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Mikhail Antonov

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*Mikhail Antonov*¹

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This paper studies the background and guidelines of discussions about the concept of sovereignty and its limits. The paper begins with a short historical analysis of the processes that took place in Soviet Russia that led to the “parade of sovereignties” in the early 1990s. Afterwards, the author sketches the different approaches and doctrines upheld by the Constitutional Court of Russia in several decisions concerning sovereignty problems. The paper focuses on the vertical dimension of sovereignty, i.e. on different conceptions adopted by the federal and regional powers in post-Soviet Russia regarding the legal status of the member-republics 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: State sovereignty, national sovereignty, judicial doctrine, Constitutional Court of Russia, autonomy, supremacy, self-determination, territorial integrity.

JEL Classification: K10.

¹ *Mikhail Antonov* holds a chair in Theory and History of Law and of State at Law Faculty and is associated with the Law Faculty at the National Research University Higher School of Economics in Saint Petersburg. He is a Research Fellow of the Laboratory of Comparative Legal Research and Director of the scientific research group “Normativity and Legal Argumentation” at the same University. He is the Executive Director of the Russian Yearbook for Legal Theory. Antonov’s research interests focus upon contemporary legal theory, upon the problems of normativity in law and of sociological jurisprudence. He is author of more than 30 papers, some of which were published in English, French, and German.

² The main ideas of this article have been presented by the author at the International Conference “Sovereignty in Question” (London, 28-30.06.2011, Institute of Advanced Legal Studies of London University).

Introduction

Legal theory in contemporary Russia seems to be at a crossroads: many of its concepts are not shaped precisely and leave room for redefinition by politicians and lawyers. One such concept is that of sovereignty, which plays a major part in constitutional debates. During the last twenty years, supporters of strong federal powers and adherents of the idea of power decentralization in Russia have given divergent 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 the Russian science of law are related to the previous Soviet jurisprudence. This latter theoretical system, in turn, was based on the vocabulary of the legal science of the beginning of the 20th century, which in many aspects has been seriously, sometimes dramatically disguised by the ruling ideology of the Communist party. One such case is the concept of sovereignty.

The understanding of sovereignty as the higher plenipotentiary power of state over society was never abandoned by Soviet-era lawyers, but has gone through some important deformations produced by the ideology. As Marxist dogma wanted the state to wither away in order to give way to new forms of society, Soviet legal scholars did not focus on the lexicon of traditional political science and preferred to study actual power relations rather than their reflexion 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 the 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 Constitutional Court has played a vital role in reshaping sovereignty as one of the fundamental concepts of 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 necessary, for sovereignty is an object of scientific inquiry not only in Russia, and the 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 the contemporary Western legal theory without a gross distortion, because the Soviet legal doctrine was almost fully separated from the Western by the ideological iron ideological curtain. In addition, new 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 paper – 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 only within Soviet history and the doctrine of the Constitutional Court. We cannot refrain from mentioning certain political processes that constitute the background for this doctrine, but investigation and evaluation of these processes is not the primary subject matter of this paper.

Historical sketch of the evolution of sovereignty problems in Russia

To understand the USSR legal system, it is important 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 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 but they were 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”.³ Emphasis was placed on the prerogative right of minority ethnic groups to determine their 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”.⁴ 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 of winning were far from being certain.⁵ A somewhat different opinion was put forth by Stalin, who was skeptical about the national construction (*natsionalnoe stroitelstvo*) 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 this determination could be better realised in the form of regional autonomy.⁶ 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 1915.⁷

Such anti-imperialist ideology naturally strengthened the Russophobe 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 Yashchenko).⁸ At the same time, the idea of parity of large and small nations in the aspect of

³ Vladimir Lenin, “Resoljutsija po natsional’nomu voprosu” (Resolution on the national question), in Lenin V.I. *Selected works*. (Moscow, 1978), V. 2, 95.

⁴ Vladimir Lenin, “O prave natsii na samoopredelenie” (About the right of nation to self-determination), in Lenin V.I. *Selected works*. (Moscow, 1978), V. 2, 583 (first published in 1914).

⁵ “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”, *Slavic Review* (1994) No. 53(2), 450).

⁶ “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” (Stalin J. *Marxism and the National Question*, in Stalin J. *Works*, (Foreign Languages Publishing House, Moscow, 1954), Vol. 2, 376. (Cf. also: Van Ree E., “Stalin and the National Question”, *Revolutionary Russia*, Vol. 7, No. 2, December 1994).

