

Theoretical Issues of Sovereignty in Russia and Russian Law*

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Abstract

This article examines the background and the framework of discussions about the concept of sovereignty and its limits. It begins with a short historical analysis of the processes which took place in Soviet Russia leading to the ‘parade of sovereignties’ in the early 1990s. Afterwards, the author sketches the different approaches and doctrines upheld by the Russian Constitutional Court in several landmark decisions concerning sovereignty problems. The article focuses on the vertical dimension of sovereignty, *i.e.*, on different conceptions adopted by federal and regional powers in post-Soviet Russia regarding the legal status of the member-republics (subjects) of the Russian Federation. The development of the doctrine of the Constitutional Court of Russia in this matter is quite illustrative as to the legal arguments used to protect the integrity of the Russian Federation against the diverse disintegrative strategies pursued by the regions.

Keywords

autonomy, Constitutional Court of Russia, judicial doctrine, national sovereignty, self-determination, state sovereignty, supremacy, territorial integrity

1. Introduction

Legal theory in contemporary Russia seems to be at a crossroads: many of its concepts have not been precisely formulated and leave room for redefinition by politicians and lawyers. One such concept is that of ‘sovereignty’, which plays a major part in Russian constitutional debates. During the last twenty years, supporters of strong federal powers and adherents to the idea of decentralization-of-power in Russia have put forward diverging interpretations of the sovereignty concept.

Before proceeding to the short history of revival of this concept in post-Gorbachev Russia, it is vital to note that most of the key notions in Russian legal

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science are related to Soviet jurisprudence. This latter theoretical system, in turn, was based on the vocabulary of legal science from the beginning of the twentieth century which, in many aspects, was taken quite seriously albeit dramatically disguised by the ruling ideology of the Communist party. One such case is the concept of sovereignty.

The appreciation of sovereignty as the higher plenipotentiary power of the state over society was never abandoned by Soviet-era lawyers but went through some significant ideological deformations. As Marxist dogma predicted that the state would wither away in order to give way to new forms of society, Soviet legal scholars failed to focus on the lexicon of traditional political science and, rather, preferred to study actual power relations rather than their reflection in bourgeois ideologies. This resulted in a gross misunderstanding of the basic properties that a state possesses in comparison with the other political territorial entities in a federal state.

After the collapse of the Soviet system, Russian lawyers paid much more attention to the constitutional lexicon, which needed to be refined in order to construct a new legal system and to establish rule of law in the country. The first period of formation of Russia's new social system in the early 1990s was logically connected with the sovereignty issue, which underlies the power structure in a federal state. In fact, the last twenty years have been marked by a continuous struggle between centripetal and centrifugal forces in the Russian Federation, in which the doctrine of the Russian Constitutional Court has come to play a vital role in reshaping sovereignty as one of the fundamental concepts of Russian constitutional law and legal theory.

An overview of the sovereignty doctrine's key phases of formation must begin with a description of its historical and theoretical context. A minimum of preliminary commentary seems in order since sovereignty is an object of scholarly inquiry not only in Russia and, also, since Western legal tradition has developed a sophisticated and nuanced analysis of this problem. Nevertheless, disputes around the concept of sovereignty are not amenable to transposition to broader theoretical perspectives of contemporary Western legal theory without gross distortions because Soviet legal doctrine was almost fully separated from its Western 'sister' by the ideological iron-curtain. In addition, post-Soviet legal science in Russia is still largely based on the principles and conceptions developed in the Soviet era. The goal of accurate analysis therefore dictates that a description of the problems of contemporary Russian legal thinking in terms of Western legal theory should be omitted from this article—reluctantly, for the topic is certainly of interest to legal philosophers but requires a separate and more voluminous research project—and that the exposition undertaken should follow a separate path connecting the problems of Russian Federalism, for the time being, only within the context of Soviet history and the doctrine of the

Russian Constitutional Court. Furthermore, we cannot refrain from mentioning certain political processes that constitute the background for this doctrine, but an investigation and evaluation of these processes is not the primary subject matter of this article.

2. Historical Sketch of the Evolution of Sovereignty Problems in Russia

To appreciate the Soviet legal system, one needs to understand that two parallel structures of authority existed. The first, called the “system of Soviets,” was the legal structure that included government, parliament (the Congress of Soviets), quasi-free elections, legislation, courts and other attributes of a state. The second, the structure of the Communist Party (the hierarchy that protected and developed the ideology of the regime), was formally disassociated from the governance structure but, in fact, dominated almost every aspect of social life. The latter ideological power took complete control of the machinery of Soviets. In contrast to the Soviets’ system based (*inter alia*) on the national principle, the relevance of this principle in Party’s structure has been minor—even though the ideological structure of the Party formally acknowledged some national distinctions; they were, however, devoid of any practical or organizational value. At the same time, the system of Soviets was organized in accordance with the mixed national-territorial principle, which implied that the political entities were formed as national ones (Russia, Ukraine, etc.) and, consequently, were divided into national republics and autonomous provinces. This structure completely changed the colonial system of the Russian Empire, allowing the existence of minor national republics having privileged status as compared with the numerically dominant Russian people.

The roots of this complicated power structure lie in the national policy formulated by Lenin between 1917 and 1922, the years of the civil war. In Lenin’s view: “Each nation which is part of Russia shall have a right to secession and to creation of an independent state.”¹ Emphasis was placed on the prerogative right of minority ethnic groups to determine their own destiny, which meant determining the extent of their autonomy. This right was deduced from the new socialist structure of the national relationships that requires “not only to presume observance of formal equality, but also to find such an inequality which compensates the factual imparity between a large nation and a small ethnic group.”² This policy revealed a clear strategic intention of the Bolsheviks to gain support of the national minorities during the civil war, in which the Bolsheviks’ chances

¹ Vladimir Lenin, “Resolutsiia po natsional’nomu voprosu”, in his *Selected Works* (Moscow, 1978), Vol.2, 95.

