

# The Russian Federation

Marat Salikov

Geographically, Russia is the world's largest country, with a land area of 17,075,200 square kilometres. It dominates northern Eurasia, stretching northward to the Arctic Ocean, eastward to the Pacific Ocean, and westward to Central Europe, and it is bordered by (among other countries) Azerbaijan, Belarus, China, Poland, and the Ukraine. Russia's population numbers about 145 million. Russians comprise the most numerous ethnic group (81.5 percent of the population), and Russian is the predominant language. However, Russia includes a variety of other ethnic groups, including Tatars (3.8 percent of the population), Ukrainians (3.0 percent), Chuvash (1.2 percent), and Bashkirs (0.9 percent). These groups tend to be geographically concentrated, and some groups retain their own language. The main religion is Russian Orthodox, although there is a substantial Muslim population and some representation of other religions. As of 2000 the per capita income was US\$4,200.

Russia has not only the world's largest national land area, but also one of its most complex federal systems. The Russian Federation combines both ethno-federalism and territorial federalism. Its 89 constituent units, typically referred to as "subjects of the federation," are divided into six different types -- republics, autonomous areas, one autonomous region, territories, regions, and federal cities -- although the asymmetrical features of this division have been muted since the adoption of the 1993 federation Constitution. This Constitution also gives federal constitutional status to local governments. In addition, it authorizes the president of the federation to enter into treaties with the executives of constituent units, further particularizing the allocation of power between the national government and the various subjects of the federation. Finally, in 2000 President Vladimir Putin superimposed seven federal districts on the federal structure, each with its own presidential representative, potentially introducing even greater complexity as well as hierarchy into Russia's federal system.

Putin's reform highlights another key aspect of Russian constitutionalism, namely its evolving character. The current Constitution of the Russian Federation dates from 1993, and the federal arrangements under it remain dynamic.<sup>1</sup> To understand the structure and operation of contemporary Russian constitutionalism and in particular its federal dimensions, one must examine the historical development of federalism in Russia.

## The Federation Constitution in Historical Context

### Creation of the Federation

Federalism was formally introduced by the federal Constitution of Russia in 1918. Before this date, however, there were precursors of federalism in Imperial Russia. These precursors involved tendencies toward federalization, or toward decentralization of a unitary state in favour of some autonomy for subunits. For example, although before 1918 Russia was a unitary state, several territories within the boundaries of the state -- such as Finland, Poland, and the Ukraine -- enjoyed special autonomy.<sup>2</sup>

The demise of Imperial Russia provided the occasion for the creation of a federation. Even before the Russian revolutions in February and October 1917, different plans for the structure of the Russian state had been proposed, including federative and quasi-federative models. For example, in 1905 the Party of Constitutional Democrats proposed the establishment of a bicameral parliament, with one house including representatives from local governments. At the same time, the Radical Party suggested the creation of a United States of Russia (i.e., a classic federation). Anarchists such as Mikhail Bakunin and Peter Kropotkin offered their own plans for an encompassing global federal

structure.<sup>3</sup> However, the Bolshevik (Communist) Party, headed by Vladimir Lenin, initially rejected the idea of federalism for Russia, insisting that it was necessary to retain a centralized, indivisible state.

The Communists' position shifted after they came to power in the October Revolution of 1917 and faced the outbreak of civil war. Lenin accepted a federal arrangement in order to combat disorder, win the support of non-Russian minorities, and prevent the disintegration of the country. The federation in Russia was instituted by the Declaration of the Rights of the Toiling and Exploited People, which was accepted on 10 July 1918 by the Fifth Soviet Congress. The legal establishment of the federal form of state structure occurred with the first written Russian Constitution in July 1918, which proclaimed that the Soviet regions could be united in autonomous regions and could "enter the Russian Socialist Federated Soviet Republic on a federal basis." Thus the stage of prefederal relations in Russia might also be regarded as its preconstitutional stage because the Russian Federation was created by Russia's first written constitution.

### Federal Development During the Soviet Era

The most significant federalist development during the Soviet era was the incorporation of the Russian Socialist Federated Soviet Republic (RSFSR) into the Union of Soviet Socialist Republics (USSR), which was officially proclaimed in 1924. Despite its professed commitment to "socialist federalism," the USSR was very much a unitary state, and policies of the RSFSR had to conform to those determined by the leadership of the USSR. The USSR was based on a one-party political system rooted in Marxist-Leninist ideology, with an emphasis on "democratic centralism,"<sup>4</sup> a centrally planned economy, and a powerfully repressive state machinery. The Constitution's apparent grants of power to constituent units were undermined by broad grants to the central government to set "general principles" for public policy as well as to legislate on all "questions of all-union significance." The Soviet system was administered through regional Communist Party officials, with each republic within the Soviet Union being headed by a first secretary of the Communist Party drawn from the indigenous population of the republic. These party secretaries functioned as envoys from the central government rather than as representatives of the regions in which they governed, and they remained dependent on Moscow rather than on local supporters for their political position. Thus a huge gap separated constitutional prescription and political practice, giving rise to a sort of fictive or sham federalism in which, among many other things, the constitutional right of secession was a dead letter.

What was true of the USSR was likewise true of the RSFSR; federalism was more a pretence than a reality. Nevertheless, two aspects of this fictive federalism should be highlighted. First, the adoption of the 1918 Constitution did not complete the USSR's federal development because federal relations changed as a result of constitutional amendments and the adoption of three new constitutions during the Soviet era (1924, 1936, and 1977). Second, federalism during the Soviet era set the stage for federalism under the Russian Federation by providing the underpinnings for its distinctive combination of ethno-federalism and territorial federalism. The RSFSR acknowledged the multiethnic character of its population by according special status -- as autonomous republics, *oblasts* (regions), or *okrugs* (areas) -- to areas in which non-Russian populations were concentrated, while creating purely territorial *oblasts* and *kraya* (territories) in areas in which the population was predominantly Russian. These territorial units did not have the status of subjects of the federation. Rather, they were governed directly by the central government and, therefore, their relations to the centre were unitary rather than federal in character.

The RSFSR's federal arrangements did not survive the dissolution of the Soviet Union and the move toward democratization. These developments transformed federal-regional relations, leading to greater assertions of autonomy by subjects of the federation. In the early 1990s, for example, when Boris Yeltsin declared that republics could take as much sovereignty as they could swallow, most

autonomous republics adopted Declarations of State Sovereignty that proclaimed their sovereign status. The Constitution was amended to eliminate the term "autonomous" from the title of the republics, the title RSFSR was replaced by "Russian Federation," and the territories, regions, and federal cities were all recognized as members of the new federation. However, under the three-part Federation Treaty of 1992,<sup>5</sup> signed by federal authorities and by all of the constituent units of the Russian Federation except Chechnya and Tatarstan, these new members did not enjoy rights equal to those of the republics. Only with the adoption of the 1993 Constitution, Russia's current constitution, were the equal rights of all subjects of the federation recognized. In this and other respects, this Constitution has played a crucial role in promoting democratic reform and encouraging the development of federalism.

## Constitutional Principles of the Russian Federation

### The Status of Subjects of the Federation

Whereas the federation as a whole is sovereign, its constituent units are not. This was confirmed by the Constitutional Court in a 2000 case involving the Republic of Altai's assertion that it was a sovereign republic. The Court concluded that the federation Constitution does not recognize any source of power other than the multinational people of Russia; therefore, it does not presume any sovereignty other than the sovereignty of the Russian Federation. The sovereignty of the federation precludes the existence of two orders of sovereign power, each enjoying independence in a single system of state power; consequently, it does not allow for even "limited" sovereignty on the part of republics or of any other unit of the Russian Federation.<sup>6</sup>

Yet, although the constituent units lack sovereign authority, they still enjoy considerable autonomy, and their position in the federation is guaranteed in a number of ways, including the following. First, all constituent units of the federation are recognized as self-governing entities, a shift from the Soviet era when only ethnically based units were recognized as subjects of the federation. All units are now free to adopt their own constitution or charter (quasi-constitution) without seeking approval from federal bodies (as had been required during the Soviet era). They may, therefore, design their own government institutions, allocate power among these institutions, and set the terms of office and modes of selection for officials. However, under the federation Constitution's supremacy clause, federal law is given precedence over these subnational constitutions, and therefore the provisions of these constitutions must conform to federal constitutional requirements. Thus the constitutional arrangements must be based on the fundamental principles of the Constitution (e.g., the separation of powers and a republican form of government) and on the general principles for the formation of legislative and executive bodies that are fixed in federal law.

