

The Russian Federal System: Sub-National and Local Levels

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Introduction

The Russian Federation consists of 89 constituent units, typically referred to as "subjects of the Federation" which are divided into six different types: republics, territories, regions, federal cities, autonomous areas, and autonomous region. The Federation combines both ethno-federalism and territorial federalism, therefore there are ethnical and territorial components in the federal system. The status of the subjects of the Federation is determined both by the federal Constitution and by the regional constitutions or charters.

Federal Development

Federalism in Russia was first formally instituted by the federal Constitution of Russia in 1918. The most significant development of the Soviet era was the incorporation of the Russian Socialist Federated Soviet Republic (RSFSR) into the Union of Soviet Socialist Republics (USSR), which was officially proclaimed in 1924. Despite its professed commitment to "socialist federalism," the USSR was very much a unitary state, and policies of the RSFSR had to conform to those determined by the leadership of the USSR. The USSR was based upon a one-party political system rooted in Marxist-Leninist ideology, with an emphasis on "democratic centralism," a centrally planned economy, and a powerfully repressive state machinery. The constitution's apparent grants of power to constituent units were undermined by broad grants to the central government to set "general principles" for public policy, as well as to legislate on all "questions of all-union significance."

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In the early 1990's after the USSR's dissolution most autonomous republics adopted Declarations of State Sovereignty that proclaimed their sovereign status. The federal Constitution was amended to eliminate the term "autonomous" from the title of the republics, the title RSFSR was replaced by "Russian Federation," and the territories, regions, and federal cities were all recognized as members of the federation. However, under the Federal Treaty of 1992, signed by the constituent units of the Russian Federation and by federal authorities, these new members did not enjoy rights equal to the republics.

The Russian Constitution had played a positive role in developing federal reforms. Observing this period of time we also could find tremendous achievements in construing true federalism in Russia. 1. Such units as territories, regions and federal cities were recognized as the members of the federation. Since then the whole territory of Russia was included into federal relations. 2. The Constitution has fixed equal rights for all constituent units of the federation. 3. Absolutely new model of division of powers between central government and regional governments was introduced and began to function. 4. Constitutional guarantees against prevailing of any level of power over another were envisaged. Among them the institute of representation, impossibility of territorial changes without constituent units consent, preemption of the regional laws over federal ones in the subjects' domain, the right to appeal to the Constitutional Court, etc. 5. The Constitution has granted to the constituent polities the right to determine the system of their bodies of power and to establish them. 6. The members of the federation have got a power to enter into external economic relations and sign corresponding agreements with other countries. 7. The mechanism of structural changes within the federation has been established by the federal law. It is believed that such changes would not be long awaited. For example, currently the merging Perm region with the Komi-Permyak autonomous area takes place. There are also other merging suggestions, for example, Irkutsk region with the Ust-Ordyn Byurat autonomous area, Kamchatka region with the

Koryak autonomous area, etc. are being discussed. 8. New tools regulating federal relations have been introduced into legal system such as the decisions of the Constitutional Court, the treaties and agreements between federal and regional governments.

The Status of the Constituent units of the Federation

Whereas the Federation as a whole is sovereign, its constituent units are not. This was established by the Constitutional Court on June 7, 2000 in a case involving the Republic of Altai's assertion that it was a sovereign republic. The Constitutional Court concluded that the Federation Constitution does not recognize any source of power other than the multinational people of Russia, and it therefore does not presume any sovereignty other than the sovereignty of the Russian Federation. The sovereignty of the Federation precludes the existence of two levels of sovereign powers, each enjoying independence in a single system of state power, and therefore it does not allow for even "limited" sovereignty on the part of republics or of any other unit of the Russian Federation.

Yet even if the constituent units lack sovereign authority, they still enjoy considerable autonomy, and their position in the Federation is guaranteed. First of all, the constituent units of the Federation are recognized as self-governing entities. They are free to adopt their own constitutions or charters (quasi-constitutions), without seeking approval from federal bodies (as had been required during the Soviet era). They may therefore design their own governmental institutions, allocate power among these institutions, and set the term of office and mode of selection for officials. However, under the Federation Constitution's Supremacy clause, federal law remains superior over these sub-national constitutions, and therefore the provisions of these constitutions must conform to federal constitutional requirements. Thus, the constitutional arrangements must be based upon the fundamental principles of the Constitution (the separation of powers, republican form of government, etc.) and upon

the general principles for the formation of legislative and executive bodies that are fixed in federal law.

