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## **Recent Developments in Russian Constitutional and Administrative Law**

SERGEY A. BELOV\*

### Abstract

This article is a brief sketch of recent development of the doctrine and practice in Russian constitutional and administrative law. The focus is made on the controversial issues of state organization and status of individuals, as well as the realization of legal principles established by the Constitution of the Russian Federation in 1993.

The Constitution of the Russian Federation adopted in 1993 has brought out an essential need for change in the Russian legal and political system. Many principles established by this Constitution were formerly rejected or criticized in the Soviet law (e.g., the principle of separation of powers)

<sup>1</sup> As a result, Russian legal theory today is not based on well-developed doctrine, and while rethinking Soviet era legal research seems to be a more intricate task than working out a new legal theory.

During the years since 1993 new legal and state systems have been developing. Changes have affected different spheres. In the beginning, Russian legislation changed very slowly. Five years ago, about half of the statutes in effect were those remained from the Soviet era, being in line with the principles of the Soviet legal and political system.

Some legal institutes in the sphere of the Russian constitutional and administrative law changed several times during these years. Numerous – and

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<sup>1</sup> Teremeckiy G.N. "Separation of Powers," in THEORY AND PRACTICE OF BOURGEOUS STATES, abstract of candidate of law's thesis (Moscow: Moscow State University, Law Faculty, 1951). P.14. Hereinafter, all sources are in Russian.

sometimes hasty – modifications of legislation were characteristic of this process. For example, election law underwent four reforms since 1993. The system of real estate rights registration has changed three times, excluding minor changes. But the best illustration is still Russian tax legislation. The Second part of the Tax Code (rules for each tax) was amended 28 times during 2004 only! At the same time the total number of statutes increased.

During these years legal practice was also developing. Judicial practice played a great role in this process, particularly the jurisprudence of the Constitutional Court of the Russian Federation. The Soviet legal system did not know this institution would become so important. The Constitutional Court is often compared to a parliament, remembering that its decisions are equal to statutes in every-day practice.<sup>2</sup> As statutes traditionally played main role in the Russian law (as distinct from Common law states), the role of court rule-making (including that of the Constitutional Court) is one of the main themes discussed in the Russian legal doctrine.<sup>3</sup>

Generalizing the problems of the present day Russian Constitutional and Administrative law, it is challenges of the implementation of the legal principles of the 1993 Constitution in Russian legislation, courts and administrative practice that are in the center of polemics.

The period of the 1993 Constitution implementation is still very short. Russia has to adopt the legal principles known to the world constitutional practice and to adjust them to its special needs. Many principles are being interpreted differently, and general problems are being discussed. The issues of urgent importance are discussed below.

### **The principle of separation of powers**

The separation of powers principle was adopted in Russia in 1992; however, its implementation is still under discussion, even more so, as some state authorities do not belong to any of the three branches under the Constitution of 1993.

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<sup>2</sup> B.A. Osipjan, *Place of the Constitutional Court of the Russian Federation in the System of State Bodies of Russia* / "BLACK HOLES " IN RUSSIAN LEGISLATION 2006, No. 3, PP. 13 - 18

<sup>3</sup> COURT PRACTICE AS A SOURCE OF LAW / B.N. Topornin, et. al. (Moscow: Jurist, 2000); A.N. Kokotov, *Legal Nature of Constitutional Court Decisions* / RUSSIAN LEGAL JOURNAL 2006, No. 1, PP. 73 – 81.

In the 1990s the place of the President of the Russian Federation in the system of separation powers was much talked over.<sup>4</sup> Under Article 80 of the Constitution the President is “the head of the state.” Accordingly, he was clothed with huge powers both in rule-making and in the supervision of the state administration. The duty of the President is to coordinate activity of different state bodies and provide their interaction.

