

RUSSIAN FEDERALISM

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1. Russia has the biggest territory in the world. Of course, it is possible to govern it on the unitary base, but it is impossible to make such government most effective. The experience of the Empire of Russia and of the former Soviet Union has showed it quite clearly.

The Empire of Russia has been built as the result of expansionist policy during centuries. Some states joined Russia voluntarily to escape conquest by enemies. In such a way it gained vast territories with many peoples. Several states joined Russia, because of threat of heterodox conquest. The form of the Empire was unitary, but there were territories, which enjoyed the rights of certain autonomy. Finland, for example, had its own constitution, although Russia as a whole had none.

Before the October revolution of 1917 leader of the Bolsheviks Vladimir Lenin advocated the right of nations to the full self-determination. But at the same time he was antagonist of any federation. “Want you to separate, then go to hell—he said—. But if you don’t want to separate, then excuse me, don’t decide instead of me, don’t think you have a right to federation”.

After the revolution and particularly at the time of the Civil War of 1918-1922 a number of peoples and even of parts of peoples built their own independent states. Several of them were recognized by the Soviet government, such as Finland, Poland, three states of Baltia, but not all. The other, such as the Transcaucasian republics, were occupied by the Red Army in the course of the Civil War, and the so called Soviet Power was there imposed. Some of new states, which had no special ethnical base, were liquidated.

Russia was proclaimed a federative republic of its nations. Lenin hoped, that all parts of the former Empire would unite in such a way. But separatist tendencies were too strong even in the new “soviet” republics. So he sup-

posed to build another “floor”, and in 1922 the Union Treaty was concluded. Four soviet republics took part in it.

It was interesting, that national territorial formations were ranged. The highest rang had Union Republics, the direct federal units of the Soviet Union. There were in the beginning four of them, later seven, then with adopting the Stalin-Constitution of 1936 eleven. After the “Winter War” of 1939-1940 against Finland, after occupying three Baltic states and getting some territories from Rumania the number of Union Republics increased to 16. But several years after the World War II it diminished to 15: the Karelian-Finnish Union Republic was reorganized to Karelian Autonomous Republic in the composition of the Russian Federation, and its status was in such a way lowered. The Union Republics were formally considered sovereign states. The Union constitutions even recognized their right to secession from the Union. Two of the Union Republics —the Ukraine and Byelorussia—, as well as the Union itself, became founders of the United Nations Organization and of its specialized agencies. But I’d like to underline again, that their “sovereignty” was purely formal.

The next rang had Autonomous Republics, which formed parts of several Union Republics. There were 16 Autonomous Republics in the Russian Federation, but their share of territory and especially of population was very small. As a rule, the share of the indigenous ethnos was in this republics much less, then a half, but nevertheless the leaders belonged to this ethnos.

Lower stood Autonomous Regions. In the Russian Federation there were five of them. They formed parts of Territories or Regions, which were direct units of the Russian Federation like Autonomous Republics. The share of the indigenous ethnos was usually even lower, then in the Autonomous Republics.

The lowest level formed 10 National Districts. According to the Union Constitution of 1977 and the Russian Constitution of 1978 they were renamed to Autonomous Districts. Such units were only in the Russian Federation and also formed parts of Territories or Regions. Autonomous Districts were areas of indigenous little peoples of the North and Far East. Although constitutionally the Soviet Union was a federation and the Russian Federation (the correct translation of its name should be the Federation of Russia) was the biggest of its federal units and a federation too, but really the Soviet Union, and the Russian Federation as its part were governed in a highly centralized way. As far as the Russian Federa-

tion was concerned, Soviet scholars couldn't determine, what federal units there were.

2. The disintegration of the Soviet Union at the end of 1991 exerted certain influence upon the composition and organization of the Russian Federation. Ethnic elites of many autonomous units felt the scent of sovereignty, and the temptation was big. All Autonomous Republics, but one, and all Autonomous Regions, but one, declared themselves to be sovereign republics in the composition of Russia and received a privileged status in comparison to Territories and Regions. All former and the only existing Autonomous Regions came out of the corresponding Territories and Regions, and so did one of the Autonomous Districts (for others the time was soon over, and they may not do the same). The regional elites contended against the privileged status of Republics.