Second, the territorial integrity of subjects of the Federation is guaranteed--their borders cannot be changed without their consent, as well as that of the Federation Council. On the other hand, the constituent units have the right to merge, to join with another subject of the Federation to form a new constituent unit. The procedure for such a merger is established by federal law. Indeed, there have in recent years been proposals to encourage such mergers, given the small size and economic difficulties of some subjects of the Federation.

Third, each constituent unit has its own name and is free to change it.

Fourth, subjects of the Federation are able to protect their interests against federal intrusion because they are represented on the federal level in the Federation Council, one chamber of the Parliament (Federal Assembly). Each constituent unit has two representatives, one from the legislature and the other from the executive. However, the Federation can protect its interests against centrifugal tendencies. It can establish its own agencies in the component unit--federal bodies of executive power (ministries, services, agencies, state committees, etc.) maintain branches in the constituents.

Finally, the constituent units exercise both exclusive powers and concurrent powers. These powers extend even into foreign affairs: constituent units may enter into international agreements (but not treaties) with the constituent parts of other countries and, with the consent of the Federation, even with foreign countries. However, their powers do not extend to a right of secession. According to Article 4, section 3 of the Constitution, "The Russian Federation shall ensure the integrity and inviolability of its territory."

The 1993 Constitution confirms the equal legal status of these units: each has equal representation at the federal level, can devise its own institutions, can exercise legislative authority, and so on. Further, Article 72, section 2, which lists the

concurrent powers of the federation and its component units, states that "the provisions of this Article shall equally apply to the republics, territories, regions, federal cities, the autonomous region and autonomous areas." Nevertheless, this asserted equality in rights is in tension with the diversity among the constituent units.

Sub-national Constitutions and Charters

Unlike the other federations the components of the Russian Federation have not only the constitutions but also the charters (*ustavy*). It depends on the type of the constituent unit. All republics have their own constitutions, the rest of the constituent units (regions, territories, federal cities, autonomous areas, and autonomous region) have the charters. The constitutions and charters have territorial limit of their action because could be implemented only on the territories of correspondent regions. On these territories the constitutions and charters possess the highest legal force and serve as basis of the regional regular legislation. Taking into account the principle of equal rights for all constituent units of the federation fixed in the federal Constitution, both the constitutions and the charters should be considered as equal, analogous legal documents that possess same characteristics and regulate similar relations. The similarities among the constitutions are determined by the necessity of conformity with the federal Constitution. From this point of view all republican constitutions take the federal Constitution as a pattern to organize their content. The constitutions have the chapters devoted to the basics of constitutional structure, to the rights and freedoms, to the order of formation of their bodies of power, etc.

One can find a lot of similarities among the charters. Since these legal documents are pretty new phenomena in the legal systems of the constituent units, the latter began their preparation and adoption almost at the same time (at the beginning of 90-s of the XX century). Therefore the charters contain more or less the same content. The procedure of the adoption is also alike since there is a requirement in the federal Constitution.

There are few differences among the constitutions and charters. These peculiarities do not have principle character. First of all, these documents differ by their names: in republics their basic law is titled as the constitution, yet in the rest of the constituent units – the charter. The term «constitution» does not apply to the non-republics because they are not the states (nation-states). The constitution is an attribute of the state even though existing in the structure of another state. The territories, regions, federal cities, autonomous areas and autonomous region are the territorial-state units but not the states. That's why they have the charters but not the constitutions. Besides the republics had the right to adopt their own constitutions from the outset, while the non-republics obtained such a right only recently. Under their legal nature both the constitutions and the charters play the same role – establishing the status of the constituent polities of the federation.

What else differs the constitutions from the charters is the procedure of their adoption. The federal Constitution does not envisage the way of adoption of the republican constitutions. It means that the republics are free to adopt their constitutions in any way they choose: by referendum, by legislature, by specially created convent, etc.). At the same time Art. 66, sec. 2 of the federal Constitution requires that the charters are to be adopted by the legislatures of the non-republic components.