Second, the territorial integrity of the subjects of the federation is guaranteed. Their borders cannot be changed without their consent as well as the consent of the Federation Council. The constituent units do have the right to merge -- that is, to join with another subject of the federation to form a new constituent unit -- but only under procedures established by federal law. In recent years, there have been proposals to encourage such mergers, given the small size and economic difficulties of some subjects of the federation -- for example, to merge the Perm region with the Komi-Permyak autonomous area and to merge the Irkutsk region with the Ust-Ordyn Byurat autonomous area.

Third, each constituent unit has its own name and is free to change it. As all component units are listed in the federation Constitution, the question arose as to how the new name of a constituent unit would become included in the Constitution. In its decision of 28 November 1995, interpreting Article 137, Section 2, of the Constitution, the federal Constitutional Court ruled that changes in the name of a constituent unit are incorporated in the text of the Constitution by a decree of the president of the Russian Federation, once a constituent entity has adopted a new name according to a procedure of its

own choosing. However, a change of name that affects the foundations of the constitutional system, human and civil rights and freedoms, the interests of the other constituent units of the federation, the interests of the federation as a whole, or the interests of other states and that presupposes a change in the composition of the federation or in the constitutional legal status of the constituent units, cannot be accomplished under this procedure.<sup>7</sup> Moreover, the legal status of a constituent unit may be changed only with mutual consent of the federation and the constituent unit in accordance with the federal constitutional law.

Fourth, subjects of the federation can protect their interests against federal intrusion. They are represented in the Federation Council, which is one chamber of the bicameral parliament (i.e., the Federal Assembly). Each constituent unit has two representatives, one from its legislature and the other from its executive. If the federal government challenges their authority, constituent units can seek protection from the Constitutional Court. However, the federation can protect its interests against centrifugal tendencies. It can establish its own agencies in the component units; for example, federal bodies with executive power (e.g., ministries, services, agencies, and state committees) maintain branches in the constituencies.

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

Thus far, this chapter has emphasized features common to all subjects of the federation. The 1993 Constitution confirms the equal legal status of these units. Each has equal representation in the federal government, can devise its own institutions, can exercise legislative authority, and so on. Further, Article 72, Section 2, which lists the concurrent powers of the federation and its component units, states that "the provisions of this Article shall equally apply to the republics, territories, regions, federal cities, the autonomous region and autonomous areas." Nevertheless, this asserted equality of rights is in tension with the diversity among the constituent units and even with other legal authority, namely the Federation Treaty of 1992 -- although this treaty was demoted to subordinate status in Section 2, Point 1, of the 1993 Constitution. I turn, therefore, to the six types of constituent units that make up the Russian Federation.

### The Diversity of Constituent Units

The subjects of the federation include 32 ethnically based units (21 republics, ten autonomous areas, and one autonomous region) and 57 territorial units (six territories, 49 regions, and two federal cities). Of the 32 ethnically based constituent units, only nine have a native ethnic population that constitutes more than 50 percent of the population: the Aginsky Buryat autonomous area, the Komi-Permyak autonomous area, the Kabardin-Balkar Republic, the Republic of Dagestan, the Republic of Northern Ossetia-Alania, the Republic of Tatarstan, the Republic of Tyva, the Chechen Republic, and the Chuvash Republic.

The federation's constituent units vary dramatically in population, size, and economic development. Seven constituent units boast populations of more than 3 million, while eleven have fewer than 300,000 inhabitants. Six units encompass more than 500,000 square kilometres, while six include less than 20,000 square kilometres. Several are economically prosperous, such as the Tyumen region, Sakha (Yakutia), Sverdlovsk, and Krasnoyarsk, while others are economically backward, such as the Penza region, the Republic of Mordovia, the Republic of Tuva, and the Republic of Dagestan.

Nine out of ten autonomous areas and Russia's two federal cities -- Moscow and St Petersburg -- are located wholly within the borders of other constituent units. This circumstance requires these compound units to forge agreements regulating areas of mutual concern. Among the compound constituent units are the Nenets autonomous area (inside the Arkhangelsk region), the Komi-Permyak autonomous area (inside the Perm region), the Ust-Ordyn Buryat autonomous area (inside the Irkutsk region), the Aginsky Buryat autonomous area (inside the Chita region), the Koryak autonomous area (inside the Kamchatka region), the Khanty-Mansi and Yamal-Nenets autonomous areas (inside the Tyumen region), and the Taimyr (Dolgan-Nenets) and Evenk autonomous areas (inside the Krasnoyarsk region).

### Republics

Republics resemble nation-states in several respects. They have their own constitutions, while other constituent units have charters; they have state languages that are used in legislation, administration, and schools along with Russian (the official language of the federation); they have the right to establish constitutional courts (which has been done by about half of the republics), while other constituent units have charter courts; the heads of the republics are usually denominated as presidents, while those in other constituent units are called governors; and the republics have capitals, while other subjects of the federation have so-called administrative centres. Most of these distinctive features of the republics have historical roots, reflecting the fact that the republics were members of the Russian Federation from the outset. But under the 1993 Constitution, these differences are matters more of terminology than of substance and do not detract from the equality of rights among constituent units proclaimed in the Constitution.

### The Autonomous Region and the Autonomous Areas

The autonomous region and autonomous areas, which are commonly called "autonomies," were designed to reflect the distinctive ethnic composition of the populations they contain. Historically, these jurisdictions were -- and many still are -- less developed economically; thus previous Russian constitutions contained economic and social-welfare guarantees for these units, some of which have been carried over in the current Constitution. For example, whereas the status of other constituent units is determined by the federation Constitution and by regional constitutions or charters, in the case of autonomies, their status can be determined not only by federal and regional constitutional legislation, but also by a special federal law that can be adopted on the initiative of one or more of the autonomies. (To date none has proposed such an initiative.) Nevertheless, in view of the Constitution's equal-rights clause, there is little basis for distinguishing the autonomies from other subjects of the federation.

### The Territories and the Regions

Historically, territories (*kraya*) had autonomous regions within their borders, whereas regions (*oblasts*) did not. Because this distinction no longer exists, the difference between these constituent units is a matter of terminology rather than substance. Both territories and regions are based on territory rather than ethnicity and are populated mostly by Russian speakers. These constituent units were recognized as members of the federation in 1992 when the Federation Treaty was signed.

### The Federal Cities

Like the regions, the two federal cities -- Moscow and St Petersburg -- are based on territory, not on ethnicity. They contain mostly Russian populations and were recognized as members of the federation in 1992. What distinguishes the federal cities is that they are both cities and constituent units of the federation (thus resembling the three *Land* cities in Germany). These enclaves are situated within the



territory of other units. Moscow is surrounded by the territory of the Moscow region, and St Petersburg is surrounded by the territory of the Leningrad region. Moscow has a particularly complicated status, with four distinct legal identities. It is simultaneously a city, a constituent unit of the federation, the administrative centre of another constituent unit (the Moscow region), and the capital of the Russian Federation.

### Local Government

Article 12 of the Constitution recognizes a right of local self-government that citizens exercise directly through referenda and elections and indirectly through the institutions of local government. The Constitution grants these local governments constitutional status and guarantees to them a range of independent powers. This represents a major innovation. In the past, local governments in Russia had no independent authority but were controlled by higher levels of government. The new status of local governments has not yet been fully assimilated, as uncertainty about the division of powers between the subjects of the federation and local governments has led to numerous conflicts.