On the March 31 of 1992 three Federal Treaties were signed by leaders of the Russian Federation and of Republics, of the Russian Federation and of Territories, Regions and Federal Cities (Moscow and St. Petersburg), of the Russian Federation and the only Autonomous Region and Autonomous Districts. All these parts of the Russian Federation became federal units. Corresponding amendments were made in the former Constitution of Russia. It was the beginning of real federalism in Russia. Ethnic and regional elites managed to get important advantages. The first President of Russia Boris Yeltsin, seeking support of the leaders of the Republics told to them: "Take as much of sovereignty, as you can gulp down". And many tried and gulped down even more, than that.

Nevertheless leaders of two Republics didn't sign the Federal Treaty. Republic of Tatarstan concluded after two years a separate treaty, which gave it more powers and resources, then the new Constitution of Russia.

Here is to mention, that adopting this Constitution took place soon after armed suppressing the opposition in October 1993. In these conditions the leaders of the republics behaved more carefully, then before, and President Yeltsin could take them away a number of former concessions.

3. Now I have to tell several words about the Chechen question, which is till now a very painful place in my country and the most complicated problem of our federalism.

The Checheno-Ingush Republic disintegrated in 1991, and the Chechen Republic tried to come out of Russia. Its leader, former soviet general Dudayev organized in 1991 a *coup d'état*, liquidated the "Soviet Power" in the Republic and was in the fact supported by the democratic Russia. The

authorities of Russia paid no attention to the fact, that in Chechnya a real army had been organized and it became in reality an independent territory, although kept on to receive means from the federal budget of Russia. Armed gangs attacked and robbed trains coming from Russia, banished and murdered Russians and other non-Chechens, held in servitude a lot of people.

On the eve of 1995 the First Chechen War began. The Russian Army occupied the flat part of the Republic, fully destroyed its capital Grozny and other towns. Many people, included children, were killed, kidnapped and mutilated. General Dudayev was killed.

But nevertheless the war was lost. Till now we don't know exactly, why. I must tell, that a certain part of the Russian society sympathized the Chechens, supposing they were fighting for their national freedom. But these sentiments begun to fade after the raid of a Chechen detachment to the town Budyonnovsk out of Chechnya, where a lot of people were killed and taken as hostages by the Chechens. The former head of Russian Government had even personally to negotiate on the phone with the ringleader of the Chechen detachment, which could return to Chechnya safely. In 1996 Grozny had been taken back by the Chechens. The armistice was concluded. The Russian Army left Chechnya, and decision-taking about its status was postponed.

Three years more Chechnya, which took the name Ichkeriya, was really independent, its elected President Maskhadov, Dudayev's successor, was recognized by the Russian authorities, but the Chechens didn't manage to build a normal state, their armed gangs were loggerheads with each other, attacked neighbours, practiced kidnapping and so on. In 1999 they suddenly attacked the neighbouring Republic of Dagestan, occupied its several districts and intended to organize a fundamentalist state. So began the Second Chechen War.

The Russian Armed Forces routed gangs, occupied the whole territory of the Republic, and now political process is going on, new national statehood is being built. In March of 2003 the Constitution of the Chechen Republic has been adopted by referendum. In October the election of the President of the Republic is to be held. Chechnya has now its own central and local government, its own police. After concluding a treaty between the Russian Federation and the Chechen Republic the latter will get the broadest autonomy, possible according to the Constitution of Russia.

Nevertheless the activity of terrorists goes on in Chechnya. Hard to say, how long it will last. The terrorists-kamikadze murder innocent people not only in Chechnya, but in many cities of other parts of Russia too.