² Vladimir Lenin, “O prave natsii na samoopredelenie”, in *ibid.*, Vol.2, 583 (first published in 1914).

of winning were far from being certain.³ A somewhat different opinion was put forth by Stalin, who was skeptical about the national construction (*natsional'noe stroitel'stvo*) proposed by Lenin. Nevertheless, Stalin conceded that “*the right of self-determination is an essential element* in the solution of the national question” and that it was preferable to realize this determination in the form of regional autonomy.⁴ Bukharin was more resolute on this matter and opposed the right of nations to self-determination as a proletarian tactic at the Berne Conference of the Bolshevik Party in 1915.⁵

Such anti-imperialist ideology naturally strengthened the Russophobic feelings that existed before the Revolution 1917 among the minorities of the Russian Empire, particularly in the Caucasus and in Middle Asia (both conquered in the second half of the XIX century) and simultaneously promoted the idea of power decentralization which was the cornerstone for creation of the multilevel system of Soviets (based, in fact, on the dualist sovereignty described by Iashchenko).⁶ At the same time, the idea of parity of large and small nations as an aspect of the repentance of the Russian people towards the conquered nations also was propagated by the Bolsheviks among the nations which did not have these feelings at all (as in the Finno-Ugrian groups in the mainland of Russia). This propaganda produced no spectacular effect upon the distribution of actual power and, for the time being, remained only a formal declaration.

³ “If this story sounds strange, it is because most historical accounts of Soviet nationality policy have been produced by scholars who shared Lenin’s and Stalin’s assumptions about ontological nationalities endowed with special rights, praised them for the vigorous promotion of national cultures and national cadres, chastised them for not living up to their own (let alone Wilsonian) promises of national self-determination, and presumed that the ‘bourgeois nationalism’ against which the Bolsheviks were inveighing was indeed equal to the belief in linguistic/cultural-therefore-political autonomy that the ‘bourgeois scholars’ themselves understood to be nationalism.” (Yuri Slezkine, “The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism”, 53(2) *Slavic Review* (1994), 450).

⁴ “The advantage of regional autonomy consists, first of all, in the fact that it does not deal with a fiction bereft of territory but with a definite population inhabiting a definite territory. Next, it does not divide people according to nations, it does not strengthen national barriers; on the contrary, it breaks down these barriers and unites the population in such a manner as to open the way for division of a different kind, division according to classes”. J. Stalin, “Marxism and the National Question”, in his *Works* (Foreign Languages Publishing House, Moscow, 1954), Vol.2, 376. Cf. E. Van Ree, “Stalin and the National Question”, 7(2) *Revolutionary Russia* (December 1994).

⁵ “Social democracy must not advance ‘minimum’ demands in the realm of present-day foreign policy [...] any advancement of ‘partial’ tasks, of the ‘liberation of nations’ within the realm of capitalist civilization, means the diverting of proletarian forces from the actual solution to the problem, and their fusion with the forces of the corresponding national bourgeois groups [...] The slogan of ‘self-determination of nations’ is first of all utopian (it cannot be realized within the limits of capitalism) and harmful as a slogan that disseminates illusions. In this respect it does not differ at all from the slogans of the courts of arbitration, of disarmament, etc, which presupposes the possibility of so-called peaceful capitalism”. Nikolai Bukharin, *Tezisy o prave na samoopredelenie* (first published in 1915), cited after: Nikolai Bukharin, *Programma kommunistov–bolshevikov* (Moscow, 1918), 60.

⁶ Cf. Terry Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939* (Cornell University Press, Ithaca, NY, 2001).

Nevertheless, following the principle of national self-determination, the Soviet authorities created several national autonomies in Russia the formal legal status of which was similar to that of sovereign states.

Some ethnic groups such as the Poles, Finns, Ukrainians, Georgians, etc. were eager to profit from this policy in order to create independent or quasi-independent states. Other groups—which were smaller and not ready to construct their national entities—all the same were driven to create states, as Lenin had proclaimed this as a part of a program for “forced formation of the new Soviet nations”.⁷ This intention was easily explicable in the overall policy intended to urge a worldwide revolution that would destruct the bourgeois states. The previous bourgeois states would be condemned to wither away during the construction of a communion of Socialist states where each people kept full legal independence (provided that those states followed the Communist ideology and, in this way, remained as ‘one team’). Governance through political organisms was to be replaced by self-governance of the nations, resulting in a free federation of independent states. The Russian Empire—in which the Bolsheviks took the upper hand after the Revolution of 1917—became a starting point and, at the same time, a testing ground for this project.⁸

The illusions of the Third International withered away in the political realities of the late 1920s. Anxious to centralize their power, Stalin and the other practically minded leaders of the Communist Party realized the necessity of making changes in this national policy.⁹ Nevertheless, they still could not contradict Lenin’s stance on “the national question” and could not reverse the formal structure of the new Soviet state. The USSR’s particular political structure—closer to a confederation than to a federation from a legal standpoint and with a strictly centralized administration under supervision of the Communist Party, from a sociological perspective—was the outcome of this strange compromise of two directly opposing strategies.

In spite of the actual application of the concept of sovereignty to state construction, Soviet legal scholars sought to avoid this term. It was progressively abandoned in favor of new propagandist slogans like ‘the friendship of nations’—especially between the 1930s and 1960s. When it was applied, this term was used as an synonym for the omnipotence of public power within a certain territory¹⁰ or was carefully examined to reveal the underlying capitalist economy

⁷ Vladimir Lenin, “O prave natsii na samoopredelenie” in his *Selected Works* (Moscow, 1978), Vol.2, 263 (first published in 1914).

⁸ Cf. Richard Pipes, *The Formation of the Soviet Union: Communism and Nationalism, 1917-1923* (Harvard University Press, Cambridge, MA, 1964), 21-49.