The President participates in appointing the personnel of different state institutions. The President introduces candidates for judges of the higher courts (the Supreme Court, the Higher Arbitration Court and the Constitutional Court) to the Upper house of the parliament (the Council of the Federation) and appoints the judges of federal courts. The President forms the Federal Government, and it is only prime-minister who is appointed with the consent of the Lower house of the parliament (the State Duma). Nevertheless, in the case of a thrice-repeated refusal to consent to a presidential candidate, the State Duma is threatened by pre-term dissolution. According to the Constitutional Court decision of 1998, the President can introduce the same candidate all three times; in practice a Government is formed entirely by the President.<sup>5</sup>

The legislation expands the constitutional powers of the President. In 2004 the President got the power to introduce candidates for the Chairman of the Accounting Chamber (the body charged with financial control of the parliament) and candidates for regional governors.<sup>6</sup>

The President, with his wide range of powers, is considered by many to be the key figure in the federal system. Under the Constitution, the President of the Russian Federation “determines the guidelines of the internal and foreign policies of the State.” Some ministries report directly to the President. The President has the right to preside at Government sessions. According to some Russian specialists, these facts signify a deviation from a

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<sup>4</sup> G.V. Degtev, FORMATION AND DEVELOPMENT OF PRESIDENCY IN RUSSIA: THEORETICAL AND CONSTITUTIONAL BASICS. (Moscow: Jurist, 2005)

<sup>5</sup> Decision of the Constitutional Court of the Russian Federation No 28-P of December 11, 1998 on interpretation of art. 111(4) of the RF Constitution // *Sobranie zakonodatelstva Rossiiskoi Federatsii* (OFFICIAL GAZETTE, hereinafter SZ RF) 1998, No. 52, Item 6447.

<sup>6</sup> Federal Law No. 145-FZ of December 1, 2004 // SZ RF 2004, No. 49, Item 4844; Federal Law No. 159-FZ of December 11, 2004 // SZ RF 2004, No. 50, Item 4950.

system of checks and balances and signal a power imbalance in favor of executive power.<sup>7</sup>

At the same time, as everybody knows, the principle of separation of powers allows different models of power distribution: the supremacy of the parliament in the United Kingdom, and powerful executive branch of the 5<sup>th</sup> republic in France give us different examples. Perhaps Russia, with its strong autocracy traditions, is one more specific model. What a national model is, and where the edge of the principle violation lies, are the themes of discussions in law journals and researches.<sup>8</sup>

Rule-making of executive power is another problem. Traditionally, administrative rule-making plays a great role in Russian legal practice. The Russian advocates used to say that a statute is not as important as its interpretation in subordinate legislation.

Often a bureaucratic ruling not only replaces a law, but it expands and broadens legal burdens and duties for people. Between 1997 and 2005 two higher courts of Russia (the Supreme Court and the Higher Arbitration Court) nullified 180 acts by executive powers as violating federal laws. Practical aspects of these problems are mostly discussed in the Russian legal literature.<sup>9</sup>

On the other hand, questions of judicial law-making are viewed as a theoretical problem.<sup>10</sup> The discussion about court decisions and court practice as a source of law in Russia is far from over, but most of the Russian lawyers admit that court practice can be viewed as a law source.

There was a controversy in the Soviet law about the legal nature of interpretations given by the higher courts (Plenums of the Supreme Court and the Higher Arbitration Court).<sup>11</sup> Current legislation made these interpretations obligatory for state arbitration courts, and retained the problem for theoretical

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<sup>7</sup> CONSTITUTION OF THE RUSSIAN FEDERATION. PROBLEM COMMENTARY / ed. by V.A. Chetvernin. (Moscow, 1997)

<sup>8</sup> A.M. Nikolaev, *Realization of the Principle of Separation Powers in the Constitution of the Russian Federation 1993 and Current Legislation: Problems and Perspectives* / "BLACK HOLES" IN RUSSIAN LEGISLATION 2003, No.4, PP. 100 - 118

<sup>9</sup> J.A. Sokolova, *Rule-making of Executive Power Bodies and Mechanism of Law Realization* // FINANCIAL LAW 2006, No. 6, PP. 9 – 11.

<sup>10</sup> B.N. Topornin, et. al. op.cit.

<sup>11</sup> A.V. Mad'jarova, *CLARIFICATION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION IN THE MECHANISM OF CRIMINAL LAW REGULATION* (St.Petersburg : Juridicheskiy centr press,2002).

comprehension and for courts of common jurisdiction.<sup>12</sup> While traditionally court precedent was rejected in Russia, now there are debates whether one can declare obligatory previous courts decisions for cases to come.