4. The Russian Federation has following composition now. It consists of 89 federal units, including 21 Republics, 6 Territories, 49 Regions, 2 Federal Cities, 1 Autonomous Region and 10 Autonomous Districts. All of them enjoy equal rights in their relations with the Russian Federation. Although the Republics are considered states, which have their constitutions, while the other federal units have their statutes, this difference of names has no real legal meaning.

The status of the Autonomous Districts is most original. Everyone of them but the Chukotski Autonomous District is a part of a Territory or Region and at the same time has the same constitutional status like the corresponding Territory or Region, the part of which it is. So it turns out, that a part is equal to the whole. It doesn't look like having a lot of logic, but so is a result of our political history.

Autonomous Districts differ very much economically. Several of them are rich of oil, gas and other natural resources, and others have nearly nothing of the sort. Their names are the names of corresponding indigenous peoples, which are now a little minority of the population and not owner of natural resources. The relations between the Autonomous Districts and corresponding Territories or Regions depend upon these facts to a big extent. For example, the poor Komy-Permyatski Autonomous District is now negotiating with the Perm Region, which part it is, about their merger and building a unitary Perm Territory. Many observer mean, it is the beginning of the process of diminishing the number of federal units. On the contrary, the rich Autonomous Districts in the North of the Krasnoyarski Territory and Tyumenska Region don't want to merger with the Southern parts of this big federal units. Attempts of mergering Federal Cities Moscow and St. Petersburg and surrounding Regions failed as well.

The status of a federal unit may be changed by mutual agreement between the Russian Federation and the corresponding federal unit. Borders between federal units may be changed upon their mutual consent.

The territory of the Russian Federation comprises the territories of its federal units, inland waters and territorial sea and the air space over them. The Russian Federation has sovereign rights and exercises jurisdiction on the continental shelf and in the exclusive economic zone.

The Constitution of the Russian Federation prohibits establishing in its territory any custom borders, duties, levies or any other barriers to the free flow of goods, services and financial resources. Restrictions on the movement of goods and services may be introduced in accordance with federal law only to ensure security, to protect the life and health of people, and to preserve nature and cultural values.

The Russian language is the State language on the entire territory of the country. Republics have the right to establish their own State languages, which may be used in government bodies and institutions together with the Russian language. The Russian Federation guarantees all of its peoples the right to preserve their native language and creating conditions for its study and development. The rights of indigenous small peoples are constitutionally guaranteed in accordance with the universally recognized principles and norms of international law and international treaties of the Russian Federation.

5. The main problem of any federalism is the distribution of jurisdiction between the federation and its federal units. From this point of view Russia is generally a symmetric federation. Constitutionally all federal units, as I said, have equal rights and duties with respect to the Russian Federation. The only exclusion of this rule is the possibility of concluding treaties and agreements about delimiting powers between federal bodies and government bodies of federal units within the sphere of the joint jurisdiction of the Russian Federation and its federal units. The reason of such an exclusion is, that our federal units differ very much from points of view of their territory, population, ethnic composition, climate, economy etc.

The federal Constitution determines the sphere of exclusive federal jurisdiction and the sphere of joint jurisdiction of the Russian Federation and its federal units. All other powers and duties belong to federal units, but powers and duties reserved by the federal Constitution for the local self-government.

According to the Article 71 of the federal Constitution the Russian Federation shall have jurisdiction over:

a) adopting and amending the federal Constitution and federal laws, their observance. As a matter of fact the most part of the Constitution according to its Article 136 may be amended with approving of no less than 2/3 federal units;

b) the federative system and the territory of the Russian Federation;