⁹ The quarrels about the form of the new socialist state between Trotsky and Stalin put stress upon the internationalist sympathies of the former and the traditional Westphalian thinking of the latter. Given that Stalin engineered a majority among Party members, one can assume that this line of thinking was common to this majority.

¹⁰ Cf. Igor Levin, *Suverenitet* (Moscow, 1948), 110 ff.

that gave birth to this idea (in the dialectics of basis and superstructure). So, the outstanding Soviet legal scholar Jacob Magaziner wrote in 1919 that “there is no higher power than authority of a state whose legal edicts have supremacy, and it is this property of state authority which is otherwise called sovereignty”.¹¹ It is important to note that the first Soviet textbook on constitutional law defined sovereignty in 1938 as “supremacy of the state power which makes this power unlimited and independent inside the country and runs autonomous foreign policy in international relations”.¹² Such a definition has nothing particular for ‘bourgeois’ legal theory, but it is interesting to observe how the new legal ideology of the Soviet state returned to the paths of traditional political science. This opinion was echoed later on by numerous legal theorists among whom one can mention Molodtsov (1954) who defined sovereignty as “territorial supremacy of a state”¹³ or Klimenko (1974) who identified it with unity of imperium and dominium that is exercised by a state over all the people within the territory it possesses.¹⁴

This understanding was based on conflation between the actual (political) power and legal power, and sovereignty was perceived in the Hobbsean perspective as the authorities’ mechanism of control over the population. This point of view still remains persuasive for many contemporary Russian lawyers, as sovereignty was—and still is being—conceived as a feature of a political entity characterizing its integrity and indivisibility, its monopoly to use coercive power.¹⁵ No pluralization and dispersion of power inside the state authority mechanism was possible in this theoretical framework that identified the very existence of a state with the presence of a centralized power. Again, this conception of sovereignty was nothing new as compared with ‘bourgeois’ political science (recall the Weberian definition of the state); but the shift in Soviet legal theory from the prerevolutionary programs of the Bolshevik leaders was significant. From this theoretical standpoint, the purpose of separation of sovereign powers among several territorial levels or the concept of a divided sovereignty seemed—and still seems—to be an assault against the idea of state. The identification of power with law led to neglect of the aspects of legitimacy of the authorities, so that the disputes about territorial integrity, independence and sovereignty turned into quarrels about the relative force of the conflicting authorities.¹⁶ Given that the concept of legitimacy was discarded once and for all by Soviet legal theory as an ideological device of capitalism,

¹¹ Jacob Magaziner, *Leksii po gosudarstvennomu pravu* (Petrograd, 1919), 228.

¹² *Sovetskoe gosudarstvennoe pravo: uchebnik dlia iuridicheskikh vuzov* (Moscow, 1938), 262.

¹³ Stefan Molodtsov, “Nekotorye voprosy territorii v mezhdunarodnom prave”, *Sovetskoe gosudarstvo i pravo* (1954) No.8, 63.

¹⁴ Boris Klimenko, *Gosudarstvennaia territoria: voprosy teorii i praktiki mezhdunarodnogo prava* (Moscow, 1974), 20.

¹⁵ Cf. Sergei Alekseev, *Gosudarstvo i pravo* (Moscow, 1993), 16-17.

¹⁶ Surely, from a sociological standpoint, this is so. But using a legal perspective allows one to bring these disputes to the level of constitutional debates concerning rights, freedoms, liberties and guarantees rather than remain solely on the level of bargaining about more (or less) power among the authorities.

a description of the formal properties of state power could be based only on sovereignty. This sequence nevertheless was not able to concuss the ideological premises of Soviet legal theory, which studied a mummified centralized apparatus of the USSR inside which no legal conflict of powers was conceivable.

The sovereignty issue was dealt with in a remarkable manner in the Soviet Constitutions. The first RSFSR (the Russian Soviet Federative Socialist Republic) Constitution of 1918 held that “all the power in the center and in the regions belongs to the Soviets” (Art.1). This circular definition proclaimed the authority to be its own source. Virtually the same idea was repeated in the next Constitution-like document of 1925 (Art. 2). The 1937 USSR Constitution made some progress towards the idea of government of the people, but not without reference to the Soviets: “All power belongs to the working population represented by the Soviets”. At last, the 1977 Constitution made it clear that “All the power belongs to the people” (Art.2), adding that “the people exercise their power through the Soviets”. It was only in 1990 that Article 2 of the Constitution was amended specifying that “the people can exercise their power through the Soviets or directly”.

From a political standpoint, Russia has always demonstrated a tendency towards a hierarchical structure of governance without returning to the complicated and fragile mechanisms of balancing interests and competencies which act on different levels of society and which characterize Western democracies. The heritage of Imperial Russia—with its strict line of subordination inside the state mechanism—was reproduced, after some unhappy experiments with the self-government of people through the Soviets, making the USSR the paradigmatic example of a fully centralized state.¹⁷ Nothing new appeared after the breakup of Communist rule in the early 1990s, when the new authorities followed the traditional methods of hierarchical power structuring. It has been maintained by some scholars that this policy was merely a repetition of the Russian mentality accustomed to conceive of power as something indestructible and monolithic, based on unilateral order of subordination.¹⁸ The ‘dissident’ ideas about diffusion and dispersion of sovereignty in the twentieth century were never ‘at home’ in Russian legal science, and their authors (such as Harold Laski¹⁹) were considered as the worst enemies of Soviet ideology because such ideas were considered to provoke rivalry between working-class parties.

Based on the formal doctrine of national freedom (self-determination) and on the real practice of rigid centralization, Soviet legal theory (the basic standards of which were formulated by Andrei Vyshinskii in 1938 at the first colloquium of Soviet legal theorists) thus promoted two conflicting values. When both

¹⁷ Cf. Francis Fukuyama, “Second Thoughts. The Last Man in a Bottle”, *The National Interest* (Summer 1999).

