, First Deputy Chairman, Secretary, fifteen Deputy Chairmen (one for each union republic) and twenty-one other members, giving a total of thirty-nine members.⁴³

The Presidium of the Federal Assembly in Czechoslovakia consists of forty members, elected twenty each from among the deputies of the House of the People and the House of Nations. One half of the members of the Presidium of the Federal Assembly elected from the House of Nations (i.e., ten of them) must represent the Czech Socialist Republic, and the other half must represent the Slovak Socialist Republic.⁴⁴ Both Houses of the Federal Assembly elect from among the members of the Presidium the Chairman and the Deputy Chairman of the Federal Assembly. If a Czech deputy is elected Chairman of the Federal Assembly, only a Slovak deputy is eligible to be Deputy Chairman and vice versa.

The S.F.R.Y. Presidency consists of a member from each Republic and Autonomous Province elected by the Assemblies of the Republics and the Assemblies of the Autonomous Provinces, and the President of the League of Communists of Yugoslavia by virtue of his office.⁴⁵

5. *The Prohibition of Outvoting*

For Czechoslovakia, as a federation of two national states, the prohibition of outvoting is an important and specific guarantee of equality to both nations. Its principal idea is that in voting in the Federal Assembly on those matters determined by law, the deputies elected from one national republic will not be permitted to outvote the deputies elected from the other national republic. Rather, the votes of the deputies in each national state are considered separately when determining the majority.

The possibility of outvoting arises from the fact that the populations of the Czech Socialist Republic and the Slovak Socialist Republic are not equal. The Czech population is about twice as large as the Slovak population, and therefore the number of deputies in the House of the People elected from the Czech Socialist Republic is about twice the number of deputies in the same House elected from the Slovak Socialist Republic. Hence, the Slovak deputies might be outvoted by the Czech deputies in the House of the People.

In the House of Nations the number of Czech and Slovak deputies is the same. However, even in that house either nation may be outvoted. Consider the case in which, at the time of voting in the House of Nations, one deputy is missing. Suppose that all the other deputies elected in the same

collective heads of state. Since Czechoslovakia has, in the person of the President of the Republic, an individual head of State, the Presidium of the Federal Assembly does not serve as a collective head of state.

43. See Soviet Constitution, *supra* note 6, art. 120; Simons, *supra* note 6, at 379.

44. See Constitutional Law on Czechoslovak Federation, *supra* note 7, art. 56; Grospič, *supra* note 7, at 195-96; Simons, *supra* note 6, at 601-02.

45. See Yugoslav Constitution, *supra* note 9, art. 321; Simons, *supra* note 6, at 552.

national republic vote in favor of a law, while all the deputies elected in the other national republic vote against it. The outcome of the voting will be seventy-four for and seventy-five against, so that one national group will be outvoted and the proposal rejected, in spite of the unanimous support of the deputies elected from one national republic.

Further complication may arise from the fact that in Czechoslovakia both houses of the Federal Assembly have symmetrical competence, so the adoption of a proposal by the Federal Assembly requires the approval of both houses. Let us again imagine a simplified case, in which a certain proposal is adopted in the House of Nations with the votes of all the Slovak deputies plus five of the Czech deputies, i.e., by a majority of eighty to seventy. Suppose further that in the House of the People all the Slovak deputies again vote in favor of the proposal, but the votes of the Czech deputies against the proposal attain a majority. The proposal will not be adopted in the House of the People, so there will be no consensus between the resolutions of the two houses. Consequently, the proposal will not be adopted by the Federal Assembly, although all the deputies elected in the Slovak Socialist Republic voted in favor of its adoption.

Due to unity of the Czechoslovak people and their fundamental interests, and particularly due to the unifying role of the Communist Party of Czechoslovakia, such cases do not occur in actual practice. Nevertheless, the federal system in Czechoslovakia does not exclude them, so the Constitutional Law on Czechoslovak Federation must provide for them.