The federation Constitution assigns the structuring of local government to both the federation and the constituent units of the federation as a joint power. Under this arrangement, the federation has promulgated framework legislation for the organization of local government -- the federal Law on General Guidelines for the Organization of Local Self-Government in the Russian Federation. Most subjects of the federation have adopted their own laws that regulate the field of local government in detail. However, the Constitution imposes limits on what subjects of the federation may prescribe, as shown by the Constitutional Court's invalidation in 1997 of the Udmurtian Republic's Law on the System Governing the Organs of State Authority in the Udmurtian Republic.<sup>8</sup>

The Udmurtian Constitution had dealt with the structuring of local government within the republic. It listed the *raions* (territorial units that may include more than one municipality) and main cities as territorial administrative entities of the Republic of Udmurtia. However, it did not give this status to territorial entities at a different level, namely to *raion* capitals, towns, and villages within the *raion* and other urban areas (such as parts of towns, subdistricts, and residential complexes). For this reason, the Court held that the legislature of the republic could not create structures of government for these latter entities. Because these entities are not part of the state authority system, only the local citizenry exercising its power of self-government has the authority to determine their governmental structure. For the Republic of Udmurtia to intervene and set up governing structures thus violated the federal constitutional right of citizens to exercise local self-government.

As this example indicates, under Article 133 of the Constitution, the judiciary plays an important role in guaranteeing local self-government. Chapter 8 of the Constitution, which is devoted to local government, ensures that the local population retains authority over local issues, such as the ownership, use, and disposal of municipal property, the approval and execution of the local budget, the establishment of local taxes, and the maintenance of law and order. Either the federation or a subject of the federation may grant to local governments additional state powers, which are exercised under the supervision of the granting government. However, the Constitution requires that the granting government provide the material and financial resources necessary to carry out these transferred responsibilities.

### Indigenous Peoples

The Constitution recognizes rights of indigenous peoples in two ways. First, some peoples enjoy the status of a member of the federation. For instance, ten autonomous areas have been created for the aboriginal peoples of Siberia, the North, and the Far East. Second, the Constitution imposes a responsibility on both the federal and regional governments for guaranteeing the rights of indigenous

peoples. Thus Article 71 empowers the federal government to regulate and protect the rights of national minorities, and Article 72 empowers both the federal government and the constituent units to protect the rights of ethnic minorities as well as the original natural environment and traditional way of life of small ethnic communities. Acting under this authority, the Federal Assembly enacted a federal Law on Guarantees of the Rights of the Aboriginal Small Peoples of the Russian Federation that grants the right to create different types of communities in order to preserve and develop the original environment, traditional way of life, and culture of aboriginal peoples having small populations. Some constituent units have established a fixed number of seats in their legislatures for the representatives of aboriginal peoples in order to ensure that their interests are taken into account in adopting new laws.

### Allocation of Powers

Under the Soviet constitutions, power was centralized, and the constituent units had few powers. With the fall of the Soviet Union in the early 1990s, latent conflicts emerged in Russia over the allocation of powers. The republics sought to maintain their exclusive status, while some strong regions demanded an equality of rights with the republics. The Sverdlovsk region even proclaimed itself the Urals Republic, but the central government refused to recognize this change in status. The Federation Treaty between the federal government and the governments of almost all the constituent units, signed in 1992, proposed one solution to this conflict, namely distinguishing between federal powers and concurrent powers, with republics being awarded more concurrent powers than were other constituent units. Bilateral treaties between the federal government and regional governments further complicated the allocation of powers.<sup>9</sup> The 1993 federation Constitution rejected the Federation Treaty's approach and asserted an equality of rights for all constituent units, assigning the same concurrent powers to all constituent units, such that republics and nonrepublics alike now have equal powers.

### Federal Powers

Article 71 of the Constitution assigns to the federal government those powers that concern the country as a whole. These include the adoption and amendment of the Constitution and federal laws; supervision of the implementation of federal law; the establishment and organization of the federal legislative, executive, and judicial branches; the regulation and protection of rights and liberties; the establishment of criteria for citizenship; and the delineation of federal state property and of how it is to be managed. Article 71 also lists the branches of law on which the federal government may legislate, including criminal law, civil law in its procedural aspects, and intellectual property. Article 76, Section 1, states that on issues within the jurisdiction of the Russian Federation, federal constitutional provisions and laws shall have direct effect throughout the entire territory of the federation.

### Concurrent Powers

The sphere of concurrent powers is the most complicated and innovative aspect of the Russian Federation's system of allocation of powers, and both the federal and regional governments are still experimenting with how best to allocate and implement these powers. Among the concurrent powers listed in Article 72 are the establishment of general guidelines for organizing the institutions of state power and local self-government; regulation of the possession, use, and management of land, mineral resources, water, and other natural resources; delimitation of state property; protection of historical and cultural monuments; general questions of upbringing, education, science, culture, physical culture, and sports; establishment of general guidelines for taxation and levies in the Russian Federation; and protection of the original environment and the traditional way of life of small ethnic communities. Both the federal and regional governments have the authority to adopt acts in the fields of administrative, administrative-procedural, labour, family, housing, land, water, and forestry legislation

as well as in matters of legislation regarding the subsurface (e.g., minerals) and environmental protection. Article 76, Section 2, of the Constitution confirms that in matters within the concurrent jurisdiction of the Russian Federation and its constituent units, federal law is supreme and that subjects of the federation may adopt only laws and regulations that are consistent with federal law.

### Powers of the Subjects of the Federation

Although the Constitution does not list regional powers, Article 73 indicates that those powers that do not fall within the jurisdiction of the Russian Federation or within the joint jurisdiction of the Russian Federation and its component units shall be exercised by the subjects of the federation. If a list of regional powers were drawn from the constitutions and charters of the constituent units, it would likely include the adoption and amendment of regional constitutions or charters and laws plus measures designed to ensure compliance with them; the structure and territory of the component units; the establishment of regional bodies both of legislative, executive, and judicial power and of local self-government; the management of regional state property; and fiscal powers, including preparation of the regional budget, imposition of regional taxes and levies, and expenditures of regional funds.

### Recent Initiatives

Although the federation Constitution confirms the precedence of federal law over conflicting laws of the subjects of the federation, the enactment of regional legislation incompatible with federal law emerged as a serious problem during the initial years of the Russian Federation. This sparked a concerted effort to eliminate this contradictory legislation during President Vladimir Putin's early years in office. Relying on the prosecutor's office, the federal courts, and presidential representatives in federal districts, Putin was able to get rid of most of the contradictory regional legislation quite quickly, although there was considerable nonviolent resistance by some subjects of the federation.

Another presidential initiative with important implications for federalism involves the formation by presidential decree of seven so-called federal districts -- the Central district, Northwest district, South district, Urals district, Siberian district, Privolzhsky district, and Far East district -- each made up of six to seventeen constituent units.<sup>10</sup> The Constitution does not provide for the creation of such districts; thus the districts are not constituent members of the federation and do not have the powers of subjects of the federation. The federal districts are administered by representatives appointed by the president, whose responsibilities are to coordinate the activity of all federal bodies situated in the district; to promote cooperation among federal, regional, and local bodies as well as among political parties and public and religious associations; and to oversee the implementation of laws, decrees, and regulations of the president and the federal government. Some commentators suggest that the federal districts serve to ensure the integrity of the federation and to control centrifugal tendencies, while other commentators view them as a centralizing mechanism inconsistent with federalism. Whichever interpretation is correct, it may be that these districts will serve as a basis for merging existing constituent units and creating newly consolidated subjects of the federation.

### Structure and Operation of the Federal Government

The 1993 Constitution establishes a system of separation of powers, with the executive power vested in the president and the government; the legislative power located in a bicameral Federal Assembly consisting of the Federation Council and the State Duma; and the judicial power residing in the Constitutional Court, the Supreme Court, the Supreme Arbitration Court, and the lower federal courts.

The Constitution assigns broad powers to the president, which enable him to play a leadership role, even a dominant role, in the federal government and in the federation as a whole. This feature of the constitutional design reflects the circumstances in the country at the time the Constitution was



drafted. It was widely believed that Russia needed very strong leadership in order to confront the myriad challenges associated with the transition to a democratic polity and market economy in the 1990s as well as to combat centrifugal tendencies within the Russian Federation in order to prevent it from dissolving, as had the Soviet Union. Significant opposition to this model did develop, particularly among left-wing parties. There was even an alternative draft constitution circulated that provided for a parliamentary republic with a weak president.