¹⁸ Mikhail Marchenko, “Gosudarstvennyi suverenitet: problemy opredeleniia poniatiia i soderzhaniiia”, *Pravovedenie* (2003) No.1, 190-196.

¹⁹ Cf. Harold J. Laski, *The Foundations of Sovereignty and Other Essays* (George Allen & Unwin, London, 1931).

values were subject to communist ideology and political life was thoroughly controlled, no normative conflict arose. Unfortunately for those who suffered from the ensuing wars, after the breakup of the system, the repulsion against the relicts of Soviet national policy was so strong that Russia in 1990 proclaimed itself independent from the Soviet Union: this example also was followed by other members of the USSR and, also, by the national autonomous formations inside Russia (called ‘republics’, each of them having its own ‘constitution’). Among other things, it meant the end of the USSR. There was no normative conflict since self-determination was proclaimed as a supreme principle by all ex-USSR countries. The vacuum in legislation of these countries at the end of the 1980s left room for their autonomous formations to adopt the same strategy. This problem persisted in Moldova, Azerbaijan, and Georgia, which still have ‘sovereign’ autonomous formations not controlled by the central government. In Russia, this was not only a question for Chechnia but, also, for many other national republics which had proclaimed their sovereignty in the early 1990s.²⁰

One of the major factors—but surely not the only one—was the incoherence of the application of the legal terminology and the balancing of conflicting societal values by politicians, members of the judiciary and legislators as well as by all those engaged in legal discourse. As we have noted above, the vocabulary of Soviet lawyers was quite different from the dictionary of lawyers in the ‘West’, with numerous ideological concepts integrated into the legislation, such as ‘free self-determination of nations’, and with many traditional terms banned from it as ‘bourgeois’, such as those of ‘sovereignty’ or the ‘rule of law’. Another factor was that the initial position of the newly elected Russian government headed by El’tsin: he played the ‘trump of sovereignty’ in the struggle against the remnants of the Soviet government headed by Gorbachev. The result was not only the breakup of the USSR but, also, the growth of nationalist movements inside Russia. When proclaiming Russia’s sovereignty in 1990, El’tsin told the regional leaders: “Take as much as sovereignty as you can bear”.²¹ During debates on a draft of the new Russian constitution prior to its adoption in December of 1993, the new Russian authorities entered into forty-two treaties (or compacts) with its constituent entities (republics such as Tatarstan, Dagestan, and a number of others) where both convening parties (Russia and one of its republics) regarded each other as sovereign states.²² By negotiating accords with members of the

²⁰ Cf. Yuri Krasin, “Federalism: Russian Realities and Historical Experience”, in Stephen J. Randall and Roger Gibbins (eds.), *Federalism and the New World Order* (University of Calgary Press, Calgary, AB, 1994).

²¹ Cf. Liliia Shevtsova, *Rezhim Borisa El'tsina* (ROSSPEN, Moscow, 1999), 18ff.

²² Surely, the terms of these treaties varied depending on the compromise reached between the regions and the Federation (cf. Preamble to the Federal Treaty between the Russian Federation and the Tatarstan Republic “On Demarcation of Competencies and on Mutual Delegation of Powers Between the Federal Organs of the Russian Federation and the State Authorities of the Tatarstan Republic” of February 1994 where Tatarstan was deemed to be a state associated with Russia). On the other hand, federal treaties also

Federation that defined the powers they could exercise—thereby creating a radically asymmetrical federal system—the federal government hoped to save the country from disintegration. Thus, the political compromise was prioritized, and much less attention was paid to terminology.²³ There are numerous references to sovereignty in these treaties and compacts. Probably the most characteristic example is the basic Federal Treaty “On demarcation of competencies and powers among the federal organs of state authority and the state authorities of the sovereign republics of the Russian Federation” which was entered into on 31 March 1992 between the federal government and the republics.²⁴ This Treaty was even incorporated into the 1978 Russian Constitution pursuant to a 1992 Federal Law (No. 2708-I).

Altogether, this gave the constituent republics of Russia strong input to further claims of full independence and international recognition. Thus began the process described as a ‘parade of sovereignties’. Constitutions of almost all of the constituent republics contained one or several references to the republican sovereignty. One can cite the 1994 Constitution of Buriatiia, for example, in which the Republic was defined as a “sovereign state included in the Russian Federation” which “possesses all the plenitude of the state sovereignty on its territory” (Art.64). The provisions of the Tartar Constitution were even more provocative, holding this Republic as “a sovereign state, as a subject of international law” (Art.61) without even mentioning that Tatarstan is part of the Russian Federation. The Constitution of the Northern Ossetiia proclaimed that this Republic is “the only holder of the state power on its territory” (Art.4) and that it is “a sovereign state which in pursuance of its freewill enters the Russian Federation” (Art.61). With some changes in modality and in terms, these formulations were repeated in the basic laws of other republics. These ideas revealed the clear political intentions of the regional leaders to achieve the full separation of the two levels of power through proclaiming self-determination of the regions.²⁵ Nevertheless, this process of self-determination soon showed its detrimental signs, which were the bloody conflicts in Chechnia and in other Russian Caucasian republics, endorsing the opposite understanding of sovereignty as the indivisible power of higher state authorities. Several years later, the opposite process of reintegration of Russia started in which several factors can be articulated; among them is the doctrine of the Constitutional Court of Russia, which will be analyzed below.

had been entered into with some ‘ordinary’ regions which did not claim any sovereignty, and thus the sovereignty clause seemed to be mentioned everywhere. Cf. Boris Krylov, “Rossiiskaia model’ federatsii v novoi Konstitutsii”, *Obozrevatel’* (1994) No.12.

²³ Cf. Alan Tarr, “Creating Federalism in Russia”, 40 *South Texas Law Review* (Summer 1999), 689.