The constitutional means of preventing the occurrence of such cases is the prohibition against outvoting. Article 42 of the Constitutional Law on Czechoslovak Federation⁴⁶ enumerates the cases in which outvoting is forbidden. It provides that on such matters the deputies elected from the Czech Socialist Republic and the deputies elected from the Slovak Socialist Republic shall vote separately in the House of Nations. The proposed resolution will be adopted only if a majority of deputies elected in the Czech Socialist Republic and a majority of deputies elected in the Slovak Socialist Republic have voted in favor of it (unless, of course, the law requires only a qualified majority, as discussed below). The existence of a majority is determined regardless of the number of deputies participating in the voting; thus, the proposal is adopted in the House of Nations only if at least thirty-eight deputies from each of the nations votes in favor of it. Although these seventy-six constitute a simple majority of the House of Nations, it is not this majority that is significant, but the majorities within any group of national deputies.

Let us imagine an extreme case in which, in the House of Nations, all seventy-five deputies elected in one national republic and thirty-seven of the deputies elected in the other national republic vote in favor of a proposal and the remaining deputies vote against it. While the overall vote count will be 112 votes for and 38 votes against (if there is no abstention or other nonparticipation), the proposal would nevertheless be rejected.

The prohibition against outvoting under article 42, section 2 of the Constitutional Law on Czechoslovak Federation applies to the approval of

46. See Constitutional Law on Czechoslovak Federation, *supra* note 7, art. 42; Grospič, *supra* note 7, at 185-87; Simons, *supra* note 6, at 597-98.

eighteen expressly enumerated points representing a great majority of all the questions entrusted to the jurisdiction of the House of Nations (and consequently to the Federal Assembly). Additionally, the prohibition against outvoting applies to all cases in which the law requires a qualified majority (a majority of three fifths). Such a super majority is required in all matters enumerated in article 41 of the Constitutional Law on Czechoslovak Federation⁴⁷ — the adoption of a Federal Constitution, or, as the case may be, of a Constitutional Law, and of amendments thereto, the election of the President of the Czechoslovak Socialist Republic, and the declaration of war. In such matters, a three-fifths majority of each national group of deputies must approve the resolution.

The consistent prevention of the possibility of outvoting requires its prohibition also in the Presidium of the Federal Assembly. The Presidium enjoys considerable power, particularly between sessions of the Federal Assembly. For example, when the Federal Assembly is not in session, its Presidium is empowered to adopt so-called Legal Measures which, under the condition of subsequent approval at the next session of the Federal Assembly, have the effect of law. Because of this fact, article 57, section 2⁴⁸ states that the provisions of article 42 regarding the prohibition of outvoting also apply to decisionmaking by the Presidium of the Federal Assembly.

In cases in which the law does not prohibit outvoting, a simple majority of the deputies present in each House at the time of voting, regardless of the republic from which they have been elected, is sufficient for the adoption of the proposal.

D. *Supreme Executive (Administrative) Organs*

With respect to public administration, very little remains to be added. The basic principles of equality of nations, their sovereignty, self-determination and self-management, which form the basis of the organization, structure and jurisdiction of the supreme state power authorities of socialist federations, also form the basis of the organization, structure and jurisdiction of the supreme organs of their public administration. On the federal level these organs include the Council of Ministers of the USSR, the Government of the Czechoslovak Socialist Republic and the Federal Executive Council in Yugoslavia. The implementation of federal principles in organizing public administration, however, has been considerably simpler than it was at the level of the supreme state power authorities.

Several general points may be made briefly. First, all parts of the federation that have the character of a state have supreme executive organs of their own. In the USSR, for example, there are — apart from the Council of Ministers of the USSR — also Councils of Ministers of the union and autonomous republics. Second, the supreme executive organs are generally appointed or elected by the supreme representative bodies. The Federal Government of the Czechoslovak Socialist Republic, which is appointed by

47. See Constitutional Law on Czechoslovak Federation, *supra* note 7, art. 41; Grospič, *supra* note 7, at 184-85; Simons, *supra* note 6, at 597.