Ultimately, however, the position espoused by President Yeltsin, a presidential republic with a very strong presidency, prevailed. President Putin's approach to his broad powers has been more cautious and secretive than that of his predecessor. For instance, unlike Yeltsin, he has never used his power to dissolve Parliament. Indeed, Yeltsin's disbanding of Parliament in September 1993 via Decree 1400 was an extraconstitutional act that had no legal basis in the then governing RSFSR Constitution. Under the 1993 Constitution, the president does have the power to dissolve Parliament under certain circumstances. Yeltsin threatened to use this power several times, but never did so. By contrast, in an address to the Federal Assembly in 2003, Putin announced his willingness to form the government based on the results of the parliamentary elections, although the Constitution does not require this of him.

### The Federal Legislature

Legislative powers are vested in the bicameral Federal Assembly. The upper house, the Federation Council, has 178 seats, which are filled by executive and legislative representatives from each of the 89 constituent units, with members serving terms equal to the terms of the regional executive and legislature but not exceeding five years. The Federation Council is an unusually strong upper house. It has the power to approve changes of borders between constituents of the Russian Federation; approve presidential decrees on the introduction of martial law and a state of emergency; call elections for the presidency; impeach the president; appoint the judges of the Constitutional Court, the Supreme Court, and the Supreme Arbitration Court; and review all bills passed by the State Duma.

The lower house of the Federal Assembly, the State Duma, includes 450 members, with half elected by proportional representation from the party lists of parties winning at least 5 percent of the vote and the other half elected from single-member constituencies. Members are elected by direct popular vote for four-year terms. The State Duma has broad power, in conjunction with the Federation Council, to enact legislation on subjects on the federal- or concurrent-powers lists. In addition, the State Duma can grant consent to the president for the appointment of the chairman of the government, conduct votes of confidence on the government, appoint and dismiss the chairman of the Central Bank, bring charges against the president for his impeachment, pass federal laws, and undertake other responsibilities.

### The Federal Executive

The president of the Russian Federation is the head of state and defines the basic domestic and foreign-policy guidelines for the country. The president is directly elected for a term of four years by the citizens of the Russian Federation by secret ballot, and no one may hold the office of president for more than two successive terms.

The president serves as supreme commander in chief of the armed forces and appoints and dismisses the supreme commander of the armed forces. In addition, he can appoint the chairman of the government, with the consent of the State Duma; decide on the resignation of the government; dissolve the State Duma in circumstances stipulated in the Constitution;<sup>11</sup> form and lead the Security Council; introduce draft laws in the State Duma; sign and publish federal laws; conduct negotiations with foreign nations and sign international treaties in the name of the Russian Federation; issue decrees and

executive orders; resolve issues of citizenship in the Russian Federation; and grant political asylum. In undertaking these responsibilities, he is assisted by the Presidential Administration, which provides staff and policy support to the president, drafts presidential decrees, and coordinates policy among government agencies.

### The Federal Judiciary

The Constitution provides for a federal judicial system consisting of the Constitutional Court, a subsystem of general courts headed by the Supreme Court, and a subsystem of arbitration courts headed by the Supreme Arbitration Court.

The Constitutional Court was initially established in 1991, consisting of 15 judges (only 13 were actually appointed). The Constitution in operation at this time and the Law on the Constitutional Court (adopted on 12 July 1991)<sup>12</sup> granted the Constitutional Court full powers and proclaimed it to be the supreme judicial body charged with protecting the constitutional system. The Court is empowered to try cases on the constitutionality of international treaties and statutory acts (e.g., laws, presidential decrees, and government regulations), to regulate the activities of political parties and other public associations, to oversee law-enforcement practices, to settle jurisdictional disputes among various government entities, and to resolve other cases as prescribed by law. Under the law, the Court has authority to take up cases on its own initiative. The creation of the Constitutional Court marked a major shift in the government of Russia. With the short-lived exception of the USSR's Committee on Constitutional Supervision,<sup>13</sup> never before had there been a specialized body to ensure conformity with the Constitution, and never before had the judiciary served as a counterbalance to legislative and executive powers.

The operation of the Constitutional Court must be divided into two periods: up to late 1993 and since mid-1994. During the earlier period, the Court issued several important rulings protecting the rights of citizens. For example, it invalidated dismissal from office on the basis of age as a violation of the right against discrimination, and it struck down an eviction from an unlawfully occupied housing unit, which had been approved by a prosecutor but which had afforded the evicted no right to lodge a complaint against the prosecutor's action. The Court held that this restricted the right to judicial protection. The Court confirmed the principle of equality in contractual relations between the state and a citizen. It also responded to citizen complaints by acknowledging the responsibility of the state to meet its obligations concerning special-purpose cheques<sup>14</sup> for the purchase of cars and indexation<sup>15</sup> of citizens' money incomes and savings. However, unfamiliar with the political limits on supreme courts in other democratic systems, the Constitutional Court let itself become embroiled in the political conflict between President Yeltsin and Parliament in 1993, thereby sacrificing its reputation for independence and impartiality. This involvement led several judges who did not agree with the Court's stance to refuse to participate in its work; thus, unable to proceed with only part of its membership, the Court ceased to operate in October 1993. President Yeltsin, moreover, issued a decree suspending the Court in October 1993. The Constitutional Court was reconstituted only after the federation Constitution was adopted and a new federal Law on the Constitutional Court of the Russian Federation was enacted in July 1994.<sup>16</sup>

Under this new law, the Court's membership was increased to 19. The president nominates candidates for appointment to the Constitutional Court, and the Federation Council may either accept or reject these nominees. Members of the Court must meet several qualifications. They must be no younger than 40 years of age and citizens of the Russian Federation, with a legal education, a widely recognized high level of qualification in the field of law, an irreproachable reputation, and at least 15 years of legal experience. Judges on the Court serve a single 15-year term or until they reach the retirement age of 70.

The main responsibilities of the Constitutional Court continue to be to interpret the federation Constitution and, through the exercise of judicial review, to ensure that the legislation and other acts of the Russian Federation and its constituent units comply with constitutional mandates. The power of the Court was enhanced in 2001 by an amendment to the Law on the Court, under which, when regional authorities disobey Court decisions and/or refuse to take required action, the regional legislature may be dissolved and the regional governor removed from office.

Cases come to the Constitutional Court directly from citizens alleging violations of their constitutional rights and on request from lower courts that the Court review the constitutionality of a law applied or due to be applied in a specific case. Other cases reach the Court on request by the president, the State Duma, one-fifth of either the members of the Federation Council or the deputies of the State Duma, the government, the Supreme Court, the Supreme Arbitration Court, and the legislative and executive branches of subjects of the Russian Federation.

Since 1994 the Constitutional Court's federalism rulings have not consistently favoured either the federal government or the regional governments, although they have confirmed that the Court stands for an indivisible Russian state. What is striking is that the number of cases coming to the Court that deal with human rights and liberties has increased considerably. Emblematic is a 1996 ruling<sup>17</sup> in which the Court struck down the acts of a number of subjects of the federation that regulated the registration of citizens, holding that they violated the civil right to freedom of movement and choice of residence. This case reveals that the Court is quite willing to address possible violations of, or restrictions on, fundamental rights and freedoms, even in cases that arise from requests by state bodies rather than from citizen complaints.<sup>18</sup> However, the Court does face challenges, as indicated by the fact that this ruling was not implemented by the city of Moscow, the main offender, because the city's mayor pleaded special circumstances.

The Supreme Court of the Russian Federation is the highest judicial body dealing with civil, criminal, administrative, and other matters justiciable by general-jurisdiction courts. Its judges are nominated by the president and appointed by the Federation Council. The Supreme Court hears appeals from the lower federal courts, including general courts operating within the constituent units of the federation (one court in each unit), general courts operating within municipalities (e.g., district courts and city courts), and military courts operating in military units. It will also oversee the rulings of the specialized courts (e.g., administrative courts, labour courts, and juvenile courts) once they are established.

The Supreme Arbitration Court, whose judges are nominated by the president and appointed by the Federation Council, is the highest judicial body for resolving economic disputes concerning sales contracts, property, taxes, evaluation of acts of taxation bodies, insolvency (bankruptcy), loan contracts, insurance, the proclamation of acts of state bodies and other official bodies null and void, and other like matters. The Supreme Arbitration Court supervises the activity of lower arbitration courts, which include 82 arbitration courts operating within the constituent units of the federation and ten district arbitration courts to which the rulings of these lower courts can be appealed.