One of the most critical problems is the recent (for Russia) phenomenon of the Constitutional Court and its “legal position,” found in its courts’ decisions. First, Russian scholars argue about the nature of the Constitutional Court. Many deny its judicial function and designate it “a negative legislator.”<sup>13</sup> This opinion is justified by the wide discretion of the Constitutional Court, its potential for interpreting vague and abstract rules found in the text of the constitution. Those emphasizing the special nature of the Constitutional Court (and today they make up the majority) find political causes in the grounds of many Constitutional Court decisions and take into account that its decisions can’t be appealed. They declare the Constitutional Court to be the main guarantor of democratic principles, just as the Council of Mujtahids guarantees the essential principles of the Islam faith, approving bills passed through the parliament.

The second issue under discussion is the nature of the Constitutional Court’s legal positions. Those are opinions and conclusions made by the Constitutional Court on certain cases and declared by the Court obligatory both for legislators and law-implementing bodies.<sup>14</sup> Essentially the legal positions are interpretations of the constitution principles and rules. They appear in decisions on certain questions, but their consequence is more general in character.

The third main problem related to the Constitutional Court is the enlargement of the Court’s powers through its own decisions. Although the Constitutional Court was originally empowered to declare as unconstitutional characteristics of a law, in practice it gives official and binding interpretation of laws, establishing their constitutional sense.<sup>15</sup>

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<sup>12</sup> Art. 170 (4) of Arbitration Procedure Code of July 24, 2002 // SZ RF 2002, No. 30, Item 3012.

<sup>13</sup> E.V. Kolesnikov, *Decisions of the Constitutional Courts as a Source of Russian Constitutional Law* // PRAVOVEDENIE 2001, No.2, PP. 32 – 53.

<sup>14</sup> L.V. Lazarev, *LEGAL POSITIONS OF THE CONSTITUTIONAL COURT OF RUSSIA* (Moscow: Gorodets, 2003).

<sup>15</sup> See, e.g., *Decision of the Constitutional Court of the Russian Federation*, No 1-P of February 1, 2006 on art.336 of Civil Procedure Code of Russian Federation // SZ RF 2006 No 10 Item 1145.

### **The process of democracy in Russia.**

One of the main problems of Russian democracy is how to develop a good system of political parties. Political pluralism in the 1990s caused a rapid growth in the number of political parties. In 1995, 43 non-governmental organizations pretending to be political parties took part in the State Duma elections. As a rule, those organizations were narrow circles of their leaders' acquaintances, unable to present social interests in the parliament. Under the majority-proportional electoral system of those days, it resulted in a low level of representation: the parties in the parliament presented only about 50% of the electors.<sup>16</sup>

Since 2001, legislation has been transforming the party system. New rules for political parties' activities were adopted. The federal law of 2001 fixed the minimal number of party members and set some compulsory requirements for their organization. Direct state financing of political parties also was adopted.<sup>17</sup> These measures, however, were not effective. For example, in just a few years, 46 political parties were registered. In 2004 the minimum for party membership was increased. The next step followed in 2005: the mixed (half-majority, half-proportional) electoral system was replaced with a full proportional representation closed lists system, and the electoral threshold was increased from 5% to 7%. The first election under the new system will take place in December 2007. A prohibition to group into political blocs is one more step toward a better political party system.

All these measures cannot ensure the result needed. Now there is a growing disproportion in favor of right-wing parties, which get most of the seats in the State Duma. Many people worry about the dominate position of "Edinaja Roosija" (United Russia) – the political party, organized by the Russian bureaucracy with an unclear political agenda. The party holds more than 300 of the 450 State Duma seats, and it is able to pass any bill (including a constitutional bill).

At the same time political parties do not take part in forming the Federal Government. Recently, they started to influence the formation of regional administrations. A party that has won elections to a regional

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<sup>16</sup> See, *Decision of the Constitutional Court of the Russian Federation* No 26-P of November 17, 1998 on Federal Law On elections of the State Duma of the Russian Federation // SZ RF 1998 No 48 Item 5969.

<sup>17</sup> Federal Law of July 11, 2001 No 95-FZ On political parties // SZ RF 2001, No. 29, Item 2950.

parliament can now introduce a candidate for the Chief of the region administration to the President of RF, who afterwards introduces him to the regional parliament.<sup>18</sup>

Having changed four times since 1993, the Russian legislation on elections now regulates election procedures in detail; it tightly controls money spent in election campaigns, guarantees equality of candidates' presentations in mass media, and guarantees equality of free access in state-owned media. Special election committees have been created for carrying out the elections. Political parties take part in appointment of these committees.

