

# DRAFT CONSTITUTION OF TRANSCARPATHIAN UKRAINE: GENERAL LEGAL CHARACTERISTICS

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**Annotation.** *A study of the draft Provisional Constitutional Law (temporary constitution) of Transcarpathian Ukraine was conducted. The main external formal and legal provisions of this document have been analyzed, which allows us to draw certain conclusions about the intentions of the leaders of Transcarpathian Ukraine, revealed by them when drafting this act and aimed at forming the constitutional foundations of this territorial formation of the transitional period.*

**Key words:** *Transcarpathian Ukraine, constitution, legislation.*

## 1. Posing a question.

The formation of a generalized idea regarding the history of constitutional development on the territory of modern Ukraine is possible only under the condition of its comprehensive study in certain regions of our country and, in particular, in Transcarpathia, where in 1944-1946 there were extremely interesting for research, state-legal processes related to the existence of a specific administrative-territorial entity called "Transcarpathian Ukraine".

## 2. Analysis of scientific sources.

The phenomenon of Transcarpathian Ukraine has been studied by a number of scientists for a long time. Among them, first of all, it is necessary to mention I. Yevseev, M. Troyan, V. Markus, P. Magocsi, M. Makara, P. Mosnya and others. However, when studying this issue, some authors focused their attention on the historical facts of the development of Transcarpathian Ukraine, leaving out the legal side of the issue, while others focused their attention on certain legal aspects. At the same time, there are still no special studies in the scientific literature on the constitutional process in this territory in the period of 1944-1946, which is largely due to the absence of the Constitution of Transcarpathian Ukraine itself.

## 3. Presentation of the material.

However, recently in the funds of the State Archives of Transcarpathian region, the author discovered a draft of a document entitled "Provisional Constitutional Law" (temporary constitution), dated November 26, 1944, which allows us to draw certain conclusions about the intentions of the leaders of Transcarpathian Ukraine, revealed by them when drafting this act and aimed at forming of the constitutional foundations of this territorial entity [1].

Of course, the draft of the provisional constitution requires a separate comprehensive study and analysis, however, within the scope of this article, the goal is to analyze only its external formal and legal aspects.

On November 26, 1944, the First Congress of People's Committees of Transcarpathian Ukraine was held in Mukachevo, during which an attempt was made to legitimize a new administrative-territorial entity called "Transcarpathian Ukraine" and the formation of its legal system was initiated. During the congress, its participants adopted the Manifesto on the reunification of Transcarpathian Ukraine with Soviet Ukraine, which was later noted in many acts issued by the People's Council as their basis, that is, it became the actual basis for the further constitutionalization of Transcarpathian Ukraine. However, the Manifesto was

declarative in nature, it was not a constitutional law on the basis of which a certain state-legal system could be formed, that is, it did not comply with the rules of legal technique established for this type of documents. It should be noted that, in general, the legal system of Transcarpathian Ukraine was formed in extreme conditions, often situationally, in the absence of the necessary time for the proper preparation of normative acts, constantly experiencing the influence of Hungarian, pre-war Czechoslovakian and newly implemented Soviet legal norms. The circumstances of the last period of the war objectively generated, first of all, reconstruction tasks, the implementation of which was the main activity of the regional administration. In addition, the existence of the ultimate goal of Transcarpathian Ukraine – joining the Ukrainian Soviet Socialist Republic, and not forming an independent state entity, allowed local authorities to pay less attention to state-building issues, focusing precisely on urgent economic problems.

Obviously, to a certain extent, this can explain the fact that in Transcarpathian Ukraine there was no single constitutional document that would define the principles of the state and social order, and therefore a number of constituent functions that are normally contained in the constitution were taken over by separate normative acts - decrees, orders and resolutions.

The draft is dated November 26, 1944, that is, the day of the First Congress of People's Committees of Transcarpathian Ukraine, where it was supposed to be approved. However, the question of adopting a provisional constitution was not raised at the congress itself. Instead, the delegates voted for the adoption of the Manifesto on reunification with Soviet Ukraine. It is not known for certain why the draft of the Provisional Constitutional Law was not submitted for discussion by the delegates. However, the most likely reason is that in the absence of a clear vision of the further development of the situation around Transcarpathian Ukraine and a possible ambiguous reaction to the adoption of the Constitution by the leadership of the Czechoslovak Republic and the Soviet Union, the leaders of Transcarpathian Ukraine decided to limit themselves to only the general provision regarding the formation of the People's Council, defined in the text of the Manifesto on reunification, and not to exacerbate the issue by adopting a basic law, thus constitutionalizing Transcarpathian Ukraine.