²⁴ The title of this Federal Treaty speaks for itself. Also, in the preamble, the declarations of state sovereignty of the republics are mentioned as the normative sources of the Treaty.

²⁵ Cf. Suren Avakyan, “O statusе sub”ektov RF i problemakh ‘rossiiskogo federalizma””, *Konstitutsionnyi vestnik* (1994) No.17.

3. Sovereignty and the Doctrine of the Russian Constitutional Court

The RF Constitutional Court has set forth its legal position on the sovereignty issue in several landmark decisions. The first one was as early as in 1992 in the Tatarstan case (Decision of 13.02.1992), where the Court held that proclamation of state sovereignty by a national autonomy contravenes international law, as the latter does not allow reference to be made to this principle in situations threatening the integrity of another sovereign state.

The conflict that brought this case to the Court broke out early in 1992 when, based on the provisions of the republican constitution, the regional parliament had adopted a law on referenda intended to test the willingness of the population in Tatarstan to be independent from Russia. In its own terms, “to go ahead with constructing the Republic of Tatarstan as an independent and sovereign state belonging to the international community as its full-fledged member”. The President of Tatarstan, Mintirmer Shamiev, argued that no literal conflict with the Federal Constitution could be found in this case, as there was no prohibition against constituent republics of the Federation declaring partial or even full sovereignty. Moreover, the Russian Constitution recognized that republics could participate in the international affairs and international treaties. Therefore, there was no *per se* discrepancy, and the Constitutional Court did not have jurisdiction to speak in place of the Constitution when the latter was silent. The federal treaties between the Federation and the constituent republics provided the best evidence thereof. In 1993, Shamiev sent an official letter to President El'tsin notifying him that Tatarstan would not “enter the Russian Federation” unless a mutually acceptable treaty would be concluded.²⁶

The Court rejected the position of Tatarstan's leader and ruled that—in Russia as well as abroad—the concept of sovereignty excludes the legal possibility of the Federation and its members being equal in international relations; rather, federal treaties have effect on constitutional laws. The fact that the Federal Constitution is silent on the sovereignty of the constituent republics means that the only subject of sovereignty in Russia is “the multinational Russian people” which is mentioned as the “vehicle of sovereignty in Russia”.

Basing its holding on these findings, the Court voided the above-mentioned law along with the corresponding provisions of the Tatarstan Constitution. The reasoning of the regional authorities was overturned by the Constitutional Court in its finding that Tatarstan cannot be an independent member of the international community even by authority of a plebiscite. It is noteworthy that the Court's reasoning was not based on the norms and principles of municipal constitutional laws; these were silent on this matter and even rather favorable

²⁶ Cf. Boris Krylov, “Gosudarstvennyi suverenitet kak on ponimaetsia v Kazani”, *Zhurnal Rossiiskogo prava* (2001) No.11.

to the principle of self-determination. The Court's argumentation rested on the principles of public international law, thus revealing a symptomatic weakness of Russian constitutional legislation of that time period. These principles served as a platform for a restrictive interpretation of Article 3 of the Constitution: the absence of a reference to the sovereignty of republics must have meant that republics do not have sovereignty at all. This restrictive proposition may seem fallacious, but the process of disintegration nevertheless was blocked.

In a decision made three years later, the Constitutional Court developed this line of argumentation concerning another sensitive issue of the sovereignty question: *i.e.*, self-determination. As has been highlighted above, Soviet legal theory used to support this principle which had been exalted by Lenin. This support was rather theoretical since no secession or other practical acts could be expected from the formations that formed the 'friendly family of the Soviet people'. But the reality of the post-Soviet époque—and, especially, the war in Chechnia—stressed the perilous nature of this principle, which implied the right of a nation (of nations) to determine its (their) coexistence with other nations.

Here, the issue before the Court concerned the limits to which federal authorities could go in suppressing Chechen rebels and, more practically, whether or not federal military forces could be used against the rebels without the consent (invitation) of the republic where the military operations were to be conducted. Since, at the beginning of the first Chechen campaign, there was no legitimate government of Chechnia (in the eyes of federalists), no power could express the consent of the Chechen people to any military operations. This could be interpreted as a launch of warfare without approval of the people and as aggression against that people, who had chosen the path of self-determination. On 31 July 1995, the Constitutional Court invalidated this assessment, following the doctrine of 'multinational people of Russia' which alone—through its parliament or through a plebiscite—can decide on territorial integrity of the country and can be sovereign in this sense. The Court underlined that the right to self-determination "cannot be interpreted as sanctioning or encouraging any acts which could lead to the dismemberment or to a complete negation of the territorial integrity or of the political unity of sovereign and independent States". Since the warfare in Chechnia (in the Russian legal parlance, a 'counter-terrorist operation') was pursuant to a declaration by the Russian parliament, no normative conflict between this law and the Federal Constitution was found.

The next significant step in the evolution of the Russian Constitutional Court's sovereignty doctrine took place after changes in the balance of power between the central and regional authorities following the arrival of Vladimir Putin to power.²⁷ One of people's main expectations towards this new leader was as a potentate who would support the reintegration of the disintegrating

²⁷ Cf. Cameron Ross, "Putin's Federal Reforms and the Consolidation of Federalism on Russia: One Step Forward, Two Steps Back!", *Communist and Post-Communist Studies* (2003) No.1, 29-47.

country.²⁸ Several federal laws were adopted drastically delimiting the prerogatives of the autonomous regions;²⁹ and, even though no amendments were made to the Constitution, the understanding of federalism in Russia underwent a remarkable change. The idea of a great united people (the “Russians” embracing Russians, Tartars, and other peoples into one) began to prevail rather than the image of Russia as a friendly family of peoples living side-by-side.³⁰ This matched President Putin’s new official policies; the change of ideological landmarks was also mirrored in the practice of the Constitutional Court.