#### Institutions of the Constituent Units

Article 77 of the Constitution grants the subjects of the federation the authority to establish their own government institutions, provided that they are in accordance with the basic principles of the constitutional system of the Russian Federation and the general principles governing the organization of legislative and executive bodies found in federal law. The pertinent law was adopted in 1999: the Law on General Principles of the Organization of Legislative (Representative) and Executive Bodies of Power of the Constituent Units of the Russian Federation.<sup>19</sup>

## Legislatures of the Constituent Units

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

The membership of regional legislatures ranges from 11 in the Taylmyr (Dolgan-Nenets) autonomous area to 190 in the Republic of Bashkortostan. Most regional legislatures are unicameral, but some republics have established bicameral legislatures -- for example, the Republic of Bashkortostan's State Assembly-Kurultayi consists of a House of Representatives and a Legislative House. Among territorial constituent units, only the Sverdlovsk region's Legislative Assembly consists of two chambers: the House of Representatives and the Regional (Oblastnaya) Duma. Under federal law, the term of office for regional legislators cannot exceed five years.

In the years immediately following the adoption of the federation Constitution, the Constitutional Court closely supervised the organization of regional powers to ensure that they did not violate constitutional mandates. A key case involved the Altai territory, where the Legislative Assembly had assigned itself broad powers over the executive branch, including the right to elect the head of the administration, to review the structure of the administrative council, and to remove members of the administration through a vote of no confidence. In addition, the chairman of the Legislative Assembly was assigned the right to sign laws into being. In January 1996, the Constitutional Court invalidated this attempt to subordinate the executive.<sup>20</sup> Although it recognized that Article 77 of the Constitution authorizes constituent units to establish their own systems of government, the Court emphasized that regional institutions must conform to the Russian Constitution and its principle of separation of powers. Altai's charter violated this requirement by not creating a proper system of checks and balances, thereby allowing a single branch of government to both approve and promulgate laws. In addition, Altai transgressed Article 3, Section 2, of the Constitution by providing for indirect election of the head of the executive branch rather than for a direct expression of the people's will.<sup>21</sup>

More recently, enactment of the federal Law on General Principles of the Organization of Legislative (Representative) and Executive Bodies of Power of the Constituent Units of the Russian Federation has provided the regions with clearer guidelines as to how regional governments can be organized without violating the principle of separation of powers.

## Constituent-Unit Executives

Just as regional legislatures have different names, so also do the executive officials in the constituent units of the federation. In most republics, the title for the highest official is president, although some republics use other titles, such as the head of the republic (the Republic of Komi), chairman of the government (the Republic of Karelia and the Republic of Khakassia), or chairman of the state council (the Republic of Dagestan). The other constituent units use the title of governor for their top official.

The president (or governor) of a constituent unit is elected by its residents for a term of no longer than five years on the basis of a general, equal, and direct vote by secret ballot. No person may hold this office for more than two consecutive terms. The federal Law on General Principles of the Organization of Legislative (Representative) and Executive Bodies of Power of the Constituent Units of the Russian Federation requires that the highest official of the constituent unit be at the same time the head of the regional government. The president (or governor) exercises many of the same powers exercised by the president of the federation. He or she appoints the regional government, decides on a



resignation of the government, introduces draft legislation, signs and publishes regional laws, vetoes regional laws, conducts negotiations and signs international agreements, issues decrees and executive orders, and dissolves the legislature in circumstances stipulated in his or her region's constitution (or charter).

### Constituent-Unit Judiciaries

The federal Law on the Judicial System of the Russian Federation authorizes two types of regional courts: justices of the peace and constitutional (charter) courts. Justices of the peace, like the federal courts of general jurisdiction, consider a wide range of civil and criminal cases. However, they occupy a position at the lowest level of the judicial hierarchy, just below municipal courts. A district or a city is divided into several sectors, and a justice of the peace sits within each.

Although justices of the peace are considered to be regional courts, they are, in actuality, federal because they act under federal law, implement federal law, and are even financed in part (i.e., justices' salaries) from the federal budget. The federal Law on Justices of the Peace in the Russian Federation specifies their jurisdiction and the legal effects of their decisions. Constituent units of the federation may regulate how justices of the peace are appointed, but federal law prescribes that they must either be appointed by the regional legislature or be elected by the population of the judicial district. The federal Civil Procedural Code and the Criminal Procedural Code detail the procedural rules governing justices of the peace and confirm that the decisions of justices of the peace may be appealed to the federal courts.

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

A regional constitutional (charter) court is responsible for interpreting the constitution or charter of its constituent unit. These courts also exercise judicial review by resolving disputes over whether the laws and other actions of the regional and local governments are consistent with the regional constitution or charter. The jurisdiction of the regional constitutional and charter courts was established by Article 27, Section I, of the Law on the Judicial System of the Russian Federation. However, two republics (Tatarstan and Bashkortostan) challenged the law, arguing that it unconstitutionally narrowed the jurisdiction of the regional constitutional courts. In 2003 the federal Constitutional Court agreed, ruling that the jurisdiction awarded in this law could not be considered exhaustive lest it conflict with Article 27, Section 1, of the federation Constitution. The Court therefore held that constituent units may grant additional powers to their constitutional courts, provided that these powers are consistent with the aims of these courts and do not intrude upon the jurisdiction of the federal courts.<sup>22</sup>

The decisions of regional constitutional (charter) courts are final and cannot be appealed to any federal court of general jurisdiction or to the federal Constitutional Court. The only exception (which is quite rare) is when a case can be considered by both the federal Constitutional Court and a regional constitutional (charter) court -- for example, when a treaty between the federal and regional governments is at issue. Then a party dissatisfied with the decision of a regional constitutional (charter) court may apply directly to the federal Constitutional Court. If the federal Constitutional Court reaches a different decision, its ruling will be authoritative.

### Interjurisdictional Relations



Article 8 of the Constitution guarantees unity of economic space; the free movement of goods, services, and financial resources; support for economic competition; and freedom to undertake any economic activity throughout the Russian Federation. Article 74 prohibits customs frontiers, duties, levies, or any other barriers to the free movement of goods, services, or financial resources within the federation, but it permits federal law to impose restrictions on the movement of goods and services if necessary to protect the people's safety, lives, or health, the natural environment, or cultural values. The subjects of the federation have no power to establish such restrictions; they may only be imposed by federal law and then only for constitutionally envisaged aims.

The Russian Constitution does not contain any provision that expressly requires subjects of the federation to give mutual recognition to each other's legal acts. However, all acts of constituent units that were adopted through lawful procedures are binding on the whole territory of the federation. For example, according to the federal Family Code, the middle name of a child is determined by the name of a child's father. However, not all peoples living in the Russian Federation have a tradition of giving a child a middle name. The subjects of the federation, therefore, determine whether to fix a middle name or not. If a particular subject makes no requirement for a child's middle name, this act will be binding on the territories of all other subjects of the federation. Generally, the Constitution places family law within concurrent jurisdiction, which means that subjects of the federation can legislate if there is no overriding federal law. If there is a federal act, it overrides regional laws. For example, Article 1 of the federal Family Code defines marriage as a union of a man and a woman; consequently, subjects of the federation cannot legalize homosexual marriages.

Given that Article 71 proclaims the regulation of the rights and liberties of the human being and citizen to be a federal power, the federal authorities are responsible for providing equal status for all citizens, no matter from what subject of the federation they come. The Constitutional Court has in several decisions confirmed that subjects of the federation have no power to enact any law that discriminates against residents from other constituent units within the federation. In 1996, for example, the Court struck down a law that imposed a tax on nonresidents of Moscow who came to live in the city and purchased an apartment there.<sup>23</sup>

Because criminal law is a federal power, crimes are tried in federal court, unless the punishment for a crime is two years of imprisonment or less, in which case it is tried by a justice of the peace. However, both federal courts and justices of the peace apply the federal Criminal Code of the Russian Federation in trying cases. Extradition of criminals who flee from one constituent polity to another is thus not an issue in Russia because any court will apply federal criminal law. The issue of regional courts' jurisdiction could arise in civil cases if a resident of one constituent unit sued a resident of another constituent unit in a justice-of-the-peace court. In such a situation, the federal procedural code prescribes that the residence of the defendant determines the court in which the case is heard.