⁷ “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* (Theses on the Right of Self-Determination), first published in 1915, cited after: Nikolai Bukharin. *Programma kommunistov – bolshevikov* (The Program of Communists – Bolsheviks) (Moscow, 1918), 60.

⁸ Cf.: Terry Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939* (Cornell U.P. 2001).

repentance of the Russian people towards the conquered nations was propagated by the Bolsheviks also 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 for distribution of factual power and for the time being remained only a formal declaration. Nevertheless, following the principle of national self-determination, the Soviet authorities created in Russia several national autonomies whose formal legal status 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. The other groups, which were smaller and not ready to construct their national entities, all the same were driven to create states, as Lenin proclaimed this as a part of a program for “forced formation of the new Soviet nations”.⁹ 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 the Socialist states where each people kept full legal independence (provided that those states followed the Communist ideology, and in this way stayed as “one team”). Governance through the 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 got the upper hand after the Revolution of 1917, became a starting point and at the same time a testing ground for this project.¹⁰

The illusions of the 3rd 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 bringing correctives into this national policy.¹¹ 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 an outcome of this strange compromise of two directly opposing strategies.

In spite of the factual application of concept of sovereignty to state construction, Soviet legal scholars tried to avoid this term. It was progressively abandoned in favour of new propagandist

⁹ Vladimir Lenin, “O prave natsii na samoopredelenie” (About the right of nation to self-determination), in Lenin V.I. *Selected works*. (Moscow, 1978), V. 2, 263 (first published in 1914).

¹⁰ Cf.: Pipes R., *The Formation of the Soviet Union: Communism and Nationalism, 1917-1923* (Cambridge, MA, 1964), 21-49.

¹¹ The quarrels about the form of the new socialist state between Trotsky and Stalin stressed the internationalist sympathies of the former and the traditional Westphalian thinking of the latter. Given that Stalin won the majority amidst the Party’s members, one can induce that this line of thinking was common to this majority.

slogans like “the friendship of nations”, especially between the 1930s and 1960s. When applied, this term has been used as a synonym to the omnipotence of the public power on a certain territory,¹² or has been carefully examined to reveal the underlying capitalist economy that gave birth to this idea (in the dialectics of basis and superstructure). So, the outstanding Soviet legal scholar Jacob Magaziner wrote 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”.¹³ It is important to note that the first Soviet textbook on constitutional law defined sovereignty as “supremacy of the state power which makes this power unlimited and independent inside the country and runs autonomous foreign policy in international relations”.¹⁴ Such a definition has nothing particular for the “bourgeois” legal theory but it is interesting to see how the new legal ideology of the Soviet state returned to the paths of traditional political science. This opinion was echoed later on by many legal theorists among whom it is possible to invoke Molodtsov who defined sovereignty as “territorial supremacy of a state”¹⁵ or Klimenko who identified it with unity of imperium and dominium that is exercised by a state over all the people within the territory it possesses.¹⁶

This understanding was based on conflation between the factual (political) power and the 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 characterising its integrity and indivisibility, its monopoly to use coercive power.¹⁷ No pluralisation 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 the “bourgeois” political science (recall the Weberian definition of the state), but the shift in the Soviet legal theory from the prerevolutionary programs of the Bolshevik leaders was significant. From this theoretical standpoint, the purpose of separation of the sovereign powers between 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

¹² Cf.: Igor Levin, *Suverenitet* (Sovereignty). (Moscow, 1948), 110 ff.

¹³ Jacob Magaziner, *Leksii po gosudarstvennomu pravu* (Lectures on the constitutional law). (Petrograd, 1919), 228.

¹⁴ *Sovetskoe gosudarstvennoe pravo: uchebnik dlja juridicheskikh vuzov* (The Soviet constitutional law: A textbook for law institutes). (Moscow, 1938), 262.

¹⁵ Stephan Molodtsov, “Nekotorye voprosy territorii v mezhdunarodnov prave” (Some questions about sovereignty in the international law), *Sovetskoe gosudarstvo i pravo* (1954). No. 8, 63.

¹⁶ Boris Klimenko, *Gosudarstvennaia territoria: voprosy teorii i praktiki mezhdunarodnogo prava* (The State territory: the issues of theory and practice of international law). (Moscow, 1974), 20.