- c) regulating and protecting human and civil rights and freedoms; the citizenship in the Russian Federation; regulating and protecting the rights of national minorities. It could be put more exactly as ethnic minorities;
- d) establishing the system of federal legislative, executive and judicial bodies, the procedure of their organization and functioning; forming the federal government bodies;
- e) federal public property and administering thereof;
- f) establishing basic principles of federal policy and federal programmes in the sphere of State, economic, ecological, social, cultural and national development of the Russian Federation;
- g) establishing basic legal principles for the common market; financial, currency, credit, customs regulation, money emission, basic principles of pricing policy; federal economic services, including federal banks;
- h) the federal budget, federal taxes and levies, federal funds of regional development;
- i) federal power-engineering systems, nuclear powers, fissile materials, federal transport, railways, information and communication, activities in space;
- j) foreign policy and international relations of the Russian Federation, international treaties of the Russian Federation, issues of war and peace;
- k) foreign economic relations of the Russian Federation;
- l) defense and security; military production; determining the procedure for selling and purchasing weapons, ammunition, military equipment and other military hardware; production of poisonous substances, narcotic substances and the procedure of their use;
- m) determining the status and protection of the State border, territorial sea, air space, the exclusive economic zone and the continental shelf of the Russian Federation;
- n) the judiciary; the system of procurator's offices; the criminal legislation, the legislation about criminal procedure and criminal execution; amnesty and pardon; the civil legislation, the legislation about civil and arbitration procedure; legal regulating intellectual property;
- o) federal collision law;
- p) meteorological service, standards, metric and time systems, geodesy and cartography; place-names; official statistics and book-keeping;
- q) State awards and honorary titles of the Russian Federation;
- r) federal State service.

In the sphere under its exclusive jurisdiction the Russian Federation may adopt federal constitutional laws and federal laws. They have direct force on the entire territory of the Russian Federation.

Article 72 determines the joint jurisdiction of the Russian Federation and their federal units. This sphere consists of following issues:

a) ensuring the conformity of constitutions of the republics and charters of other federal units, as well as laws and other enactments of all federal units, with the Constitution of the Russian Federation and federal laws;

b) protecting human rights and freedoms; protecting rights of national minorities; guarantying legality, law and order, public security; border zone regimes;

c) issues of possessing, using and disposing land, entrails of the earth, waters and other natural resources;

d) demarcating State property;

e) using natural resources; protecting the environment and ensuring ecological safety; natural territories under special protection; protecting historical and cultural relicts and monuments;

f) general issues of upbringing, education, science, culture, physical education and sport;

g) coordinating of health care issues; protecting family, maternity, fatherhood, childhood; social protection, including social maintenance;

h) taking measures against catastrophes, natural calamities, epidemics, eliminating their cosequences;

i) establishing general principles of taxation and levies in the Russian Federation;

j) administrative, administrative-procedural, labour, family, housing, land, water, forest, entrails of the earth, protection of environment legislation;

k) pesonnel of the judiciary and of the law-guarding bodies; the bar, notaries;

l) protecting primordial places of inhabitance and traditional way of life of small ethnic communities;

m) establishing general organization principles of the system of State government bodies and of local self-government;

n) coordinating international and foreign economic relations of the federal units, observing international treaties of the Russian Federation.

In this sphere the Russian Federation adopts federal laws, and federal units adopt their laws and other enactments, which are to be in conformity with federal laws. If there is no federal law regulating certain issue, federal units may adopt their laws, but after adopting federal law the federal units have to bring their laws in conformity with this federal law.

Outside of the two mentioned spheres the federal units enjoy full State authority and their laws and other enactments needn't conform with the federal legislation. The federal units establish on their own the system of their government bodies according to the grounds of the constitutional order and to the general organization principles stated by a federal law. But in the limits of the federal competence and federal powers in the sphere of the joint jurisdiction the executive bodies of the Russian Federation and of its federal units build a single whole.

Federal executive bodies may, in order to exercise their powers, establish their own territorial branches and appoint appropriate officials. They realize this possibility very actively. The federal Constitution empowers the President of the Russian Federation to appoint and dismiss his Plenipotentiary Representatives. President Yeltsin appointed them in every federal unit. President Putin dismissed them and established seven federal districts, in everyone of which there is one Plenipotentiary Representative of the President. Every such district includes several federal units. The Representatives may not interfere into the competence of the federal units and their government bodies, but the real political influence of these officials is marked.