### Fiscal Federalism

The Constitution lists the establishment of the general principles of taxation and the imposition of taxes among the joint powers exercised by the Russian Federation and its constituent units. Operating under this authority, the federal government has devised a tax code to replace the contradictory and confusing mass of tax laws that had prevented the efficient operation of the government. In 1998 the first part of the Tax Code of the Russian Federation was enacted, establishing the system of taxes and duties collected for the federal budget. It outlines the common principles of taxation and taxes in the Russian Federation, including the types of taxes and duties; the procedure for collecting taxes and duties; the rights and duties of taxpayers, tax institutions, and other participants in the tax system; the mechanisms by which tax laws and obligations are to be enforced; and the penalties for nonpayment of taxes. The second part the Tax Code discusses various types of taxes and duties in detail. Enacting federal tax

legislation was a major step in restoring the integrity of fiscal federalism because the legislation put an end to the tax concessions granted earlier by the national government to some subjects of the federation through bilateral treaties.

At present, all three orders of government -- federal, regional, and local -- impose taxes and duties. The chief federal taxes and duties include the value-added tax, the income tax, fees for the use of natural resources, taxes on corporate profits, federal license taxes, excises, and the ecological tax. The level of taxes that constituent units pay to the federal budget varies considerably. For example, in 2002 the total amount of profit tax contributed to the federal budget was 180 billion rubles. Of this total, Moscow paid 85 billion rubles, the Khanty-Mansi autonomous area paid 18 billion rubles, and St Petersburg delivered 11 billion rubles, while the Koryak autonomous area paid only 64 million rubles, the Komi-Permyak autonomous area paid 54 million rubles, the Republic of Tyva remitted 28 million rubles, and the Ust-Ordyn autonomous area delivered 14 million rubles.

Constituent units can impose regional taxes, but the federal Tax Code limits their authority. Regional legislatures can establish tax rates (for taxes within their authority), determine the order and terms of payment of taxes, and prescribe the system of tax reporting. But they cannot introduce new taxes that are not specified in the Tax Code. The regional taxes and duties include property taxes for organizations, real-estate taxes, highway taxes, transport taxes, taxes on gambling, regional license taxes, sales taxes, and others. Revenues gleaned from the property tax for organizations are divided equally between regional budgets and local budgets.

As of 1 January 2003, 74 constituent units had introduced sales taxes, most at the 5 percent level. Revenues from the sales tax are funnelled into the budgets of the subjects of the Russian Federation (40 percent) and into local budgets (60 percent). The sales tax is not the main source of revenue for constituent units. Some constituent units have not established it, and in those that have, some enterprises do not pay the sales tax because they use a so-called simplified system of taxation. Nevertheless, in those subjects of the federation that have introduced the sales tax, it has replaced various regional taxes, such as the tax for the needs of educational establishments, the tax on dog owners, and the liquor-license tax. Finally, in addition to revenues from regional taxes, constituent units share in the revenues from such federal taxes as the income tax, the tax on corporate profits, excise taxes, and others.

Both the Tax Code and acts adopted by local governments impose local taxes. The Tax Code limits the authority of local governments to impose taxes. Local governments can establish tax rates (on taxes they are authorized to impose), prescribe the order and terms of payment of the taxes, and provide for a system of tax reporting. Local governments also may introduce tax privileges for certain groups of taxpayers. Among the important local taxes are the land tax, the property tax on individuals, the advertising tax, the tax on inheritance and on the acquisition of property, and local license taxes.

All taxes -- whether federal, state, or local -- are collected by the federal Tax Ministry, which has offices in each constituent unit of the federation. Neither constituent units nor local governments have their own tax bodies. The revenues are then allocated as directed by the Tax Code and other laws. This system of tax collection and distribution was inherited from the highly centralized Soviet model.

The Russian Federation faces numerous problems relating to intergovernmental fiscal relations. Although the Budget Code of the Russian Federation is supposed to determine the authority of the federal, regional, and local governments in the budget system, the code is badly in need of modernization because the distribution of authority among the orders of government is not well defined. Regional and local governments lack taxing and budgeting autonomy, which undermines the incentives for effective financial management. Also, unfunded mandates from the federal government skew regional budgets; that is, the federal government assigns duties to the subjects of the federation

without allocating any funds to fulfil these duties. In addition, most of the federal financial assistance to the constituent units is provided without clearly defined rules and procedures that would ensure accountability.

To address these and other problems, the Federal Assembly in 2001 enacted a reform of the budget system, which will be implemented by 2005. The main aim of this reform is to define clearly the federal, regional, and local budget responsibilities within Russian law and to demarcate revenues and expenditures between the levels of the budget system.

### Foreign Affairs and Defence

The conduct of foreign policy and international relations, including the adoption of international treaties and foreign-trade agreements, are federal powers. The federal government has exclusive authority to determine the country's relations with other countries. The president conducts negotiations and signs international treaties of the Russian Federation, while both chambers of the Federal Assembly ratify them.

At the same time, the Constitution grants to the constituent units a limited role in dealing with foreign countries. Article 72 lists among the concurrent powers the coordination of the international and external economic relations of the constituent units of the Russian Federation and compliance with international treaties of the Russian Federation. This means that constituent units may have international and external economic relations and conclude corresponding agreements with the constituent units of other federations or structural parts of unitary countries. The federal Law on Coordination of the International and External Economic Relations of the Constituent Units of the Russian Federation of 1999 states that the possibility of concluding such an agreement with a country as a whole may be granted to a constituent unit by the federal government. The function of coordination is vested in the federal Ministry of Foreign Affairs. Many constituent units have concluded such agreements both with subunits of the foreign countries and with the countries themselves, dealing mostly with matters of economic and cultural cooperation.

Defence powers -- including questions of war and peace; defence and security; defence production; procedures for the sale and purchase of arms, ammunition, military hardware, and other equipment; and the production of fissionable materials, toxic substances, and narcotics, and the procedure for their use -- are also exclusively in the hands of the federal government. Constituent units have no armed forces. As the supreme commander in chief of the armed forces, the president appoints and dismisses the supreme commander of the armed forces, introduces martial law under certain circumstances, and declares a state of emergency under certain conditions.

Indeed, the powers exercised by the president extend beyond those elaborated in the federation Constitution. In the famous "Chechen case" of 1995, the Constitutional Court noted that the outbreak of a major, domestic, armed conflict on Russian territory had given rise to widespread violations of the constitutional rights and freedoms of citizens and also that it posed a threat to the security of the country and to its territorial integrity. In such circumstances, the Court held, in the absence of legislation prescribing the course to be followed in resolving the crisis, the president, as the guarantor of the Constitution, can and should, within the limits of his constitutional powers, determine all the measures necessary -- including the use of the armed forces -- to settle the conflict.<sup>24</sup>

### Voting, Elections, and Political Parties

The Constitution devotes relatively few provisions to voting and elections. Article 3, Section 3, states that referenda and free elections shall be the supreme direct manifestation of the power of the people. According to Article 32, Section 2, citizens of the Russian Federation have the right to participate in referenda and the right to elect and to be elected to bodies of state governance and organs of local self-

government. Article 81 describes the basic procedures for presidential elections. Section 1 states that the president shall be elected for a term of four years by the citizens of the Russian Federation on the basis of a general, equal, and direct vote by secret ballot. Section 2 lists the qualifications for a presidential candidate: a citizen of the Russian Federation, 35 years of age or older, and a resident of the Russian Federation for not less than ten years. Section 3 mandates that no one shall hold the office of president for more than two successive terms. Section 4 delegates to the Federal Assembly the responsibility to enact laws detailing the process for electing the president of the Russian Federation.

Article 96 addresses the election of the State Duma. Under Section 1, the State Duma is elected for a term of four years. Section 2 delegates to federal law the right to establish the procedure for electing deputies to the State Duma. Finally, Article 97, Section 1, states that any citizen of the Russian Federation who is at least 21 years of age and has the right to participate in elections may be elected to the State Duma.

Because only the main principles of voting and elections are included in the Constitution, the Federal Assembly has enacted a series of laws -- such as the Laws on Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Referendum, on Providing Constitutional Rights of the Citizens of the Russian Federation to Elect and to be Elected to the Organs of Self-Government, and on Elections of the President of the Russian Federation -- to establish an integrated electoral code for federal elections. The constituent units have adopted their own electoral laws; for instance, the Sverdlovsk region has adopted a code that details the procedures for electing the governor and the deputies of both chambers of the regional legislature. Of course, federal laws guaranteeing electoral rights prevail over any conflicting regional laws.