At the same time, the discovered Provisional Constitutional Law, together with other available archival materials, significantly supplements our knowledge of the circumstances that led to the formation of Transcarpathian Ukraine, and also allows for a comprehensive analysis of the state and legal foundations on the basis of which the leaders of Transcarpathian Ukraine planned its formation.

Based on the content of the draft of the temporary constitution, it can be stated that it consisted of the most important (from the point of view of its authors) norms aimed at forming the initial legal foundations of the new state apparatus, creating a legal system and implementing the process of reunification of Transcarpathian Ukraine with the Ukrainian SSR. According to the structure, it represents a continuous document without division into separate components (sections) and consists of 16 paragraphs. Substantially paragraphs 2–6 are devoted to the characterization of people's committees as the political basis of Transcarpathian Ukraine, 7–13 – determine the status and powers of the People's Council, 1, 14–16 – general principles of state and law-making in this territory.

That is why, according to its content, it can be attributed to the so-called “small” constitutions, that is, to documents of a constitutional nature that do not contain the usual standard set of constitutional institutions. As a rule, the appearance of such documents is due to political reasons, is exclusively temporary in nature and is adopted for a while until the adoption of a permanent constitution. For example, in the latest state legal practice of Ukraine, the role of a “small” constitution (to a certain extent) was played by the Constitutional Treaty concluded on May 18, 1995 between the President of Ukraine and the Verkhovna Rada for the period until the adoption of the new Constitution of Ukraine.

The well-known historical facts that developed around Transcarpathia in 1944 allow us to state the existence of precisely such political reasons that led to the development of the above-mentioned draft provisional constitution, based on the urgent need to restore real administrative management in the region.

Of course, a small volume of the text of the document does not allow to present a comprehensive description of this document on all grounds. At the same time, based on the generally accepted classification of constitutions, certain conclusions can be drawn regarding its individual characteristics. Thus, in terms of its validity, it is a temporary constitution, as evidenced by both its name itself and

individual provisions, in particular paragraph 8, in which the People's Council was instructed to "develop a definitive constitution in full agreement with the Stalin Constitution of the Ukrainian SSR and the USSR." According to the method of its adoption, it can rather be attributed to the people's one, since it was subject to approval by the congress of delegates of the people's committees, which spoke on behalf of the entire population of the region.

As for the territory of action, the document provided that it, as a mandatory act, would apply to the entire liberated territory of Transcarpathian Ukraine, including the Carpatho-Ukrainian districts of Maramorosh, Ugocha, Bereg, and Uzhgorod committees, and would later extend to those Carpatho-Ukrainian lands in Hungary, Slovakia and Romania, which will be reunited with Transcarpathian Ukraine.

At the same time, the main feature of the Provisional Constitutional Law was its focus on performing two main functions: constituent and ideological. Thus, based on the need to form new state principles, the draft declared the people to be the source of all power in the region. This power was exercised through village, city, district and county people's committees, which constituted the lower level of state administration (the political basis - according to the text of the draft) and were formed through elections in the "territory liberated from the German-Hungarian invaders".

The direct functions of the People's Committees included directing the activities of their subordinate governing bodies, ensuring state order and compliance with laws, protecting citizens' rights, managing local economic and cultural construction, and adopting the local budget. In exercising these powers, the committees made decisions and issued orders within the limits of the rights granted to them by the decision of the congress of delegates of the people's committees.

Being bodies of people's power, the people's committees formed their own executive and administrative structures, which became the Presidiums, which were elected directly by the committees in the composition of the chairman, his deputy, secretary and members. In carrying out their powers, the Presidiums were responsible to the people's committees that elected them, the executive bodies of the higher people's committees and the People's Council.

The highest state legislative and executive power on the territory of Transcarpathian Ukraine was vested in the People's Council of Transcarpathian Ukraine (PCTU), which was elected by the congress of delegates of the people's committees of cities and villages, consisting of the chairman, deputy chairman and 13 authorized members and acted until the election of a new higher body state authorities of Transcarpathian Ukraine.

This definition of the PCTU according to the draft of the Provisional Constitutional Law differed in terms of formal status and composition from the one officially defined for this body at the first stage of its activity (November 1944 – February 1945). Thus, according to the Manifesto proclaimed by the First Congress of People's Committees, the People's Council became "the only central authority acting according to the will of the people", without a formal definition of the legislative or executive functions assigned to it [2]. Obviously, this was due to the lack of a clear idea of the powers that would be assigned to the PCTU in the future, and therefore the authors of the Manifesto limited themselves to a general definition of the status of this body. At the same time, the People's Council included the government consisting of the chairman (commissioner I. Turanitsa), his two deputies and 11 industry commissioners who headed the relevant sectors (departments) [3].