According to the para. 3 of the Art. 11 of the federal Constitution the demarcation of competence between the federal government bodies and the government bodies of federal units shall be determined by the Constitution itself, by the Federal Treaty and by other treaties on the matter. Practically it is determined in many cases by federal laws, and the Constitutional Court of the Russian Federation considered this practice to be in conformity with the federal Constitution. As a matter of fact this approach is most realistic. In the first years after adopting the Constitution of 1993 such treaties were concluded between the Russian Federation and many federal units, and sometimes these treaties violated the federal Constitution, because they gave certain federal competences to federal units. Now the situation is being improved: many treaties are being corrected or canceled. It looks like in the nearest future such treaties would be rather an exclusion, then a rule. And besides, from 1999, according to federal law the treaties may be concluded only in the sphere of the joint jurisdiction of the Russian

Federation and its federal units. Now it is admitted only for cases, when it is conditioned by economic, geographical and other peculiarities of the federal unit, and only if these peculiarities determine the demarcation of powers other, then foreseen by federal laws.

The Constitution of the Russian Federation establishes also the possibility for the federal executive bodies to transfer realizing a part of their powers by an agreement to the executive bodies of a federal unit, if it doesn't contradict to the federal Constitution and to federal laws. And on the contrary, executive bodies of federal units may transfer realizing of a part of their powers by an agreement to federal executive bodies.

The possibility of concluding such treaties and agreements was included into the Constitution, because it was then not clear, how to divide powers between the Russian Federation and their federal units in an optimal way, especially because of the fact, that these federal units are very different. It was a quite new problem, because, as I said, the Soviet Russian Federation was no federation at all, but a part of the very centralized Soviet Union.

The search for an optimal model of federal organization is going on in Russia till now, although the federal Constitution remains till now untouched. A certain centralization takes place by means of federal laws and of decisions of the Constitutional Court of the Russian Federation.

6. A few words about our budgetary federalism. There is nearly nothing on the matter in the Constitution of the Russian Federation. To my mind there are two reasons of this fact. First, there was no tradition of constitutional regulating public finances in our country. The communist regime wasn't interested in such a regulation, because the communist dictators and oligarchies didn't want to dispose public finances under any social control. As a result there were no real experts, who understood, how the budget system is to look under the conditions of market economy. Second, the matter is very complicated, and the Constitutional Conference of 1993 hadn't time enough to study it properly and elaborate corresponding constitutional norms. As we can see, both reasons were interdependent. The problem was and is till now being solved gradually by federal laws, some of which were later codified. So we have now our Budget Code Of 1998, Tax Code of 1998 (part I) and 2000 (part II), Custom Code of 1993 (from 2004 replaced by the Code of 2003), which inter alia demarcate the competences of the Russian Federation and its federal units on the field of public finances. Although these codes and other federal laws on the matter

have been adopted comparatively not long ago, they were many times amended. The studies are still going on.

Like many other federations the federal center in our country concentrates the main part of public finances. Only ten federal units have own money enough to satisfy their requirements, the others need federal aid. It is clear, what it means politically.

7. The centralization trend reflects also in a certain unification of the systems of federal units' authorities. The unification is not complete, but can be seen more and more. According to the para. 3 of the Art. 5 of the federal Constitution the federal structure of Russia shall be based in particular on the unity of the system of State authority. This constitutional provision is interpreted in the way, that the systems of authority bodies of federal units is to be based on the same principles, like the federal one.

Really it looks in following way. On the federal level the President of the Russian Federation shall be elected by direct voting of citizens. He nominates the Chairman of the federal Government with the consent of the State Duma (the lower house of the parliament) and with proposals of the Chairman nominates and dismisses federal ministers. If the State Duma rejects the President's nominees three times, the President shall nominate the Chairman himself, dissolve the State Duma and announce new elections. The State Duma may pass a resolution of censure to the Government, but the President may reject it, and only in case of the second such resolution within three months he shall announce the resignation of the Government or dissolve the State Duma. The same choice the President has in the case, when the State Duma rejects the Government's request to vote confidence.