¹⁷ Cf.: Sergey Alekseev, *Gosudarstvo i pravo* (State and Law). (Moscow, 1993), 16-17.

integrity, independence and sovereignty turned into quarrels about the relative force of the conflicting authorities.¹⁸ Given that the concept of legitimacy was discarded once and for all by the Soviet legal theory as ideological device of capitalism, 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 the 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 Constitution of 1918 of the RSFSR (the Russian Soviet Federal Socialist Republic) of 1918 held that “all the power in the centre and in the regions belongs to the Soviets” (art. 1). This circular definition wanted the authority to be its own source. Almost the same idea was repeated in the next Constitution of 1925 (art. 2). The Constitution of 1937 made some progress towards the idea of government of the people, but not without reference to the Soviets: “all the power belongs to the working population represented by the Soviets”. At last, the Constitution of 1978 made it clear that “all the power belongs to the people” (art. 2), adding that “the people exercise their power through the Soviets”. And only in 1990, an amendment was brought into art. 2 of the Constitution 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 the 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 centralised state.¹⁹ Nothing new appeared after the crackdown of the Communist rule in the early 1990s, when the new authorities followed the traditional methods of hierarchical power structuring. It has been maintained by some researchers that this policy was just a repetition of the Russian mentality accustomed to conceive the power as something impartible and monolithic, based on unilateral order of subordination.²⁰ The “dissident” ideas about diffusion and dispersion of sovereignty in the 20th century were always “not at home” in the

¹⁸ Surely, from the sociological standpoint it is so, but legal perspective allows bring these disputes on the level of constitutional debates about rights, freedoms, liberties and guarantees rather than stay solely on bargaining about more power among the authorities.

¹⁹ Cf.: Francis Fukuyama, “Second Thoughts. The Last Man in a Bottle”, *The National Interest* (Summer 1999).

²⁰ Mikhail Marchenko, “Gosudarstvennyj suverenitet: problemy opredelenija ponjatija i soderszanija” (The State sovereignty: the problems in establishing of its definition and contents), *Pravovedenie* (2003) No. 1, 190-196.

Russian science of law, and their authors (such as Harold Laski²¹) were considered as the worst enemies of the Soviet ideology because such ideas were considered to provoke rivalry between the working classes' parties.

Based on the formal doctrine of national freedom (self-determination) and on the real practice of rigid centralization, the Soviet legal theory (the basic standards of which were formulated by Andrej Vishinski in 1938 at the first colloquium of the Soviet legal theorists) has thus promoted two conflicting values. When both values were subject to the ultimate communist ideology and the political life was thoroughly controlled, no normative conflict arose. Unfortunately for those who suffered from the consequent wars, after the crackdown of the system the repulsion against the relicts of the Soviet national policy was so strong that Russia in 1990 proclaimed itself independent from the Soviet Union: this example was followed by other members of the USSR, and by the national autonomies inside Russia (called "republics", each of them having its own "constitution") as well. Among other things, it meant the end of the USSR. There was no normative conflict as 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 a room for their autonomies to adopt the same strategy. This problem persisted in Moldova, Azerbaijan, and Georgia, which still have "sovereign" autonomies not controlled by the central government. In Russia this was not only a question for Chechnya but for many other national republics that declared their sovereignty in the early 1990s.²²

One of the major factors, surely not the only one, was the incoherence of the application of the legal terminology and in balancing of the conflicting societal values by the politicians, judiciary, legislators, and all those engaged in legal discourse. As noted above, the vocabulary of the Soviet lawyers was quite different from the dictionary of the Western lawyers, with many ideological concepts integrated into the legislation such as "free self-determination of nations", and with many traditional terms banned from it as "bourgeois", like those of "sovereignty" or "rule of law". Another factor was that the initial position of the newly elected Russian government headed by Yeltsin was to play the "trump of sovereignty" in the struggle against the remnants of the Soviet government headed by Gorbachev. It resulted not only in the breakup of the USSR but also in the growth of nationalist movements inside Russia. When declaring Russia's sovereignty in 1990, Yeltsin told the regional leaders, "and you take as much as sovereignty as you can bear".²³ While the new Russian constitution was under discussion until its

²¹ Cf.: Harold Laski, *The Foundations of Sovereignty* (London, 1931).

²² Cf.: Yuri Krasin, "Federalism: Russian Realities and Historical Experience", in *Federalism and the New World Order*. Contributors: Stephen J. Randall, Roger Gibbins (eds.). (1994) Calgary, University of Calgary Press. Place of Publication.