The Constitution does not address the subject of political parties, except by protecting the general right of association (Art. 30, Sec. 1). The procedures for creating political parties, establishing their rights and responsibilities, determining the order of their participation in elections, and so forth are established in the 2001 federal Law on Political Parties.<sup>25</sup>

### Citizenship and the Protection of Rights

The adoption of the federal Law on Citizenship of the Russian Federation in 2002 clarified the issue of citizenship by establishing a single federal citizenship. Prior to the law's adoption, it was widely assumed that the republics could award their own citizenship. This new law envisages only federal citizenship although, in fact, some republics continue to assert a dual citizenship in their constitution.

The president has responsibility for resolving issues of citizenship in the Russian Federation. He may resolve individual cases through the exercise of presidential discretion, aided by his Commission on Issues of Citizenship, which performs the necessary investigative work. He may also address broader issues -- for example, the plight of citizens of the former Soviet Union who were not granted citizenship by their former union republic -- through executive ministries.

Even before the 1993 Constitution came into effect, the Russian Federation had already adopted the 1991 Declaration of the Rights and Liberties of Man and Citizen, and its provisions were subsequently included in Chapter 2 of the Constitution. Among the civil rights guaranteed are the right to life, the right to freedom and personal inviolability, the right to privacy and to personal and family secrets, freedom of movement, freedom of conscience and religious worship, and freedom of thought and of speech. Political rights guaranteed by the Constitution include the right to seek, get, transfer, produce, and disseminate information by any lawful means; the right of association; the right to gather peacefully, without weapons, to hold meetings, rallies, and demonstrations, and to engage in marches and picketing; the right to elect and to be elected to bodies of state governance and organs of local self-government; the right to participate in referenda; and the right of equal access to state services. Various economic and cultural rights and liberties are also fixed in the Constitution, such as the right to



private property; the right to make free use of one's abilities for work and to choose one's own occupation; the right to collective bargaining in labour disputes under federal law; the right to strike; the right to social security in old age and in cases of disease, handicap, or the loss of the family breadwinner; the right to raise one's own children; the right to health care and medical assistance; the right to education; and the right to participate in cultural life, to use the institutions of culture, and to have access to cultural values.

It should be noted that the Constitution does not guarantee all social and economic rights to the fullest extent possible. For instance, it guarantees basic general education, permitting state or municipal education institutions to condition access to higher education on payment of tuition or success on a competitive examination. Similarly, the Constitution states that medical assistance shall be made available by state and municipal health-care institutions to citizens free of charge, with the money coming from the relevant budget, insurance payments, and other revenues. However, this means that medical assistance delivered by health-care institutions other than the state and municipal ones is not free of charge, even if there is not enough funding provided for state and municipal health-care institutions.

Article 71 indicates that the regulation and protection of the rights and liberties of the human being and citizen are within the scope of the federal powers, while Article 72 includes the protection of the rights and freedoms of man and citizen among the concurrent powers. Taken together, these provisions suggest that the federal government has primary but not exclusive responsibility in this area. The subjects of the federation can supplement federal efforts with their own guarantees, but they cannot of course impede the operation of the federal guarantees.

The Constitution contains some important principles governing the protection of rights and liberties by the state. Among them are that the basic rights and liberties of the human being shall be inalienable and shall belong to everyone from birth; that the rights and liberties of the human being and the citizen shall have direct effect; that these rights and liberties shall determine the meaning, content, and application of the laws and activities of the legislative and executive branches and of local self-government and shall be secured by the judiciary; that all people shall be equal before the law and in a court of law; that the state shall guarantee the equality of rights and liberties regardless of sex, race, nationality, language, origin, property status, employment status, residence, attitude to religion, convictions, membership in public associations, or any other circumstance; that any restrictions of the rights of citizens on social, racial, national, linguistic, or religious grounds is forbidden; and that women and men have equal rights and liberties and equal opportunities for the pursuit of rights and liberties.

According to the Constitution, rights and liberties may be restricted by federal law only to the extent required for the protection of the fundamentals of the constitutional system, namely to preserve morality, health, rights, and the lawful interests of other persons and to ensure the defence of the country and the security of the state. From this provision, several major conclusions can be drawn. First, rights and liberties may be restricted only by federal law; that is, neither a federal regulation (such as a presidential decree) nor a regional law can provide a basis for restricting human rights and freedoms. Second, rights and liberties may be restricted only for the aims listed in the Constitution -- that is, for protecting the fundamentals of the constitutional system (morality, health, rights, and lawful interests of other persons) and for ensuring the defence of the country and the security of the state. Third, constitutional rights and liberties may be restricted only to the extent required to achieve these aims; that is, the absolute necessity of restricting a certain right or liberty by means of a federal law must be proved.



## Constitutional Change

The 1993 Russian Constitution establishes stringent procedures for constitutional change, which may explain why few constitutional amendments have been adopted. There are three separate procedures for amending the constitutional text, depending on the provisions to be changed.

When a proposal is made to amend any provisions of the Constitution's Chapters 3-8, it takes the form of a special legal text, the Russian Federation Law Amending the Constitution, that has a special status and differs from both regular federal law and regular federal constitutional law. Both chambers of the Federal Assembly must approve the amendment by a majority of at least three-quarters of the total number of members of the Federation Council and at least two-thirds of the total number of deputies of the State Duma. Unlike with regular legislation, the president has no veto authority. The amendment comes into effect when it is approved by no less than two-thirds of the constituent units of the Russian Federation. Then the amendment is signed by the president of the Russian Federation within 14 days and published. No amendments had been adopted utilizing this procedure as of 2004.

Changes to Article 65 of the Constitution, which determines the composition of the Russian Federation, are made on the basis of the federal constitutional law dealing either with admission of constituent units to the Russian Federation, with the formation within the Russian Federation of a new constituent unit, or with a change in the constitutional and legal status of a constituent unit of the Russian Federation. In these three cases, then, federal constitutional laws are adopted, and when the Constitution is to be republished, they are incorporated into the Constitution. No amendments had been made under this procedure as of 2004.

Changes to Article 65 of the Constitution are made on the basis of the president's decree in the event of a change in the name of the particular constituent unit. There are only five cases of amendments to the Constitution being made under this procedure, four republics and one autonomous area having changed their names: the Republic of Ingushetia (formerly the Ingush Republic), the Republic of Kalmykia (formerly the Republic of Kalmykia-Khalm Tangch), the Republic of Northern Ossetia-Alania (formerly the Republic of Northern Ossetia), the Republic of Chuvashia (formerly the Chuvash Republic), and the Khanty-Mansi autonomous area-Yugra (formerly the Khanty-Mansi autonomous area).

The provisions of Chapters 1, 2, and 9 of the Constitution may not be revised by the Federal Assembly. If a proposal to revise any provisions in these chapters is supported by three-fifths of the total number of members of the Federation Council and the deputies of the State Duma, a constitutional assembly is to be convened in accordance with the federal constitutional law. The constitutional assembly may either confirm the inviolability of the Constitution or develop a new draft of the Constitution that shall be adopted by two-thirds of the total number of members of the constitutional assembly or submitted to a popular vote. Ratification of the proposed constitution requires majority approval by the electorate, with at least half of the electorate taking part in the vote. However, the mandated federal constitutional law on the constitutional assembly had not been enacted as of 2004. Without such a law, the adoption of a new constitution in order to change Chapters 1, 2, and 9 of the previous one remains impossible.

Constitutional change may also occur through judicial interpretation of the Constitution. Federal legislation on the Constitutional Court, adopted in 1994, expressly recognized the power of judicial review. From 1994 to 2004, the Constitutional Court interpreted the Constitution's provisions 13 times, with its decisions addressing such matters as the legislative process, the order of nomination by the president of the candidates for chairman of the federal government, and the meaning of the constitutional terms relating to the executive power.

## Emerging Trends and Developments

Russia's federal system developed out of a unitary state, and there are still vestiges of the unitary tradition not only in the law, but also in popular consciousness. The historical tendency of Russia's development has been from the supercentralized state of the Russian Empire and the Soviet Union/RSSR to a decentralized federation, although President Putin's policy on federalism shows signs of a new centralization. In the decade since the adoption of the federation Constitution, Russia has made notable advances in instituting federal democracy, but important challenges remain.