Little by little those mechanisms which are hard to imagine in the soviet law are being introduced in modern law and practice of elections. The election deposit is a good example. Several months ago, a deposit of 90 million rubles (\$3,5 million) was established for party registration in elections to the St. Petersburg city legislative assembly.

Unfortunately, many legal guarantees still remain on paper. As international observers at the last State Duma elections in 2003 concluded that essential equality of candidates in the election campaign was not always provided.<sup>19</sup> However, recently the situation has been changing and the law principles have been coming into life. One of the evidences is that court trials take more and more important place in elections. Election law doctrine has been developing as well.

During the last years, a number of advisory and decision-making bodies were created to present public opinion on important decisions made by the state. The best example is the "Public Chamber of the Russian Federation" which was formed in 2005 and consists of famous public figures and members of non-governmental organizations.<sup>20</sup> The Public Chamber serves as an institution of public expertise of federal bill drafts.

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<sup>18</sup> Federal Law No. 202-FZ of December 31, 2005 / SZ RF 2006, No. 1, Item. 13.

<sup>19</sup> See, *Final Report of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe on the elections to the State Duma of the Russian Federation*, 7 December 2003 (<http://www.osce.org/odihr-elections/14523.html>).

<sup>20</sup> Federal Law No. 32-FZ of April 4, 2005 *On the Public Chamber of the Russian Federation* // SZ RF 2005, No. 15, Item 1277.

In May 2006 the Federal Law on citizens' appeals to state agencies authorities was passed.<sup>21</sup> One would not find rules of lobbying in this law. Although latent lobbyism is wide-spread in Russia, as sociologists say, its legal recognition is a subject of much controversy in Russian law periodicals.<sup>22</sup>

### Human rights

The Russian Federation ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1998, having admitted ipso facto the European Court jurisdiction. Unfortunately, the Russian Federation is one of the leaders in the number of complaints filed against it. In 2005, the Russian Federation lost 82 actions in the Court. A lot of complaints were caused by poor conditions in Russian prisons. Another frequent subject of complaints is the ineffectiveness of judicial protection of rights. Individual measures on the lost actions are assumed, compensation was paid, and respective cases were revised, but the overall situation remains largely unchanged.

Coordination of Russian legislation with the legal positions of the European Court in cases of other states is not on the agenda, although it is the focus of special discussions. The decision of the Court in case *Hirst vs. UK* of (2005) can illustrate this situation. There the Court stated that unconditionally disfranchising prisoners is unacceptable in a democratic society. In Russia, the rule of disfranchising can be found in the Constitution, and that creates a problem of hierarchy between the Russian Constitution and Russia's international treaties.<sup>23</sup> One can find a lot of information on the legal positions of the European court of Human Rights in Russian legal periodicals, and it can help to coordinate Russian legislation with the observance of human rights in Europe.<sup>24</sup>

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<sup>21</sup> Federal Law No. 59-FZ of May 2, 2006 *On the Procedure of People's Appeals Consideration* // SZ RF 2006, No. 19, Item 2060.

<sup>22</sup> M.V. Bjatec, *Lobbyism in Rule-making Activity* // PRAVOVEDENIE 1998, No. 1, PP. 46 – 52; N.Skvorcov "Wild" *Lobbyism as a Cause of Corruption in Russia* // RUSSIAN JUSTICE 2001, No. 9, P. 68.

<sup>23</sup> O.I. Tiunov [Judge of the Constitutional Court RF, retired], *The Constitution of the Russian Federation and International Law* // RUSSIAN YEAR-BOOK OF INTERNATIONAL LAW (St.Petersburg: Rossija- Neva 2002), 34–49.