²³ Cf.: Liliya Shevtsova, *Rezhim Borisa Yeltsina* (The regime of Boris Yeltsin). (Moscow, 1999), 18 ff.

adoption in 1993, the new authorities of Russia entered forty-two treaties with its constituent entities (such republics as Tatarstan, Dagestan, and many others) where the both convening parties (Russia and one of its republics) regarded each other as sovereign states.²⁴ By negotiating treaties with members of the Federation that defined the powers they can 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 the terminology.²⁵ There are numerous references to sovereignty in these treaties. Probably the most characteristic example is the basic Federal Treaty “On demarcation of competencies and powers between the federal organs of state authority and the state authorities of the sovereign republics of the Russian Federation” which was entered on 31.03.1992 between the federal government and the republics.²⁶ This Treaty was incorporated into the Russian Constitution of 1978 pursuant to the Federal Law No. 2708-I as of 21.04.1992.

Altogether this gave the constituent republics of Russia strong feedback to further claims of full independence and international recognition. Thus began the process described as “a parade of sovereignties”. Constitutions of almost all the constituent republics contained one or several references to the republican sovereignty. One can cite the Constitution of Buryatia (adopted on 22.02.1994) art. 1 of which defined this Republic 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 the international law” (art. 61) without even mentioning that Tatarstan is part of the Russian Federation. The Constitution of the Northern Ossetia proclaimed that this Republic is “the only holder of the state power on its territory” (art. 4), and 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 disclosed the clear political intentions of the regional leaders to full separation of the two levels of power through proclaiming self-determination of the regions.²⁷ Nevertheless, this process of self-determination soon showed its detrimental signs, which were the bloody conflicts in Chechnya and in other Russian Caucasian republics, endorsing the

²⁴ 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 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” as of 15.02.1994 where Tatarstan is held as a state associated with Russia). E.g., the federal treaties were also entered with some ordinary regions which did not claim any sovereignty, and thus the sovereignty clause has not been mentioned anywhere. Cf.: Boris Krylov, “Rossijskaja model federatsii v novoj Konstitutsii” (The Russian model of Federation according to the new Constitution). *Obozrevatel* (1994) No. 12.

²⁵ Cf.: Alan Tarr, “Creating Federalism in Russia”, 40 S. Tex. L. Rev. 689, Summer, 1999.

²⁶ Already the title of this Federal Treaty speaks of itself. Also, in the preamble, the declarations of state sovereignty of the republics are mentioned as the normative sources of the Treaty.

²⁷ Cf.: Suren Avakyan, “O statute subjektov RF i problemah ‘rossijskogo federalizma’” (On the status of members of the Russian Federation and on ‘the Russian Federalism’), *Konstitucionnyj vestnik* (1994). No. 17.

opposite understanding of sovereignty as the indivisible power of higher state authorities. Several years later, the opposite process of reintegration of Russia started where several factors can be articulated; among them is the doctrine of the Constitutional Court of Russia, which will be a subject for the analysis below.

Sovereignty and the doctrine of the Constitutional Court of Russia

The Constitutional Court of Russia marked its legal position on the sovereignty problem in some illustrious precedents. The first such precedent took place 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 referring to this principle in situations threatening the integrity of another sovereign state.

The conflict that brought this case to the Court broke out in 1992 when, based on the provisions of the republican constitution, the regional parliament adopted a law on referendum. This referendum was 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, Mr. Shajmiev, stood firmly on the point that no literal conflict with the Federal Constitution could be found in this case, as there is no interdiction for the constituent republics of the Federation to fully or partly possess sovereignty. Moreover, the Russian Constitution recognised that republics could participate in the international affairs and international treaties. Therefore, no discrepancy in terms might be stated, and the Constitutional Court was not competent to speak instead of the Constitution when this latter was silent. The federal treaties between the Federation and the constituent republics provide the best proofs thereto. Suffice it to say that Shajmiev in 1993 sent an official letter to Yeltsin with information that Tatarstan would not “enter the Russian Federation” in case no mutually acceptable treaty was entered into.²⁸

The Court nevertheless dissented with Tatarstan’s leader and held that, both in Russia and abroad, the sovereignty concept excludes the legal possibility of the Federation and its members being equal in international relations. The federal treaties have effect on constitutional laws. The fact that the Federal Constitution is silent on sovereignty of the constituent republics means that

²⁸ Cf.: Boris Krylov, “Gosudarstvennyj suverenitet kak on ponimaetsja v Kazani” (State sovereignty of Russia as it is understood in Kazan), *Journal rossijskogo prava* (2001). No. 11.

the only subject of sovereignty in Russia is “the multinational Russian people” which is mentioned as the “vehicle of sovereignty in Russia”.