Its June 2000 ruling was seminal in this respect; here, the Constitutional Court nullified the provisions of Constitution of Altai Republic that qualified this republic as having national sovereignty. Until then, the principle of national sovereignty had remained intact in the constitutions of the Russian autonomous republics—in spite of the Court’s earlier opinions on discrepancies between such principle and the terms of the Federal Constitution. Some republics, including Altai, still considered themselves as independent nations bound with Russia mainly by means of bilateral federal treaties and, therefore, as sovereign entities.

Article 4 of the Altai Constitution established that this Republic “in its internal life is based on sovereignty as the natural, indispensable, and legitimate precondition of its nationhood, history, culture, and traditions that guarantee the peaceful life of the nations residing in the Republic”. The advocates of this wording insisted that it merely reproduced the preamble of the Federal Constitution; but, in this case, particularly as to the Altai people. As all the nations in Russia were proclaimed in the RF Constitution to be legally equal, the Altai people had the same rights and, therefore, the same qualifications as the ‘multinational people of Russia’.³¹ As there was no question here about secession, self-determination or even international legal capacity, the proponents of Altai’s constitution argued that no substantial controversy could exist between the Federal and Altai Constitutions.

²⁸ Tatiana Kurkovets and Igor’ Kliamkin, *Cho zhdet Rossiia ot Putina?* (Moscow, 1999). This volume also describes the results of a poll conducted in 1999 revealing that during the disastrous economic situation of those years, one of citizens’ main priorities concerned the ‘strong and indivisible state’; the third priority in the list of their most vital needs.

²⁹ See, for example, Hans Oversloot, “The Merger of Federal Subjects of the Russian Federation During Putin’s Presidency and After”, 34(2) *Review of Central and East European Law* (2009), 119ff.

³⁰ Cf. Daria Bystrova, “Gosudarstvennyi suverenitet i territorialnaia tselosnost’ Rossiiskoi Federatsii: problemy sootnosheniia”, *Gosudarstvennaia vlast i mestnoe samoupravlenie* (2009) No.4; and Richard Sakwa, “Rossiiskii regionalizm, vyrabotka politicheskogo kursa i gosudarstvennoe razvitiie”, in Natalia Varlamova and Tatiana Vasileva (eds.), *Rossiiskii federalizm: Konstitutsionnye predposylki i politicheskaiia real’nost’* (Moscow, Centre for the Study of Constitutionalism of the Moscow Public Science Foundation, 2000), 8-37.

³¹ To understand the terminological difficulty: Russian legal parlance does not make a distinction between the notions of ‘people’ and ‘nation’ (so familiar in Western legal culture). To make matters worse, this latter notion has a negative connotation in Russian, usually associated with such phenomena as nationalism, national-socialism (Nazism) or “Nazmenism” (abbreviated from ‘national minority’ meaning a small people brandishing its imaginary cultural value and spurning other nations). So, for the most part, in official language the term ‘people’ (*narod*) is applied.

The RF Constitutional Court nonetheless held that there was a material controversy and ruled that only federal states can be deemed to be 'sovereign'; their members do not possess supremacy in determination of their competences. A threat to the sovereign rights of the Federation appears whenever its member states declare themselves to be sovereign. According to this logic, sovereign powers in a multinational state legally can appertain only to the multinational population of the entire federation and not to each particular people living in the country. The Court sustained its previous findings and held that the source of sovereignty in Russia resides in the multinational people of Russia. The will of these people is manifested in the Federal Constitution, which makes no reference to national sovereignties of the constituent republics. Therefore, this reference could not be fixed in federal treaties or in regional constitutions; when it was found there, it should be held null and void. The clause of the Altai Constitution about national sovereignty, thus, was deemed invalid as contravening the rights of multinational population of the Russian Federation. This Constitutional Court decision put an end to perpetuation of the two-level structure of administration of the public power where the federal and regional authorities treated each other as mutually independent (*viz.* sovereign) having different sources of sovereign power (the multinational people for the federal power, and the local nations for the regional powers).

Three principal cornerstones were laid down in the Court's doctrine of in this decision. *Firstly*, the groups/nations composing the Federation did not enjoy sovereignty and were not sources of power for the authorities of the national regions of Russia. The provisions of Article 3 of the Federal Constitution—proclaiming the multinational people of the Federation as the vehicle of sovereignty and the source of power—were interpreted to exclude the right of other nations in Russia to claim sovereignty. *Secondly*, the supremacy, independence and self-determination of the state authority in Russia implied that these characteristics belong only to the federal authorities, so any argument by the constituent republics that they also possessed these characteristics was incompatible with the Federal Constitution. *Thirdly*, the status of the republics that are parts of the Russian Federation was not established and defined by federal treaties, nor by referendums or self-determination of the local nations but, rather, by the will of the united people of the Federation—this will being expressed in the Federal Constitution and interpreted by the Constitutional Court.

The Court remained silent as to the precise meaning of this new doctrine of the united people; but, from that moment on, it began to play a key role in the Court's further constitutional reasoning about sovereignty. In a ruling of June 2000, it was ascertained that the respective provisions of other regional constitutions were to be considered null and void: once the above-mentioned ruling in the Altai case had been handed down, the reasoning deployed in the Altai

case should be applied *mutatis mutandis* to similar provisions of other regional constitutions of formations with within the Russian Federation.

One year later, in an April 2001 ruling, the Court explained that the 2000 Altai decision had a normative character. This meant that not only that there was no need for the Constitutional Court to separately proclaim the nullity of a national sovereignty clause for each republic but, also, that senior officials of these republics could be held liable for their failure to make the appropriate amendments to their constitutions conforming to the principle established in the Altai case. In doing so, the Court stressed the factual and legal dependence of the constituent republics on the federal authorities as well as supremacy of the Federal Constitution over the regional constitutions. Furthermore, in its 2001 ruling, the RF Constitutional Court held that there could be no citizenship of the constituent republics; that only federal citizenship is permissible under the Federal Constitution since “only a sovereign state can legislatively establish who are its citizens and who can be treated as full-fledged members of Russian society endowed with all constitutional rights”.