<sup>24</sup> See, e.g., S.G. Pevnickiy, *Protection of Honor, Dignity and Business Reputation: Correlation with Freedom of Speech and Freedom of Opinion. Legal Position of the European Court of Human Rights* / RUSSIAN JUDGE 2004, No. 5, 28–

Often the grounds for and bounds of human rights limitations becomes a subject of discussion.<sup>25</sup> Russia has declared a preference for European rather than American standards of human rights. However, the limitations of human rights in Russia are more wide-spread than in most of the European states. A good illustration is the Russian law on fighting terrorism. The law gives the federal military (the Federal Security Service) powers to bring down a civil airplane if there is a reason to believe that the plane is under terrorist control and could cause damage on the ground. This law passed in the State Duma<sup>26</sup> a few months after the Constitutional Court of Germany (Bundesverfassungsgericht) declared a similar rule violated the rights of passengers.<sup>27</sup> Unfortunately, the Russian people know what terrorism is. Terrorists' threats have also resulted in additional limitations being imposed, such as rules on counter-terrorism offensive in Chechnya that seriously limits human rights.

### **The Right to Life**

The Russian Criminal Code establishes the death penalty as one form of criminal punishment, but since 1996 no death sentence has been carried out. Since 1999 according to the Constitutional Court, the death penalty can only be sentenced in jury trials. In practice, this means a moratorium on capital punishment. The jury trial is a new institution for Russia. Today juries still do not exist in every region of the Russian Federation.<sup>28</sup> Just five years ago one could find them in only nine of the 89 regions in the Russian Federation. The problem of the death penalty would become relevant with the prevalence of a jury trial (after 2010), as the total abolition of capital punishment in Russia is barred by public opinion. The death penalty is regarded by many Russian citizens as an effective tool against criminality.<sup>29</sup>

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31; L. Vasil'ev, *Practice of the European Court of Human Rights on Implementation of the Presumption of Innocence* / CRIMINAL LAW 2005, No. 4, 60–61.

<sup>25</sup> V.V. Lapaeva, *The Problem of Limitations and Rights and Freedoms of Individuals in the Constitution RF: the Experience of Doctrine Comprehending* // JOURNAL OF RUSSIAN LAW 2005, No. 7, 13–23.

<sup>26</sup> See Federal Law No. 35-FZ of March 6, 2006 *On Counter-Terrorism* / SZ RF 2006, N 11, ст. 1146.

<sup>27</sup> BVerfG, 1 BvR 357/05 vom 15.2.2006.

<sup>28</sup> For example, there are none in Chechnya.

<sup>29</sup> T.M. Kalinina, PROBLEM OF ABOLISHING OF CAPITAL PUNISHMENT IN THE CONTEXT OF RUSSIAN AND EUROPEAN HUMAN RIGHTS PROTECTION DOCTRINES / RUSSIAN AND EUROPEAN RIGHTS PROTECTION SYSTEMS (Nizhniy Novgorod, 2003). PP. 264 – 276. V.E. Guliev, *Abolishing of Capital Punishment – Felonious Non-resistance to Evil and Violence* // JURIDICHESKIY MIR 2002, No. 1, PP. 5 – 13.

Furthermore, euthanasia was outlawed in Russia in 1993,<sup>30</sup> and since 2002, there has been a ban on human cloning.<sup>31</sup>

### **Personal Immunity**

Criminal procedure and administrative legislation regulating arrest procedures were adjusted to democratic standards in 2002. Sanctions for arrest became the court's exclusive prerogative. In the former USSR, the sanction of a public prosecutor – “prokuror” – was sufficient. Guarantees of a jury trial, as mentioned above, plea-bargaining, and other common institutions and practices in criminal procedure were recognized in Russian legislation at the same time.

### **Freedom of Religion**

One of the problems discussed nowadays is the possible introduction of compulsory religion lessons into secondary schools. Several regions (e.g. Belgorodskaya oblast'), in accordance with their powers to define the content of the “regional component” of the education standards, passed laws obliging pupils to attend lessons on “Basics of the Orthodox Faith.” At the same time, the authorities of the regions with predominantly Muslim populations made Islamic studies compulsory for school children. While these laws raised a wave of protest, a 16-years-old girl from St. Petersburg appealed against compulsory study of Darwin's Evolution theory, arguing with religious reasons. She failed, but the problem of religion in school curricula is still on the national agenda.

### **Private Property**

During the last decade, the judicial defense of private property rights was guaranteed. Administrative procedures for minor property-related offenses are used. These were created in the new version of Administrative Offences Code (2001). In the late 1990s, administrative responsibility (like fines for Tax Law violations) and its procedural guarantees were established

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<sup>30</sup> Art. 45 of Federal Law No. 5487-1 of July 22, 1993 *Basic Legislation of the Russian Federation on PeopleHealth Protection* / Vedomosti S'ezda Narodnykh Deputatov RF i Verkhovnogo Soveta RF 1993, No 33, Item 1318.