Division of powers

The new Russian federalism suggested a new model for the division of powers between federal and regional governments. The Federation Constitution of 1993 asserted an equality of rights for all constituent units, assigning the same concurrent powers to all constituent units. Thus, republics and non-republics now have equal powers.

Article 71 of the Federation Constitution assigns to the federal government those powers that concern the country as a whole. These include the adoption and

amendment of the Constitution and federal laws; supervision over the implementation of federal law; the establishment and organization of the federal legislative, executive and judicial branches; the regulation and protection of rights and liberties; the establishment of criteria for citizenship; and the delineation of federal state property and of how it is to be managed. Article 71 also lists the branches of law on which the federal government can legislate, including criminal law, civil law in its procedural aspects, and intellectual property. Article 76, section 1 states that on issues within the Jurisdiction of the Russian Federation, federal constitutional provisions and laws shall have direct effect throughout the territory of the Russian Federation.

The sphere of joint powers is the most complicated and innovative aspect of the system of allocation of powers, and both the federal and regional governments are still experimenting with how best to allocate and implement these powers. Among the concurrent powers listed in Article 72 are: the establishment of general guidelines for organizing the institutions of state power and local self-government; regulation of the possession, use and management of the land, mineral resources, water and other natural resources; the delimitation of state property; the protection of historical and cultural monuments; general questions of upbringing, education, science, culture, physical culture and sports; the establishment of general guidelines for taxation and levies in the Russian Federation; and the protection of the original environment and the traditional way of life of small ethnic communities. Both the federal and regional governments have the authority to adopt acts in the fields of administrative, administrative-procedural, labor, family, housing, land, water and forestry legislation; legislation on the sub-surface and environmental protection. Article 76, section 2 of the Constitution confirms that in matters within the joint jurisdiction of the Russian Federation and its constituent unit, federal laws is supreme, and subjects of the Federation may adopt only laws and regulations that are consistent with federal law.

Although the Constitution does not list regional powers, Article 73 indicates that those powers that do not fall within the jurisdiction of the Russian Federation or

within the joint jurisdiction of the Russian Federation and its component units shall be exercised by the subjects of the Federation. Were a list of regional powers drawn from the constitutions and charters of the constituent units, it would likely include: the adoption and amendment of regional constitutions/charters and laws and measures designed to ensure compliance with them; the structure and territory of the component units; the establishment of regional bodies of legislative, executive and judicial power and of local self-government; the management of regional state property; and fiscal powers including the preparation of the regional budget, the imposition of regional taxes and levies, and the expenditure of regional funds.

Institutions of the constituent units

Article 77 of the Constitution grants the subjects of the Federation the authority to establish their own governmental institutions, provided that they are in accordance with the basic principles of the constitutional system of the Russian Federation and the general principles governing the organization of legislative and executive bodies found in federal law. The pertinent law was adopted in 1999--"On General Principles of the Organization of Legislative (Representative) and Executive Bodies of Power of the Constituent Units of the Russian Federation".

Regional legislature

The legislatures of the RF constituent units vary in their names, their size, the length of legislative terms of office, and in other matters. Many legislatures are called the Legislative Assembly, State Council, or Legislative Duma. The names for legislatures in some ethnically based units reflect ethnic traditions--for example, the Legislative Suglan of the Evenk autonomous area, the State Assembly-Kurultayi of the Republic of Bashkortostan, and the Peoples Khural of the Republic of Buryatia.

The membership of regional legislatures ranges from 11 in the Taylmyr (Dolgan-Nenets) autonomous area to 190 in the Republic of Bashkortostan. Most regional legislatures are unicameral, but some republics have established bicameral

legislatures--for example, the Republic of Bashkortostan's State Assembly-Kurultayi consists of a House of Representatives and a Legislative House. Among territorial constituent units, only the Sverdlovsk region's Legislative Assembly consists of two chambers: the House of Representatives and the Regional (Oblastnaya) Duma. Under federal law, the term of office for regional legislators cannot exceed five years.