This holding was reinforced in a December 2005 dispute involving a law which entitled the federal government to dismiss regional leaders—even those elected directly by people. In that decision, the Constitutional Court ruled that autonomy of the constituent republics “cannot be exercised with prejudice to the integrity of public power in Russia which is declared united in Article 5 of the Federal Constitution”. This is the will of the ‘multinational people of Russia’ (which still is the doctrine), enabling the federal president elected by this people to dismiss the regional presidents elected by local nations.

It is worth mentioning that earlier this point of view had not been the dominant one in Russian legal science; in fact, in one of its previous decisions, Constitutional Court had concluded otherwise (January 1996). The regional constitutions were placed on the same level with reference to the exclusivity-of-competences principle. This principle held that federal power may not interfere with the exclusive powers reserved for the republics under the federal treaties (and *vice versa*) since the treaties—from the beginning of 1990s—left room for the regions to claim formal sovereignty. In the 2000 Altai ruling we read:

“In accordance with the Constitution, sovereignty of the Russian Federation excludes the existence of two levels of sovereign authorities which would build a united system of the state powers, and also excludes possession by these authorities of supremacy and independence; which means that the Constitution leaves no room for the sovereignty of republics and of other constituent members of the Russian Federation.”

The new doctrine provoked a reaction of indignation from among the regional leaders. In this situation, an influential politician—President of Tatarstan Mintirmer Shamiev (whom we have already encountered in this narrative)—accused

the Constitutional Court of ignoring the real will of the nations comprising the Federation and of committing a grave legal error.³²

This theoretical controversy led to the *third wave* of sovereignty debates.³³ These can be identified with the moment—during the winter of 2009—when the constitutional court of the Yakutiia Republic held that sovereignty clause in Yakutiia Constitution does not contravene the 1993 Russian Constitution because the republics have exclusive competence in matters in which the federal authorities cannot intervene. Sovereignty has been construed as independence in the exercise of certain powers reserved for the republics by the Federal Constitution. Pursuant to this finding of the regional constitutional court, the Yakutian parliament had refused a demand of the federal authorities to delete the ‘sovereignty clause’ from the republican constitution. It was one of the rare post-2000 cases in which a regional constitutional court dared to overturn rulings of the Federal Constitutional Court and regional leaders dared to ignore directives from Moscow.

This regional constitutional-court opinion did not stand for long and soon was rejected by an April 2009 ruling of the RF Constitutional Court explaining how the 2000 Altai holding must be interpreted and implemented into regional constitutions. In this case, the RF Constitutional Court deemed it unnecessary to issue a new decision on this matter, considering their prior ruling as *res judicata*. The Court insisted that insomuch as sovereignty implies the integrity of the authorities, this integrity leaves no room for construing sovereignty as divided between the regions and the federal center. From the 2000 Altai case, it clearly follows that a neat line is to be drawn between sovereignty of a state which belongs only to the Federation, on the one hand, and autonomy of the Federation’s republics on the other.

Thus, the RF Constitutional Court demonstrated that its continuous doctrine resulted in treatment of the constituent republics not as a national unity but, in fact, as national autonomous provinces, and an obvious advantage was given to ‘the multinational people of Russia’ as compared with the local nations (‘nations’ in the strict sense of the word). There is no need for us to remark that this perspective was transplanted from the ideology of Soviet legal science.

Here the Court unambiguously ruled that no reference or even allusion could be made to sovereignty of the constituent republics which have the same status as that other regions/provinces of Russia, and that the provisions of the federal treaties are not sources of constitutional law equal in force and effect to the RF Federal Constitution itself, having only a transitory character. Resting

³² Mintirmer Shaimiev, *O desiatoi godovshchine Deklaratsii o gosudarstvennom suverenitete Tatarstana: Desiat’ let po puti ukrepleniia suvereniteta* (29 August 2000); reproduced at <http://president.tatar.ru/pub/view/694>.

³³ Alexei Trochev, *Judging Russia: The Constitutional Court in Russian Politics: 1990-2006* (Cambridge University Press, New York, NY, 2008).

its ruling on these findings, the Court also held as illegitimate the clauses about the nations of the republics as the source of state power in these republics. This conclusion was based on a specific construction of Article 4 of the Federal Constitution where part 1 establishes that sovereignty of the Federation covers all its territory, and part 3 provides that the Federation guarantees integrity and indivisibility of its territory. From this normative liaison, the RF Constitutional Court concluded that sovereignty is another term for 'territorial integrity'. A specific meaning was also attributed to the wording of Article 5 of the Russian Constitution which uses the term "state" for the republics (mentioning them as "republics (states)" in the list of the constituent members of the Federation). In spite of the plain meaning of this constitutional provision which describes the republics as states (*gosudarstva*), the Court found that this term of 'state' in reality did not mean 'state' as a political unity of people but, rather, a kind of national autonomy which must disappear after the transitory period of Russian history is over. This distortion of the plain meaning of words is characteristic for the new doctrine of the Constitutional Court, which preferred to disregard the real significance which constitutional terms had in the early 1990s (being a equilibrium between the weak central power and separatist regions) and, rather, to introduce new political paradigms into the Constitution.

Yet, the issue is still far from being resolved. Regionalism in Europe, the rise of international organizations powers and the processes of globalization represent resistance to these tendencies so that a division has appeared in Russian jurisprudence between partisans of the Westphalian system (with centralized states), on the one hand,³⁴ and supporters of the free market and a soft-law ideology (purportedly hollowing out the sovereignty principle) on the other hand.³⁵

A policy favoring a strong central power has become one of the main planks of the platform of Russia's ruling party (*Edinaia Rossiia* [United Russia]), which explicitly maintains that any decrease in the federal government's power would ineluctably lead to the disintegration of Russia.³⁶ This evidently proceeds along with the more general authoritarian direction of United Russia's political program. At the same time, liberals cannot hide their awareness that a weakening of the central bureaucracy is fraught with dangers of renewed claims of the national regions to independency and sovereignty.