And only on February 9, 1945, after three months of work on the establishment of a new administrative management on the territory of Transcarpathian Ukraine, the People's Council adopted Decree No. 39 "On the organization of the state administrative management of Transcarpathian Ukraine", which clearly defined the status of the People's Council, similar to the wording in the Provisional Constitutional Law – as the legislative and highest executive body [4].

According to the draft, the powers of the Chairman of the People's Council included convening and conducting meetings of the People's Council, its representation, issuing decisions and orders, signing government acts, appointing, together with the relevant commissioner, civil servants. In cases of illness, absence of the chairman of the Council, as well as for other reasons that prevented or prohibited him from performing his functions, they relied on deputies.



As for the status of other members of the People's Council (commissioners), the Provisional Law did not specify it, in particular, it did not establish a list of existing sectors (departments). Their powers are mentioned only tangentially to the powers of the Chairman of the Council (e.g. appointment of officials together with him, joint signing of all relevant governmental acts). At the same time, paragraph 7 pointed out that the direct functions of commissioners of individual departments were determined by the People's Council, that is, it referred this issue to an extra-constitutional decision.

By its composition, the People's Council was defined as a collegial body, since all decisions were made by a majority of votes, with the exception of issues related to constitutional matters, the adoption of which requires the support of two-thirds of members of the Council.

The main duties of this body included: development and adoption of the definitive constitution of Transcarpathian Ukraine; organization of administrative and judicial services; reconstruction of local industry; restoration of education and commerce. he members of the Council.

In connection with assigning to the People's Council the task of developing a definitive constitution of Transcarpathian Ukraine (permanent with the definition of all state-legal institutions provided for such a document), it can be assumed that the authors of the draft, planning the reunification of Transcarpathia with Soviet Ukraine, did not clearly imagine the status of the region within the USSR and allowed the existence of Transcarpathia in this state as a certain autonomous administrative unit with its own constitution.

In addition to the above-mentioned bodies of state administration, the draft mentioned the congress of delegates of people's committees. Although the procedure, periodicity of convening and powers of this body are not directly defined, certain textual provisions allow us to characterize it as the highest body of people's power in Transcarpathian Ukraine. In particular, its competence included approving the Constitution of Transcarpathian Ukraine, electing members of the People's Council, defining the rights of people's committees.

From an ideological point of view, the Provisional Constitutional Law directed the development of Transcarpathian Ukraine to the preparation of the process of the region's entry into the USSR and, accordingly, to the formation of a pro-Soviet type of public consciousness, which was based on the principle of workers' people's power. This direction in the draft itself was ensured by two main postulates. First of all, the People's Council was entrusted with the task of developing "the constitution of Transcarpathian Ukraine in full agreement with the Stalin Constitution of the Ukrainian SSR and the USSR" (paragraph 8 of the draft) and in this way, through a legislative act of higher legal power, to ensure the formation of a state-legal system in the region, similar to the Soviet system by preparing favorable conditions for reunification. On the other hand, paragraph 12 established the imperative principle that "the normative decisions of the People's Council cannot contradict the principles of the Stalin Constitution," which made it possible to create a normative guarantee of compliance with the pro-Soviet course in the event of any future anti-Soviet manifestations on the part of the People's Council of Transcarpathian Ukraine.

And finally, paying the main attention to the formation of the foundations of state administration, the draft of the provisional constitution provided for a certain legal succession of legal norms. In particular, paragraph 14 determined that "all current legal norms that do not contradict the current legal order remain in force". This provision made it possible to ensure a certain transitional period necessary for the People's Council to prepare and implement a new legal system. In fact, in the course of practical activity, the People's Council, apparently guided by political motives, on December 18, 1944 adopted Decree No. 22 "On the Formation of a Special Court under the People's Council of Transcarpathian Ukraine," according to paragraphs 4 and 5 of which "all laws and regulations of the Hungarian and occupation governments" became invalid [5]. This, in turn, created a certain vacuum of the legislative framework, the emergence of a significant number of normatively unsettled issues, and, accordingly, the ambiguous application of legal norms in the resolution of specific social relations.

#### **4. Conclusions.**

Thus, after analyzing the Provisional Constitutional Law, it can be stated that this document was intended to enshrine in the legislative form the conquest of the Transcarpathians in the political sphere, highlighting at the same time particularly important, from the point of view of their leaders, provisions.

Although this temporary law was never adopted, it largely met the needs of power relations, created the basic foundations for their further development and gave Transcarpathian Ukraine signs of statehood, and therefore is an important source for studying state-building processes on the territory of Transcarpathia.\

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