48. See Constitutional Law on Czechoslovak Federation, *supra* note 7, art. 57, § 2; Grospič, *supra* note 7, at 196; Simons, *supra* note 6, at 602.

the President of the Czechoslovak Socialist Republic, is an exception to this principle. Third, the supreme executive organs are accountable to the supreme representative body of the corresponding level.

A fourth general administrative principle is that the supreme executive organs of the federation are structured in accordance with the representation of the individual nations and nationalities. For example, according to article 129 of the Soviet Constitution,⁴⁹ the chairmen of the Council of Ministers of the union republics are members of the Council of Ministers of the USSR by virtue of their offices. In Czechoslovakia the Prime Ministers of the Czech Socialist Republic and the Slovak Socialist Republic also serve as the Vice-Chairmen of the Federal Government. The latter office is not bestowed by law by virtue of the former office; it is rather a constitutional custom. Under article 348 of the Yugoslav Constitution,⁵⁰ the Federal Executive Council members are elected in conformity with the principle of equal representation of the republics and corresponding representation of the autonomous provinces.

What has been said in this section about the relation between the federal government and the governments of the republics applies analogously to the relation between the individual federal ministries and the ministries of the republics, as well as to the other central administrative agencies. In this case, however, the jurisdiction and the existence of the individual central administrative agencies in general depends on the division of jurisdiction between the federation and its member states. Accordingly, there are three models for the organization of ministries. First, there may be federal ministries only, having direct competence in the territory of the whole federation and consequently having no counterparts on the level of the republics. Second, there may coexist federal ministries and their counterparts, republican ministries. And lastly, there may be republican ministries only. The same applies analogously to other central administrative agencies.

E. Administration of Justice

The supreme judicial organs are organized similarly to the supreme executive or administrative organs. By way of example, let us examine the administration of justice in the USSR. The circuits correspond with the administrative territorial units; the apex of the hierarchic pyramid of courts in every state unit is the Supreme Court. There are supreme courts at three levels: the Supreme Court of the USSR, the Supreme Courts of the union republics, and the supreme courts of autonomous republics. The mutual relations among these supreme courts are codified in article 153 of the Soviet Constitution⁵¹ (or, as the case may be, in the constitutions of the union and autonomous republics), in the legislation concerning the administration of justice, and in the rules of proceedings. Despite this plurality of supreme courts, the federal structure manifests itself in the organization of the Soviet judicial organs. According to article 153, section 2 of the Constitution of

49. See Soviet Constitution, *supra* note 6, art. 129; Simons, *supra* note 6, at 382.

50. See Yugoslav Constitution, *supra* note 9, art. 348; Simons, *supra* note 6, at 389.

51. See Soviet Constitution, *supra* note 6, art. 153; Simons, *supra* note 6, at 389.

the USSR, the chairmen of the supreme courts of the union republics are members of the Supreme Court of the USSR by virtue of their office.

For the sake of completeness let us add that the courts of the autonomous provinces and the autonomous areas, which are expressly mentioned in article 151 of the Constitution of the USSR,⁵² are national judicial organs. They are, however, incorporated into the hierarchy of judicial organs on their respective levels, corresponding to the subordination of the autonomous provinces to the union republics or, as the case may be, to the regions, and of the autonomous areas to the provinces.

CONCLUSION

We have endeavored to explain briefly some fundamental theoretical and political principles forming the basis of contemporary socialist federations and the application of these principles in their constitutions. The political importance and impact of socialist federalism exceeds, naturally, the solution to the nationality problem. Similarly, the solution to the nationality problem involves elements other than the federal organization of state (for example, the rights to use of and education in a national language, or the right to national cultural development). Nevertheless, as stated at the outset, the socialist federation has been and remains the fundamental form for the state organization of the relation of nations and nationalities living in a given state.

52. See Soviet Constitution, *supra* note 6, art. 151; Simons, *supra* note 6, at 388.