Basing on these findings, the Court held void the mentioned law along with the corresponding provisions of the Tatarstan Constitution. The reasoning of the regional authorities was reversed by the Constitutional Court, which found that Tatarstan cannot be an independent member of the international community even by authority of plebiscite. It is noteworthy that the Court did not reason in pursuance of the norms and principles of the municipal constitutional laws, as these were silent on this matter and even rather favourable to self-determination principle. The Court’s argumentation rested on the principles of the international law, thus being a symptom of weakness of the constitutional legislation of Russia at that time. These principles served as a platform for restrictive interpretation of art. 3 of the Constitution – the absence of reference to 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 was blocked nevertheless.

In a decision made three years later, the Constitutional Court developed this line of argumentation concerning another sensitive issue of the sovereignty question – that of self-determination. As has been demonstrated above, the Soviet legal theory used to support this principle exalted by Lenin. This support was rather theoretical as no secession or other practical actions could be expected from the countries that formed the “friendly family of the Soviet people”. But the reality of the post-Soviet époque and especially the war in Chechnya stressed the perilous nature of this principle, which implied the right of a nation/nations to determine its coexistence with other nation/nations. The issue before the Court was about the limits that federal authorities could reach in suppression of Chechen rebels, and more practically whether federal military force could be used against the rebels without consent/invitation of the republic where the military operation is run. As no legitimate (in the eyes of federalists) government of Chechnya existed at the beginning of the first Chechen campaign, no power could express the consent of the Chechen people to the military operation. This could be interpreted as a launch of warfare without approval of the people and as aggression against that people, who had chosen the way of self-determination. On 31st of 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 be sovereign in this sense. The Court underlined that the right to self-determination “cannot be interpreted as sanctioning or encouraging any actions which could lead to dismemberment or to a full negation of territorial integrity or of political unity of the sovereign and independent States”.

As the warfare in Chechnya (in the Russian legal parlance, a “counter-terrorist operation”) has been declared by the Russian parliament, no normative conflict between this law and the Federal Constitution has been found.

The next serious shift in evolution of the sovereignty doctrine of the Constitutional Court occurred after changes in the power balance between central and regional authorities after Putin’s arrival to power.²⁹ One of the main expectations of people towards this new leader was a kind of potentate that would allow bringing together the disintegrated country.³⁰ Several federal laws were adopted drastically delimiting the prerogatives of the autonomous regions, and even though no amendments were added 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, instead of the image of Russia as a friendly family of peoples living side by side.³¹ This went along with Putin’s new official course, and the change of ideological landmarks was also mirrored in the practice of the Constitutional Court.

The Decision of 07.06.2000 was seminal in this respect, where the Constitutional Court nullified the provisions of Constitution of Altai Republic that qualified this republic as having national sovereignty. This principle of national sovereignty until then 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, were still considering 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 natural, indispensable, and legitimate precondition of its nationhood, history, culture, and traditions that guarantee a peaceful life of the nations residing in the Republic”. The advocates of this wording insisted that it just reproduced the preamble of the Federal Constitution, but particularly as to Altai people. As all the nations in Russia are declared in the

²⁹ Cf.: Cameron Ross, “Putin's federal reforms and the consolidation of federalism in Russia: one step forward, two steps back!”, *Communist and Post-Communist Studies* 1 (2003), 29-47.

³⁰ Kutkovets Tatyana, Kljamkin Igor, *Tcho szdet Rossija ot Putina?* (What does Russia expect from Putin?). (Moscow, 1999). This book also describes the outcome of a poll conducted in 1999 which revealed that in the disastrous economic situation, one of the priorities the people was concerned about has been the strong and indivisible state – the third priority in the list of the most vital needs of the people.