<sup>31</sup> Federal Law No. 54-FZ of May 20, 2002 *On Temporary Ban of Human Beings Cloning* / SZ RF 2002, No. 21, Item 1917.

for legal entities, although their responsibility for adjudicating criminal offenses is still under discussion.<sup>32</sup>

### **Right of Movement**

The current passport system is an unfortunate heritage of the former Soviet state. Under this system every citizen's residing place had to be registered by local authorities. The person's activity and mobility is restricted by this registration. There are more than ten Constitutional Court decisions on inadmissibility of different limitations of free choice of residence rights, but some attempts to keep limitations still persist.<sup>33</sup> Residence registration still obstructs some rights and freedoms, contrary to the direct rule of the federal law.

### **Universal Conscription**

The Russian army remains one of the most outdated social institutions. Despite vigorous discussions during the last decade over changing from universal conscription to a contract system, little has changed.<sup>34</sup> Every young man over 18 is liable for military service. Since 2003, the alternative of civil service has been possible, but it is deliberately presented as a less desirable choice. Nevertheless, thousands of young men make their choice in favor of the civil service.

### **Social Rights**

In the sphere of social rights the insurance systems has replaced state care. In 1991 obligatory medical insurance was introduced, and was included in the pension system since 2001. The transformation from full state financing to a private insurance system is being gradually carried out, and today retired people are left mostly on state maintenance. The amount of such pensions used to be painfully small, but is now growing. In 2005 an average pension

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<sup>32</sup> See, e.g. G.I. Bogush, *On the Issue of Criminal Responsibility of Legal Entities* / VESTNIK OF MOSCOW STATE UNIVERSITY. Series 11, Law. 2005, No. 4. PP. 19 – 29.

<sup>33</sup> See, e.g., Decision of the Constitutional Court of the Russian Federation No. 4-P of February 2, 1998 / SZ RF 1998, No.6, Item 783.

<sup>34</sup> I.Kuklina, *Does the President Know, Why Russia Needs Army Reform?* // INFORMATION BULLETIN OF RUSSIAN HUMAN RIGHTS RESEARCH CENTER 2004, No.8; L.Vahnina, *Army Reform and Civil Society* / Index - DOSSIER OF CENSORSHIP 2003, No. 19; V.Shlykov, *Army Reform – Plans or Good Purposes?* / OTECHESTVENNYE ZAPISKI 2002, No.8.

payment amounted to 2500 rubles (\$90) and exceeds the official living wage by 10%.

The most unpopular measure of the Russian Government since 1992 took place in 2004. The so-called “monetization of social privileges” canceled discounts and free services (e.g. in public utilities) for some citizens and compensated the losses with money transfers. The law was very important for the development of a market economy in Russia, but the societal response was extremely negative. When the law came into effect in January 2005, mass demonstrations took place in Russia’s larger cities, and implementation of the law was postponed in some regions. The law brought many more benefits to rural inhabitants, but cut down social guarantees for city dwellers. Nevertheless, this unpopular reform ended as one more Soviet era remnant.

### **Migration and Nationalism**

The wave of immigration from the former USSR republics during recent years totals several million people. Most migrants were searching for work. At any building site in bigger cities, one can currently find guest workers from Tajikistan, Uzbekistan, and Moldova, and to a lesser extent they come from Ukraine and Armenia. They are paid minimal salaries and often live in very bad conditions. The Russian Government has attempted to limit domestic migration during the last five or six years. Today guest workers need to get a special work permit. They are not allowed to stay in Russia longer than 90 days.<sup>35</sup>

Immigration resulted in toughening the legislation relating to foreigners staying in Russia and obtaining Russian citizenship. The required residence term was extended to 5 years, and new conditions appeared for those willing to get Russian citizenship: Russian language competence, legal means of subsistence, socially-dangerous illnesses such as AIDS and tuberculosis are considered to be obstacles.<sup>36</sup> These tougher requirements coincided with the process of citizenship registration for those people from former Soviet republics living in Russia. This caused many legal and

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<sup>35</sup> Federal Law No. 115-FZ of July 25, 2002 *On Legal Status of Foreigners in the Russian Federation* / SZ RF 2002, No. 30, Item 3032.