More recently, enactment of the federal law "On General Principles of the Organization of Legislative(Representative) and Executive Bodies of Power of the Constituent Units of the Russian Federation" has provided the regions with clear guidelines as to how regional powers could be organized without violating the principle of separation of powers/

Regional executive

Just as regional legislatures have different names, so also do the executive officials in the constituent units of the Russian federation. In most republics the title for the highest official is President, although some republics use other titles like the Head of the Republic (the Republic of Komi), Chairman of the Government (the Republic of Karelia, the Republic of Khakassia), or the Chairman of the State Council (the Republic of Dagestan). The other constituent units use the title of Governor for their top official.

The President (or Governor) of the constituent unit is elected for a term of no longer than five years by the residents of the particular region on the basis of general, equal and direct vote by secret ballot. No person can hold this office for more than two consecutive terms. The federal law "On General Principles of the Organization of Legislative (Representative) and Executive Bodies of Power of the Constituent Units of the Russian Federation" requires that the highest official of the constituent unit be at the same time the head of the regional government. The President (or Governor) exercises many of the same powers exercised by the President of the Federations. He appoints the regional Government, decides on resignation of the Government;

introduces draft legislation, signs and publishes regional laws, vetoes regional laws, conducts negotiations and signs international agreements; issues decrees and executive orders and dissolves the legislature in circumstances stipulated in the regional Constitution (or Charter).

Regional judiciary

The federal law "On the Judicial System of the Russian Federation" authorizes two types of regional courts: peace justices and constitutional (charter) courts. Peace justices, like the federal courts of general jurisdiction, consider a wide range of civil and criminal cases. However, they occupy a position at the lowest level of the judicial hierarchy, just below municipal courts--a district or a city is divided into several sectors, and a peace justice sits within each. Although peace justices are considered to be regional courts, in fact, they are federal, since they act under the federal law, implement the federal law and even partly are financed (in a part of the justices' salaries) from the federal budget.

Constitutional courts may be established by the republics and charter courts by other constituent units, although federal law does not oblige constituent units to create such courts. As of 2003, only twelve constitutional courts (Tatarstan, Bashkortostan, Buryatia, Mari El, Sakha (Yakutia), Adygea, Dagestan, Kabardino-Balkaria, Komi, Karelia, and Northern Osetia -Alania) and three charter courts (the Sverdlovsk region, the federal city of St. Petersburg, the Kaliningrad region) had been established.

Regional constitutional (charter) courts are responsible for interpreting the constitutions and charters of the constituent units. They also exercise judicial review, resolving disputes over whether the laws and other actions of the regional and local governments are consistent with the regional constitutions and charters.

The decisions of regional constitutional (charter) courts are final and cannot be appealed neither to any federal court of general jurisdiction nor to the federal Constitutional Court.

Local Self-Government

There is a distinction between two categories used in Russian legal system for describing the exercising the public authority on the local level. Two types of governments could be organized here - the local government and local self-government. The former means public authority exercised by the territorial organs of regional power, i.e. by subjects of the Federation.² The latter means local self-government which is performing by the population of the municipalities.

Among the legal sources that regulate the sphere of the local self-government are the federal Constitution, the European Charter of Local Self-Government (Russia has ratified it in 1998), the Federal Law “On General Guidelines of the Local Self-Government Organization in the Russian Federation”, regional constitutions (charters) and laws, municipal charters, court decisions.

According to the Art. 12 of the federal Constitution, “the local self-government shall be recognized and guaranteed in the Russian Federation. Local self-government shall operate independently within the bounds of its authority. The bodies of local self-government shall not be part of the state power bodies.” This means that the bodies of local governments - unlike the American approach – are not “the creatures of the states”, but rather “the creatures of the Constitution”. So even though the regions decide to form local governments (in capacity of the bodies of state power), they cannot do it instead of local self-government since the latter is guaranteed by the Constitution.

There are such three main prerequisite features for the creation of the municipalities as municipal property, municipal budget, and popularly elected bodies of the local self-government. If these conditions take place the municipality can come into being.

² Such local governments arranged, for example, in the Republics of Adygea, Bashkortostan, Tatarstan, Khakassia, Novosibirsk region.

The territories of the subjects of the Russian Federation are divided into rural areas called raions and cities. Raions, in their turn, are divided into smaller parts, which can include sub-raion towns, townships or villages, and rural districts. Rural districts cover several small rural settlements. Subraion towns can include townships and rural districts. Thus, the subjects generally has three or four levels.