³¹ Cf.: Daria Bystrova, “Gosudarstvennyj suverenitet i territorialnaja tselosnost Rossijskoj Federatsii: problemy sootnoshenija” (State sovereignty and territorial integrity of the Russian Federation: the problems of their correlation), *Gosudarstvennaja vlast i mestnoe samopravenie* (2009) No. 4; Richard Sakwa, “Rossiskii regionalizm, vyrabotka politicheskogo kursa i gosudarstvennoe razvitie” (Russian Regionalism: Policy-making and State Development), in Natalia Varlamova and Tatiana Vasileva (eds), *Rossiiskii federalizm: Konstitutsionnye predposylki i politicheskaya real'nost'* (*Russian Federalism: Constitutional Principles and Political Reality*) (Moscow, Centre for the Study of Constitutionalism of the Moscow Public Science Foundation, 2000), 8–37.

Constitution to be legally equal, the Altay people have the same rights and, thence, the same qualifications as the “multinational people of Russia”.³² As no question about secession, self-determination or even international legal capacity arose here, the proponents of Altay’s constitution argued that no substantial controversy could exist between the Federal and Altay Constitutions,.

The Constitutional Court of Russia nonetheless established a material controversy and reasoned that only federal states can be qualified as sovereign and 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 sovereign. According to this logic, sovereign powers in a multinational state can legally belong only to the multinational population of all the federation, and not to each particular people living in the country. The Court sustained its previous findings and held that 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, nor in regional constitutions, and when found should be held null and void. The clause of the Altay Constitution about national sovereignty was thence claimed invalid as it contravened the rights of multinational population of the Russian Federation. This 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) and 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 doctrine of this Court by this Decision. Firstly, the groups/nations composing the Federation possessed no 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 about the multinational people of the Federation as vehicle of sovereignty and as source of power were interpreted as excluding 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 that claiming these characteristics by the constituent republics 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-

³² To understand the terminological difficulty – the Russian legal parlance does not afford making distinction between the notions of “people” and “nation” (so familiar in the Western legal culture). To make matters worse, that this latter notion has a negative connotation in Russian, as usually associated with such phenomena as nationalism, national-socialism (Nazism) or “Nazmenism” (abbreviated from “national minority” and meaning a small people brandishing its imaginary cultural value and spurning other nations). So, in official language the term “people” is applied for the most part.

determination of the local nations, but 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 kept silence as to what exactly this new doctrine of the united people meant, but from this moment on this doctrine began playing the key role in the constitutional reasoning about sovereignty. In the Ruling as of 27.06.2000 it was ascertained that the respective provisions of other regional constitutions were to be considered null and void since the abovementioned Decision was declared, and the argumentation deployed in the case of Altay Republic was applied to other similar provisions.

One year later the Court explained in the Ruling as of 19.04.2001 that the Decision of 07.07.2000 had a normative character. This meant that not only that there was no need for the Constitutional Court to separately proclaim the nullity of the national sovereignty clause for each republic, but also that the higher officials of these republics could be held liable for not bringing amendments according to the principle established in the mentioned Decision. By doing so, the Court stressed its factual and legal dependence on the constituent republics of the federal authorities, as well as prominence of the Federal Constitutions over the regional constitutions. Furthermore, in the said Ruling of 2001 the Court stated that there could be no citizenship of the constituent republics, and that only the federal citizenship is tolerable under the Federal Constitution, as “only a sovereign state can legislatively establish who are its citizens and who can be treated as full-fledged members of the Russian society endowed with all the constitutional rights”. This position was reinforced in the case concerning the law allowing the federal government to dismiss the regional leaders, even those elected directly by people. In the Decision of 21.12.2005 the 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” (still this doctrine), which enables the federal president elected by this people to dismiss the regional presidents elected by the local nations.

It is worth mentioning that earlier this point of view was not dominant in Russian legal science, and even in one of its previous decisions the Constitutional Court had concluded otherwise (the Decision of 18.01.1996). The regional constitutions were placed on the same level with reference to the exclusivity of competences principle. This principle meant that the federal power may not interfere with the exclusive powers reserved for the republics under the federal treaties (and vice versa), as the treaties of the beginning of 1990s left room for the regions to claim formal sovereignty. In the mentioned Decision of 2000 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 excludes also that these authorities possess supremacy and independence; which means that the Constitution leaves no room for sovereignty of republics and of other constituent members of the Russian Federation”. The new doctrine provoked indignation in the regional leaders. In this situation, an influential politician, President of Tatarstan Mintirmer Shajmiev accused the Constitutional Court of ignoring the real will of the nations that compose the Federation, and of committing a grave legal mistake.³³

This theoretical controversy led to the third wave of sovereignty debates.³⁴ These can be identified with the moment in the winter of 2009 when the constitutional court of Yakutia Republic held that sovereignty clause in Yakutia constitution does not conflict with the Russian constitution because the republics have exclusive competence where the federal authorities cannot intervene. Sovereignty has been construed as independence in the exercise of some competences reserved for the republics by the Federal Constitution. Pursuant to this finding of the regional constitutional court, the Yakutian parliament has gained the grounds to refuse the federal authorities’ demand to delete the sovereignty clause from the republican constitution. It was one of the rare cases after 2000 when the regional constitutional court dared to reverse the previous statements of the Federal Constitutional Court, and the regional leaders dared to ignore the directives from Moscow.