<sup>36</sup> Federal Law No. 62-FZ of May 31, 2002 *On the Citizenship in the Russian Federation* / SZ RF 2002, No. 22, Item 2031.

administrative controversies.<sup>37</sup> Today the process is over (as old Soviet passports have expired), but some registration problems still occur.

Social tension and the growth of national identity followed the increase in immigration, especially in urban areas. The growth of nationalism related to criminality followed, as well as national identity propaganda in election campaigns. One of the biggest political party is called “Rodina” (“Fatherland”) was barred from the Moscow City Assembly elections on the grounds of instigating national strife in its election trailer on national television.<sup>38</sup>

The concept of “a compatriot” appeared in legislation. *Compatriot* is a name for people who either lived in Russia, or have Russian ancestry. They are given priority in getting Russian citizenship on the basis of the *jus sanguinis* principle.

The violation of rights of the Russian-speaking population in the republics of the former USSR – Latvia and Estonia, prompted the Russian Government to pass a law on protection of the “compatriots.” In June 2006 a program of remigration of compatriots appeared, granting Russian citizenship to compatriots returning to Russia from abroad.<sup>39</sup>

### **Federalism in Russia**

After the collapse of the Soviet Union, a separatist tendency in the Russian regions increased. Many subjects of the Russian Federation, including Chechnya and Tatarstan, unilaterally declared themselves independent states. The struggle for power between the central government and these break-away regional authorities caused many problems. A solution was found through treaties on jurisdiction delimitation (in addition to what is said about it in the Russian Constitution) and giving substantial autonomy to the regions.

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<sup>37</sup> A.A. Mostovoy, *GET BACK THE CITIZENSHIP!* (Moscow: Russkaya panorama, 2003).

<sup>38</sup> Decision of the Supreme Court of the Russian Federation No. 5-G05-134 of December 2, 2005 / available in Russian: <http://supcourt.consultant.ru/cgi/online.cgi?req=home>.

<sup>39</sup> Decree of the President of the Russian Federation No. 637 of June 22, 2006 / SZ RF 2006, No. 26, Item 2820.

Violation of personal rights, negation of federal legislation priority, and regional authorities' corruption were results of the separation tendency. The situation of the 1990s caused occurrences like that in St. Petersburg, where every member of the St. Petersburg City Assembly was given the right to use a part of the city budget at his or her own discretion, provided the member voted for the bill on a city budget. This was done for the mutual benefit of legislative and executive branches of the city authorities.

After getting past the economic difficulties of the 1990s, the federal center began the process of building a more "vertical power structure." The autonomy of the Russian Federation's regions was reduced. The federal law, passed in 1999, established a uniform system for power organization in the regions.<sup>40</sup> Financial autonomy was limited. The result was a new procedure of appointing governors, established by the law of 2004.<sup>41</sup> The governors (chiefs of the RF subjects administrations) were previously elected directly by the voters in their respective regions; however, they are now nominated by the President and then appointed by regional assemblies.

The new order received a negative response in the mass media. Much was discussed about restricting fundamental rights and about a unitary tendency.<sup>42</sup> Nevertheless the Constitutional Court declared in 2005 that electoral rights are not violated by this law.<sup>43</sup> As for the tendency of increasing the Federation's influence on the regions, some sociologists say that it was formed long ago and is now deeply rooted in the history of Russia.

Now the same tendency for centralization is explained by the need to maintain control of basic rights. Such control is under the Russia Federation's jurisdiction. During the last few years, consolidation of power in the Russian Federation has begun. As the number of subjects in the Russian Federation is still the largest in the world (86), the consolidation process will likely continue.

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<sup>40</sup> Federal Law No.184-FZ of October 6, 1999 On General Principles of Organization of Legislative (Representative) and Executive Bodies of a Subject of the Russian Federation / SZ RF 1999, No. 42, Item 5005.

<sup>41</sup> Federal Law No 159-FZ of December 11, 2004, see note 5, supra.