³⁴ Vladimir Zor'kin, "Apologiya Vestfal'skoi sistemy", *Rossiiskaia gazeta* (22 August 2006).

³⁵ Cf. this line of argumentation in: William Pomeranz, "Postanovlenie Konstitutsionnogo Suda Rossii o naznachenii gubernatorov sub"jektiv Federatsii i osobyie mneniia sudei o Rossiiskom Federalizme", *Konstitutsionnyi vestnik* (2008) No.1, 272-283. Cf. the general discussion in Amitai Etzioni, *From Empire to Community: A New Approach to International Relations* (Palgrave Macmillan, New York, NY, 2004).

³⁶ On the theoretical level, an example of this thinking can be seen in Alfiia Kaiumova, "Suverenitet i iurisdiksiia gosudarstva: problemy sootnosheniia", *Konstitutsionnoe i munistipal'noe pravo* (2008) No.9.

Using the idea of sovereignty is still a strong ideological device in Russia³⁷ and is likely to remain such until a more enduring balance can be struck between the interests of the regional and the federal elites, and until a comprehensive doctrine of the Federal Constitutional Court is formulated to reflect this.

³⁷ Cf. Thomas Frederic Remington, "Regime Transition and Democratic Consolidation: Federalism and Party Development in Russia", in James F. Hollifield and Calvin Jillson (eds.), *Pathways to Democracy: The Political Economy of Democratic Transitions* (Routledge, London and New York, NY, 1999); Henry E. Hale. *Why Not Parties in Russia? Democracy, Federalism, and the State* (Cambridge University Press, New York, NY, 2006); and Richard Sakwa, "Federalism and Democracy in the Russian Federation", in Michael Burgess and Alain-G. Gagnon (eds), *Federal Democracies* (Routledge, London and New York, NY, 2010), 202–231.

**Annex: Constitutional Court Cases (Decisions, Rulings,
and Statements) on Sovereignty³⁸**

1. *13 March 1993* (No.2-P): “The case of the examination of the constitutionality of some provisions of the Declaration of State sovereignty of Tartar SSR of 30 August 1991, of the Law of the Tartar SSR of 18 April 1991 ‘On changes and amendments into the Constitution (Basic Law) of Tartar SSR’, of the Law of the Tartar SSR of 29 November 1991 ‘On a plebiscite in the Tartar SSR’, of the Ruling of the Higher Soviet of the Republic of Tatarstan of 21 February 1992 ‘On a plebiscite in the Republic of Tatarstan concerning the state status of the Republic of Tatarstan’”.
2. *31 July 1995* (No.10-P): “The case of the examination of the constitutionality of the Decree of the President of Russia of 30 November 1994 No.2137 ‘On measures to preclude activities of illegal military formations on the territory of Chechen Republic and in the zone of the conflict between the Ossetians and Ingushetians’, of the constitutionality of the Ruling of the Government of Russia of 9 December 1994 No.1360 ‘On securing the state safety and territorial integrity of the Russian Federation, rule of law, rights and liberties of citizens, disarmament of the illegal military formations on the territory of Chechen Republic and on the near-by territories of the Northern Caucasus’, and of the constitutionality of the Decree of the President of Russia of 2 November 1993 No.1833 ‘On the basic provisions of the Military Policy of the Russian Federation’”.
3. *18 January 1996* (No.2-P): “The case of the examination of the constitutionality of some provisions of the Constitution (Basic Law) of Republic of Altai”.
4. *1 February 1996* (No.3-P): “The case of the examination of the constitutionality of some provisions of the Constitution (Basic Law) of Chitinskaia Oblast”.
5. *24 January 1997* (No.1-P): “The case of the examination of the constitutionality of some provisions of the Law of the Republic of Udmurtiia of 17 April 1997 ‘On the system of organs of state power in the Republic of Udmurtiia’”.
6. *14 July 1997* (No.12-P): “The case of the interpretation of the provisions of point 4 of Article 66 of the Constitution of the Russian Federation about the entering of an autonomous province into a Krai or Oblast”.
7. *10 December 1997* (No.19-P): “The case of the examination of the constitutionality of some provisions of the Constitution (Basic Law) of the Tambov Oblast”.
8. *9 January 1998* (No.1-P): “The case of the examination of the constitutionality of the Forest Code of the Russian Federation”.

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These decisions and other judicial acts of the RF Constitutional Court can be accessed on the Court’s official website at <<http://www.ksrf.ru/Decision/Pages/default.aspx>>.

9. *7 June 2000* (No.10-P): “The case of the examination of the constitutionality of some provisions of the Constitution of Republic of Altai and of the Federal Law ‘On the general principles of organization of the legislative (representative) and executive organs of state power of the constituent members of the Russian Federation’”.

10. *27 June 2000* (No.92-O): “In response to an inquiry of a group of Russian Parliamentary members about the congruency between the Constitution of the Russian Federation and the Constitutions of the Republics of Adygeia, Bashkortostan, Ingushetiia, Komi, Northern Ossetiia, and Tatarstan”.

11. *6 December 2001* (No.250-O): “In response to an inquiry of the State Parliament of the Republic of Bashkortostan to render an interpretation to Articles 5, 11, 71, 72, 73, 76, 77, and 78 of the Constitution of the Russian Federation”.

12. *21 December 2005* (No.13-P): “The case of the examination of the constitutionality of some provisions of the Federal Law ‘On the general principles of organization of the legislative and executive organs of state power of the subjects of the Russian Federation in connection with inquiries of some citizens’”.

13. *21 April 2009*: “On information about the implementation of Decisions of the Constitutional Court of the Russian Federation”.