The President takes part in the process of legislation: he has the right of the legislative initiative, which is rare among heads of States, and he is to sign and publish federal constitutional laws and simple federal laws. But as for the latter the President may return the adopted federal law to the Federal Assembly (the parliament), and if both chambers adopt it again by a majority of no less than two thirds of the total number of their members, the President is obliged to sign and publish the federal law, provided he doesn't request the Constitutional Court of the Russian Federation to check the law's conformity to the federal Constitution.

In federal units the functions of the supreme official are carried out by presidents of republics, or by governors in many other federal units, by chairmen of governments or heads of administrations in some of them, and by the Mayor in Moscow. In a number of federal units the supreme official

is at the same time the head of the government. The relations between the executive and legislative powers on the level of federal units and on the federal level are very much alike. Interpreting the federal Constitution, constitutions and charters of federal units by the Constitutional Court of the Russian Federation promotes this trend.

As to the judiciary, it is generally federal. There are no courts of federal units, but constitutional or charteral courts (they have been established nearly in 15 federal units) and justices of the peace.

Soon after adopting the new Constitution of Russia it became clear, that the autonomy of the federal units' leaders turned out to be too wide. Comparatively many of them disregarded the federal legislation and decisions of the federal Government. In 2000 the new President initiated amending the Federal Law on General Organization Principles of the Legislative and Executive in Federal Units, and now this Federal Law regulates the responsibility of federal units' legislative and executive bodies in cases of violating or not observing federal legal acts. The responsibility includes eventual federal intervention. True, the procedure of the responsibility foreseen is very complicated and long. Non the less federal units' authorities pay now more attention to ensure the conformity of their legal acts with the federal ones, although the problem is not definitely solved yet.

The evolution of the Federation Council, the upper house of the Federal Assembly, illustrates the mentioned trend to centralization as well. This evolution is from this point of view rather interesting. Originally, as the constitutional draft was being elaborated by the Constitutional Conference, the latter decided, that both members of the Federation Council shall be elected in every federal unit by direct voting of its electors. This decision was included into the President's decree on the election of the Federation Council, which took place on the day of the constitutional referendum and of the election of the State Duma.

The draft of the Constitution was adopted by the Constitutional Conference on the October 30, 1993, and officially published by the President a month before the day of the referendum, which was to be held on the December 12. The participants of the Constitutional Conference were very much surprised, as they saw in the published draft, that the legal status of the Federation Council had been changed. Particularly, there was said, that one member of this house from every federal unit is to represent its legislative branch and the other its executive. While the State Duma had to be elected, the Federation Council was to be formed according to federal law.

It was clear, that in the ten days between adopting the draft by the Constitutional Conference and its official publishing the President became subject of hard pressure of the federal units' elites and yielded to it.

Nevertheless the first composition of the Federation Council was elected directly by the citizens, although only for two years (like the State Duma). In 1995 the first Federal Law on the Procedure of Forming the Federation Council was adopted. This procedure foresaw, that the speakers of the legislative bodies and the supreme officials (presidents, governors etc.) became members of the Federal Assembly's upper house *ex officio*. So the Federation Council was a very influential body.

President Putin initiated a new Federal Law on the Procedure of Forming the Federation Council, adopted in 2000 and valid now. According to this Federal Law the speakers of federal units' legislative bodies and supreme officials, heads of their executive may not be member of the Federation Council. In every federal unit the representative of its legislative in the Federation Council shall be elected by the represented body and the representative of the executive shall be nominated by the supreme official, if the legislative body doesn't object by two thirds majority.

In the same year 2000 the President established the State Council as his consultative body. It consists of the supreme officials of federal units. The President nominates the presidium of this body and renews its composition every six months. The State Council, especially its presidium, prepares some important decisions of the President.

8. A federal system is part of general democratic order. It is in our country less then twelve years old. Such a period is too short for functioning in a proper manner after a thousand years of hard centralism. We are still learning democracy, getting not always good marcs and need time for two or more generations, until our society becomes really democratic and federative.