<sup>42</sup> See, M.V. Salikov and A. Blankenagel's expert comments on the RF Constitutional Court Decision No. 13-P of December 21, 2005 / COMPARATIVE CONSTITUTIONAL REVIEW 2006, No. 2(55), 153-166.

<sup>43</sup> Decision of the Constitutional Court of the Russian Federation No. 13-P of December 21, 2005 / SZ RF 2006, No. 3, Item 336.

### Administrative Reform

Administrative reform started in July 2003.<sup>44</sup> The declared purposes of the reform were: restrictions of state interference in economic activity, decreasing administrative control of business, and development of self-regulation in the market. In 2004 the system of federal state bodies was reformed. Functions were distributed between ministries (developing policies, rule-making), federal agencies (organization of state services) and federal services (control).<sup>45</sup>

The reform implies changing the basic principles of state policy: transferring from state management of the economy and social organization (as it used to be in the Soviet system), to a state which would provide safety and render services to its citizens.<sup>46</sup>

Since 2003 the criteria for assessing activities of state bodies has been changing. Before, it was the growth of Gross Domestic Product (sometimes artificially increased by statistics). Now, satisfying citizens' needs is proclaimed (on paper yet) to be the purpose of the state activity.<sup>47</sup> The new concept of a citizen as a client of a state would be reflected in legislation: there are plans to establish standards of state services in federal law and to work them out in detail in ministerial rulings.

Today, Russian legislation demands changing technical regulations (standardization and certification) in accord with WTO standards (Uruguay treaty 1994). State standards (GOSTs), which in the USSR concern everything from building materials to any kind of food, are to be replaced with technical safety regulations,<sup>48</sup> and must be approved by Federal law, the President, or by Government decree. The regulations appear slowly; for

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<sup>44</sup> Decree of the President of the Russian Federation No. 824 July 23, 2003 *On the Administrative Reform in 2003-2004* / SZ RF 2003, No. 30, Item 3046.

<sup>45</sup> Decree of the President of the Russian Federation No. 314 March 9, 2004 *On the System and the Structure of Federal Bodies of Executive Power* / SZ RF 2004, No. 11, Item 945 .

<sup>46</sup> ADMINISTRATIVE REFORM IN RUSSIA / ed. by S.E. Naryshkin [Head of the Apparatus of the Government of the Russian Federation], T.J. Khabrieva. (Moscow: Infra-M, 2006).

<sup>47</sup> Direction of the Russian Federation Government No. 1789-r of October 25, 2005, *On Conception of Administrative Reform in 2006-2008* / SZ RF 2005, No. 46, Item 4720.

<sup>48</sup> Federal Law No. 184-FZ December 27, 2002 *On Technical Regulation* /SZ RF 2002, No. 52 (part. 1), Item. 5140.

example, since 2002 there has been only one statute out of approximately 300 proposed documents.

Under the law adopted in 2005 the number of economic activities licensed by the state abruptly decreased.<sup>49</sup> Many people are worried by cancellation of building business licenses, as non-governmental means of providing economic safeguards, such as self-regulated business associations, do not yet exist. Nevertheless, the state tries to minimize its interference in business.

The same policy is followed in the privatization process. Unfortunately, privatization in the 1990s was infamous for misappropriation (state enterprises were sold for thousands of times less than their actual value). Today, legislation bars such sales, and it continues the policy of decreasing state control. The state tries to keep only enterprises which are both socially important and non-profitable, needing state financing.

Presently, activities of the state as a participant in the market are subject to more and more limitations. Since the 1990s (it was reflected in the Civil Code of 1994) the state has been treated as an equal participant in the market. Today some specialists in civil law continue to insist that the state can act to generate a profit for its own budget. Social functions of the state are thus ignored under this premise, administrative regulations play a secondary role, while the state is seen as a participant in civil relationships that would keep only profitable enterprises. Recent legislation, however, is abandoning this pattern, allowing the state only property needed for social purposes.

Summing up, one must acknowledge that reforms in Russia are indeed taking place. In the 1990s it was primarily a change in rhetoric: communism was replaced by democracy. Now, the reforms affect deeper spheres and substantially change the political and legal systems of the country. From a legal standpoint it means in essence the realization of the principles of the Constitution of 1993.

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<sup>49</sup> Federal Law No. 80-FZ July 2, 2005 / SZ RF 2005, No. 27, Item 2719.