This opinion did not stand for a long time and was rejected by the Statement Constitutional Court of Russia on 21.04.2009 issued to explain how the Decision of 2000 should be interpreted and implemented into the regional constitutions. In this situation the Court held it unnecessary to bring a new decision on this matter, considering it as *res judicata*. The Court insisted that inasmuch as sovereignty implies integrity of the authorities, this integrity did not leave room for construing sovereignty as divided between the regions and the federal centre. From the Decision of 2000 it clearly follows that a net line is to be drawn between sovereignty of a state which belongs only to the Federation on the one hand, and autonomy of Federation’s republics on the other. Thus the Court demonstrated that its continuous doctrine resulted in treating 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 to say what this perspective was from the ideology of the Soviet legal science.

³³ Mintirmer Shajmiev, *On the 10th anniversary of State Sovereignty Declaration of Tatarstan – ten years on the road of strengthening of sovereignty* (29 August 2000) / <http://president.tatar.ru/pub/view/694>

³⁴ Alexei Trochev, *Judging Russia: Constitutional Court in Russian Politics: 1990-2006* (Moscow, 2008).

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 that other regions/provinces of Russia, and that the provisions of the federal treaties are not sources of the constitutional law equal to the Constitution itself, having only a transitory character. Resting on these findings, the Court also held 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 Court concluded that sovereignty is another term for territorial integrity. A particular sense was also attributed to the wording of art. 5 of the Russian Constitution which uses a 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 a kind of national autonomy which must disappear after the transitory period of the Russian history is over. This distortion of the plain meaning of words is characteristic for the new doctrine of the Court, which preferred to disregard the real significance the constitutional terms had in the early 1990s (being a equilibrium between the weak central power and separatist regions) and to invest into the Constitution the new political paradigms.

But the issue is still far from being resolved. Regionalism in Europe, the rise of international organizations powers and the globalisation processes give feedback to these tendencies so that there appeared a division in the Russian jurisprudence between partisans of the Westphalian system with centralised states on the one hand,³⁵ and the supporters of the free market and soft law ideology which purports to hollow out the sovereignty principle on the other hand.³⁶ Argumentation in favour of strong central power has become one of the main slogans of the ruling party (“United Russia”), which explicitly maintains that any decrease in the federal government’s power would ineluctably lead to the disintegration of Russia.³⁷ This slogan evidently goes along with the authoritarian assertions of the United Russia’s political program. At the same time, the liberals cannot hide that they are also aware that weakening of the central

³⁵ Vladimir Zorkin, “Apologia Vestfalskoj sistemy” (Apologia for the Westphalian System), *Rossijskaja gazeta* (22 August 2006).

³⁶ Cf. this line of argumentation in: William Pomeranz, “Postanovlenie Konstitucionnogo Suda Rossii o naznastnii gubernatorov subjektov Federatsii i osobye mneniya sudej o rossijskom federalizme” (The Decision of the Constitutional Court of Russia on appointment of the governors of the members of the Federation and the dissenting opinions of the judges about the Russian federalism), *Konstitucionnyj vestnik* (2008) No. 1, 272-283. Cf. the general discussion in: Amitai Etzioni, *From Empire to Community: A New Approach to International Relations* (Macmillan, 2004).

³⁷ On the theoretical level an example of this thinking is: Alpha Kajumova, “Suverenitet i jurisdiksija gosudarstva: problemy sootnoshenija” (Sovereignty and jurisdiction of a state: the problems of their correlation), *Konstitucionnoe i munistipalnoje pravo* (2008) No. 9.

bureaucracy is fraught with dangers of renewed claims of the national regions to independency and sovereignty. Using the idea of sovereignty is still a strong ideological device in Russia³⁸ and will remain so until a balance is found between the interests of the regional and federal elites, and until a comprehensive doctrine of the Federal Constitutional Court is formed.