One continuing issue involves the structure of the Russian Federation because the delineation of the current subjects of the federation occurred only recently, with the adoption of the 1993 Constitution. Controversy continues over whether Russian federalism will be symmetrical or asymmetrical, whether subjects of the federation will have equal rights and powers, or whether the ethnically based republics should enjoy different status. There are also pressures in some political circles to enlarge the constituent units and reduce their number given that many undeveloped subjects of the federation are heavily reliant on federal subsidies.

The constitutional division of powers between the federal government and the subjects of the federation also raises concerns, particularly given the implementation of concurrent powers. In theory, the exercise of these powers should involve framework legislation by the federal government coupled with more detailed regulation by subjects of the federation in accordance with local conditions. In practice, however, the general guidelines in federal laws have often become detailed legislation that leave almost no role for regional legislators.

The central government's attempts to harmonize federal-regional relations (strengthening vertical relations) could lead to a highly centralized federalism, although resistance to centralization remains entrenched in certain parts of the federation, such as Bashkortostan, Sakha, Sverdlovsk, and Tatarstan.

The most difficult challenge facing the Russian federal system is the Chechen crisis -- a major armed conflict on Russian territory sparked by the Chechen Republic proclaiming itself independent, although the federation Constitution does not provide for secession. This declaration has led to two wars (federal interventions), one from 1994 to 1996 and the other from 1999 to 2000. Even now, when there are no massive battles, separatist-minded units continue to fight with federal forces and to mount terrorist attacks. Despite these hostilities, in the spring of 2003 voters in a referendum in Chechnya adopted a republican constitution and laws governing the election of the Parliament and the president of Chechnya. In fall 2003 the president of the Chechen Republic (Akhmad Kadyrov) was elected; however, he was killed by a terrorist bombing on 9 May 2004. New presidential and parliamentary elections are scheduled for fall 2004, and President Putin has expressed his desire to sign a treaty with the newly elected officials of the Chechen Republic in order to fix the division of powers between the federal government and the Chechen Republic.

Despite these problems, the federation Constitution is far superior to its predecessors, and a combination of constitutional amendments and interpretations of the Constitutional Court should serve to correct whatever deficiencies remain. Russia is on a path toward a more rational, more democratic, more federal, and more perfect union.<sup>26</sup>

---

<sup>1</sup> On emerging federalism in Russia and its development, see, for example, Jorge Martinez-Vazquez and Jameson Boex, *Russia's Transition to a New Federalism* (Washington, DC: World Bank, 2001); G. Alan Tarr, "Creating Federalism in Russia," *South Texas Law Review* 40 (Winter 1999): 689–713; Steven L. Stolnick, *Stealing the State: Control and Collapse in Soviet Institutions* (Cambridge: Davis Center for Russian Studies Series, no. 89, Harvard University Press, 1999); Marat Salikov, "Russian and American Federations: A Comparative and Legal Analysis of Their Origins and Developments," *Tulsa Journal of Comparative and International Law* 3 (Spring 1996): 161–82.

- <sup>2</sup> See also, for example, Gregory Gleason, *Federalism and Nationalism: The Struggle for Republican Rights in the USSR* (Boulder: Westview Press, 1990).
- <sup>3</sup> E.B. Alaev, R.B. Arkhipov, I.P. Barabanov, L.F. Boltenkova, et al., “Federalism,” *Entsiklopedichesky Slovar*, ed. Sergei Valentei (Moskva: Infra-M, 1997), pp. 25-6, 117-19.
- <sup>4</sup> Democratic centralism can be defined as a system in which all state organs are elected and thus presumably held accountable to the people, but lower state organs must comply with the decisions of higher state organs.
- <sup>5</sup> Although written as a singular, “the treaty” actually consisted of three treaties corresponding to the different categories of constituent units discussed below.
- <sup>6</sup> Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii [Russian Federation Constitutional Court review], 2000, no. 5.
- <sup>7</sup> Ibid., 1995, no. 6.
- <sup>8</sup> Ibid., 1997, no. 1.
- <sup>9</sup> Vladimir Lysenko, “How Strong Are the Treaty Foundations of Federative Relations?” *Anthropology and Archeology of Eurasia* 36 (Summer 1997): 33-55.
- <sup>10</sup> Sobranie Zakonodatelstva Rossiiskoi Federatsii [Russian Federation Legislation Collection], 2000, no. 20, Art. 2112.
- <sup>11</sup> The president may dissolve the State Duma if the latter rejects three successive candidates proposed by the president for chairman of the government, if the State Duma adopts two no-confidence votes in the government within three months, or if the State Duma denies a vote of confidence requested by the chairman.
- <sup>12</sup> Vedomosti Siezda Narodnykh Deputatov RSFSR i Verkhovnogo Soveta RSFSR [Congress of People’s Deputies of the RSFSR and the Supreme Soviet of the RSFSR Register], 1991, no. 19, Art. 621; no. 30, Arts 1016, 1017.
- <sup>13</sup> The first specialized body of constitutional supervision was the USSR Committee on Constitutional Supervision, which was founded in April 1990 according to the USSR’s Law on Constitutional Supervision in the USSR. See Vedomosti Siezda Narodnykh Deputatov RSFSR i Verkhovnogo Soveta RSFSR [Congress of People’s Deputies of the USSR and the Supreme Soviet of the USSR Register], 1988, no. 49, Art. 727.
- <sup>14</sup> Special-purchase cheques for the purchase of cars were designed for construction workers in a number of regions of Russia, including the North and the Far East. According to a federal government regulation, the salaries of such workers are saved in the federal Savings Bank, and after 3 to 5 years the workers may get a special-purchase cheque to buy a car at an earlier determined price. The Court ruled unconstitutional the federal government regulation that unilaterally changed the terms of the government’s obligations.
- <sup>15</sup> “Indexation” means the automatic adjustment of citizens’ wages and bank savings to compensate for inflation. Such obligations were fixed in a number of laws and regulations.
- <sup>16</sup> Sobranie Zakonodatelstva Rossiiskoi Federatsii [Russian Federation Legislation Collection], 1994, no. 13, Art. 1447.
- <sup>17</sup> Ibid., 1996, no. 2.
- <sup>18</sup> On the analysis of cases on civil rights and freedoms examined by the Constitutional Court, see Marat Salikov, “Russia’s Transition to Democracy: Constitutional Justice and the Protection of Civil Liberties,” *The Future of Freedom in Russia*, ed. William J. Vanden Heuvel (Philadelphia and London: Templeton Foundation Press, 2000), pp. 17-47.
- <sup>19</sup> See also Kathryn Stoner-Weiss, *Local Heroes: The Political Economy of Russian Regional Governance* (Princeton: Princeton University Press, 1997); and Peter Kirkow, *Russia’s Provinces: Authoritarian Transformation versus Local Autonomy?* (Houndmills, UK: Macmillan, 1998).
- <sup>20</sup> Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii [Russian Federation Constitutional Court Review], 1996, no. 1.
- <sup>21</sup> William Pomeranz, “The Russian Constitutional Court’s Interpretation of Federalism: Balancing Center-Regional Relations,” *Parker School Journal of East European Law* 4 (Fall 1997): 401-44.
- <sup>22</sup> Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii [Russian Federation Constitutional Court Review], 2003, no. 4.
- <sup>23</sup> Ibid., 1996, no. 2.
- <sup>24</sup> Ibid., 1995, nos 4-5.
- <sup>25</sup> On parties, see, for example, Kathryn Stoner-Weiss, “Central Governing Incapacity and the Weakness of Political Parties: Russian Democracy in Disarray,” *Publius: The Journal of Federalism* 32 (Spring 2002): 125-46.
- <sup>26</sup> For various perspectives, see Blair A. Ruble, Jodi Koehn, and Nancy E. Popson, eds, *Fragmented Space in the Russian Federation* (Washington, DC: Woodrow Wilson Center Press, 2001); and Rafael Khakimov, ed., *Federalism in Russia* (Kazan: Kazan Institute of Federalism, Institute of History of Tatarstan Academy of Sciences, 2001).