The federal legislation provides for what is called general guidelines of the local self-government organization, guarantees for the local self-government, list of the powers of the bodies of the local self-government, their structure and responsibility. The regional legislation gives detailed regulation of the field.

The local elections is the way of the representative bodies of the local self-government creation. The quantity of the representative body of the local self-governments depends on the population size of the municipality. The city council would consist of 7 deputies in case that there are less than 1 thousand inhabitants in the area, 10 deputies – between 1 and 10 thousands, 15 – between 10 and 30 thousands, 20 – between 30 and 100 thousands, 25 – between 100 and 500 thousands, and finally 35 in case that there are more than 500 thousands inhabitants. The raion council cannot be less than 15 deputies.

The head of the municipality can be elected either by the local population or by the representative body of the local self-government. In case the head of the municipality is elected by the population, he (she) holds the position either of the chairman of the representative body or of the head of administration (executive body). In case the head of the municipality is elected by the representative body, he (she) holds the position of its chairman. One person has no right to be the chairman of the representative body and the head of administration at the same time.

New Federal Law “On General Guidelines of the Local Self-Government Organization in the Russian Federation” (2003) tries to solve the issue of unfunded mandates providing that money (subventions from the federal or regional governments) should go along with the mandates.

The Tax Code provides for the local taxes: land tax, property tax on individuals, the advertising tax, tax on inheritance, local license tax, etc.

The local self-government could be considered at least in three dimensions: 1) as a form of public authority exercised on a local level; 2) as a right of the population to solve local issues; 3) as a tool of a civil society that influences state government and to some extent limits it. The degree of the local self-government development shows the degree of the civil society development of a given country. Russia makes only first steps in this direction nowadays.

Conclusion

Analyzing the achievements in the construction of real federalism one should consider the issues that take place in nowadays Russia in the field of federal relations. Among these issues is the problem of exclusiveness of one type of the constituent units, namely republics. Nonetheless the Constitution envisages the equal rights for all subjects, the republics enjoy different status which allows them to adopt constitutions, to establish state languages, to elect republican presidents, to form constitutional courts, etc. Different status presupposes asymmetrical federalism in sense that not all of the constituent units are equal in economical, geographical, social spheres. There is no functioning mechanism of economical equalization of the members of the federation yet.

Another problem is the quantity of the constituent units. There are a lot of undeveloped subjects that exists mostly because of federal monies.

The model of division of powers fixed in the Constitution is not perfect. The most concerning issue here is the field of joint (concurrent) powers. The practice shows that it is the federal legislator who takes more to regulate in this area leaving less to the constituent units. So called general guidelines that should be fixed in federal laws actually are turned into detailed legislation leaving almost nothing to add to the regional legislator.

The central government's attempts to harmonize the federal relations (strengthening vertical relations) could lead not just to centralized federalism, but to defederalization, i.e. back to unitarianism.

One of the hardest challenges for the federal system in Russia is the Chechen crisis - a major domestic armed conflict on Russian territory. Chechen republic proclaimed itself independent ten years ago although the federal Constitution does not provide for secession. It led to two wars (federal interventions) that took place in 1994-1996 and in 1999-2000. Even now when there are no massive battles, separatist-minded formations still keep fighting with the federal forces. The Constitutional Court considered the «Chechen case» and on 31 July, 1995 ruled constitutional presidential decree that allowed using armed forces to settle such a conflict. The latest development of the situation in this republic – the adoption of the republican Constitution and the laws on election of the Parliament and the President of Chechen republic by referendum (took place in spring of 2003). Presidential elections were held in the fall of 2003 in the republic. The President Putin has expressed his desire to sign a treaty with the Chechen republic after the legitimate authorities will emerge where the delimitation of powers between the federal and republican bodies would be strictly fixed.

There are some recent developments in the federalization process in Russia concerning sub-national level. Among them are: elimination of the regional legislation that contradicted the federal Constitution and federal laws; legal determination of the regional powers within joint jurisdiction by the federal law; beginning of the merging processes within the federal structure, local self-government reform, etc.

Information about the author

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