Practice of the Constitutional Court³⁹

1. Decision of the Constitutional Court of Russia, as of 13th of March, 1993, No 2-P “The case of examination of constitutionality of the of some provisions of the Declaration of State sovereignty of Tartar SSR of 30th of August, 1991, of the Law of the Tartar SSR of 18th of April, 1991 “On changes and amendments into the Constitution (Basic Law) of Tartar SSR”, of the Law of the Tartar SSR of 29th November, 1991, “On plebiscite in the Tartar SSR”, of the Ruling of the Higher Soviet of the Republic of Tatarstan of 21st of February, 1992 “On plebiscite in the Republic of Tatarstan about the state status of the Republic of Tatarstan”
2. Decision of the Constitutional Court of Russia, as of 31st of July, 1995, No 10-P “The case of examination of constitutionality of the Decree of the President of Russia of 30.11.1994 No 2137 “On the 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 Ingushes”, of constitutionality of the Ruling of the Government of Russia of 9th of 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”, constitutionality of the Decree of the President of Russia of 02.11.1993 No 1833 “On the basic provisions of the Military Policy of the Russian Federation”
3. Decision of the Constitutional Court of Russia, as of 18th of January, 1996, No 2-P “The case of examination of constitutionality of the of some provisions of the Constitution (Basic Law) of Republic of Altay”

³⁸ 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, 1999); Henry E. Hale. *Why Not Parties in Russia? Democracy, Federalism, and the State*. (2006) New York, Cambridge University Press; Richard Sakwa, “Federalism and Democracy in the Russian Federation”, in Michael Burgess and Alain-G. Gagnon (eds), *Federal Democracies* (London and New York, Routledge, 2010), 202–31.

³⁹ All the decisions and other judicial acts of the Constitutional Court of Russia are accessible at the official site of the Court: <http://www.ksrf.ru/Decision/Pages/default.aspx>

4. Decision of the Constitutional Court of Russia, as of 1st of February, 1996, No 3-P “The case of examination of constitutionality of the of some provisions of the Constitution (Basic Law) of Chitinskaya Oblast”
5. Decision of the Constitutional Court of Russia, as of 24th of January, 1997, No 1-P “The case of examination of constitutionality of the of some provisions of the Law of the Republic of Udmurtia of 17th of April, 1997 “On the system of bodies of the state power in the Republic of Udmurtia ”
6. Decision of the Constitutional Court of Russia, as of 14th of July, 1997, No 12-P “The case of interpretation of the provisions of point 4 of article 66 of Constitution of the Russian Federation about the entering of an autonomous province into Kraj or Oblast”
7. Decision of the Constitutional Court of Russia, as of 10th of December, 1997, No 19-P “The case of examination of constitutionality of the of some provisions of the Constitution (Basic Law) of the Tambovskaja Oblast”
8. Decision of the Constitutional Court of Russia, as of 9th of January, 1998, No 1-P “The case of examination of constitutionality of Forest Code of the Russian Federation ”
9. Decision of the Constitutional Court of Russia, as of 7th of June, 2000, No 10-P “The case of examination of constitutionality of some provisions of the Constitution of Republic of Altay 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. Ruling of the Constitutional Court of Russia, as of 27th of June, 2000, No 92-O “In response to the inquiry of the group of the Russian Parliament members about congruency between the Constitution of the Russian Federation and Constitutions of the Republics of Adygeja, of Bashkortostan, of Ingushetia, of Komi, of the Northern Ossetia, and of Tatarstan”
11. Ruling of the Constitutional Court of Russia, as of 6th December, 2001, No 250-O “In response to the inquiry of the State Parliament of the Republic of Bashkortostan to give an interpretation to articles 5, 11, 71, 72, 73, 76, 77, and 78 of the Constitution of the Russian Federation”
12. Decision of the Constitutional Court of Russia as of 21st of December, 2005, No 13-P “The case of examination of constitutionality of some provisions of the Federal Law “On

the general principles of organization of Legislative and Executive bodies of the state power of the members of the Russian Federation in connection with the inquiries of some citizens”

13. Statement of the Constitutional Court of Russia as of 21st of April, 2009, “About the information on implementation of the Decisions of the Constitutional Court of the Russian Federation”

Mikhail Antonov
National Research University Higher School of Economics (Saint-Petersburg, Russia).
E-mail: antonov@hse.ru

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