Materials of the Third Conference "The Constitution of Russia: Yesterday, Today, Tomorrow" (St. Petersburg, December 9–10, 2019)[1, 2]

ABSTRACT

This material is devoted to a review of expert reports at the Conference "The Constitution of Russia: Yesterday, Today, Tomorrow", held in St. Petersburg on December 9-10, 2019. The problems of modern federalism, human rights and freedoms, and their protection by the state and local self-government were discussed at the conference. The experts analyzed the origins and causes of the existing state structure in the Russian Federation, its features and possible development paths; problems of human rights and freedoms in Russia and in other states, as well as the current state of local self-government in Russia, trends in its preservation, expansion and bringing into line with modern requirements of social development in the context of globalization.

Keywords: Constitution of the Russian Federation, federalism, human rights and freedoms, local government

In the early December 2019 St. Petersburg hosted the 3rd Conference "The Constitution of Russia: Yesterday, Today, Tomorrow" dedicated to the problems of constitutional law in the Russian Federation. The conference was organized by the Law Faculty of the North-West Institute of Management of RANEPA, the Boris Yeltsin Presidential Center Foundation, the Commissioner for Human Rights in St. Petersburg and the Presidential Library named after B. N. Yeltsin.

The Conference discussed topical issues of Russian constitutionalism, including the problems of the federal structure, regulation and protection of human rights and freedoms as the basis of the constitutional system, issues of local self-government and many other things. The conference was held in the format of panel discussions and included three panels[3].

The participants of the **first panel "The Difficult Fate of Federalism in Russia"** were Sergey Mikhailovich Shakhrai[4] (panel moderator), Lyudmila Borisovna Eskina[5], Andrey Nikolaevich Medushevsky[6], Andrey Aleksandrovich Zakharov[7] and Sergey Lvovich Sergevnin[8].

Sergey Mikhailovich Shakhrai. The structure of state administration in Russia currently tends to change from federal to unitary built on the principle of a rigid vertical power structure. While federalism is not just a way of distributing powers between the centers of executive and judicial power, but is also a guarantee of the preservation of a democratic political regime. Federalism is a kind of philosophy, a worldview based on an understanding of the importance of diversity, respect for the opinion of others, and recognition of the value of an equitable dialogue. Unless there is such understanding of federalism, the most perfect federation turns into a formality.

Russia has made at least three attempts to move from formal federalism to genuine one: in the first quarter of the 19th century after the war with Napoleon, in the first quarter of the 20th century during the work of the Constitutional Commission of 1918. and in the 1990ies when, as a result, the current Constitution of the RF was adopted.

As a result of the adoption of the 1993 Constitution, its test implemented the idea of cooperative federalism which implies conducting a dialogue, reaching an agreement and joint solution of the tasks and problems by the federal center and regional authorities with the participation of local self-government. However, this model is not implemented in practice, since the authorities, federal and regional, have completely different and, most importantly, varied ideas about the nature of the organization of federal governance. The federal authorities communicate the ideas of a unitary state, while the regional au-

[1] Обзор подготовлен редакцией журнала «Теоретическая и прикладная юриспруденция» Северо-Западного института управления Российской академии народного хозяйства и государственной службы.

[2] The review was prepared by the editors of the journal "Theoretical and Applied Law" of the North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration.

[3] Complete publications of some of the conference participants are available in this issue of The Theoretical and Applied Law Journal.

[4] Honored Lawyer of the Russian Federation, Doctor of Law, Professor, well-known state and political figure of Russia.

[5] Doctor of Law, Professor of the North-West Institute of Management of RANEPA.

[6] Doctor of Philosophy, Full Professor of Higher School of Economics National Research University (department of Social Sciences).

[7] Associate Professor of the Russian State University for the Humanities, Doctor of Philosophy, Editor-in-Chief of The Neprikosnovny Zapas Journal.

[8] Doctor of Law, Honored Lawyer of the Russian Federation, Head of the Department of Theory and History of Law and State of the Law Faculty of the North-West Institute of Management of RANEPA.

thorities live in a parallel reality, clearly dividing governance issues into federal and regional ones, and solve them primarily through the relevant distribution of the budgetary funds.

Thus, the formula of modern federalism can be assessed as follows: as soon as the treasury runs out of money, they remember federalism, that is, they give away powers along with responsibility and financial and economic problems to the regions.

The framework of federalism still includes the problem of delimiting the objects of supervision and powers between the levels of the government. On the one hand, Article 11 of the Constitution, included in the section "Fundamentals of the Constitutional System", states that the powers are distributed by the Constitution itself, federal and other agreements. Articles 71-73 of the Constitution establish that outside the jurisdiction of the Federation itself, all the fullness of the state power belongs to the subject of the RF, and paragraph 6 of Article 76 states that the laws of the subjects adopted on objects referred to their exclusive jurisdiction have priority over federal laws.

The cooperative model of federalism is important in that it presupposes a dialogue, delegation and search for coordinated solutions, with no desire to find them being clearly observed at the present time. As to cooperative federalism, this choice was made during the preparation of the text of the Constitution both consciously and forcedly. It was done forcedly because in 1992-93 it was not possible to perform a more rational scientific delimitation between the objects of supervision and powers, the clash of interests and opposition of some forces to others was so great that it was easier to declare the issue an object of joint supervision, including it in the list established by Article 72 of the Constitution than to try to determine it in a clear, detailed and legally correct manner. In this regard, we have forced cooperative federalism. But the Constitution provides for mechanisms of distribution of powers and objects of supervision, namely: by using the provisions of the Constitution itself, the Federal Treaty, Federal Constitutional and Federal Laws, as well as agreements on the delimitation of powers and objects of supervision between the Russian Federation and the subjects of the Russian Federation.

In this respect, Article 78 of the Constitution is applied in practice in relation to the temporary redistribution of powers. For example, more than 200 agreements have been concluded to date between the RF and the authorities of the constituent entities on the transfer of the relevant powers for a certain time and subject to specific conditions. In this context, the tension in the relations inside the federation could be relieved by transfer of cultural issues, the national issue and education issues to the regional level, rather to the level of local self-government. Because federalism is an institution of public administration, primarily budgetary, economic management, it is not possible to solve issues being largely subjective, private, and local by nature at the global level of the federation.

Fiscal federalism and fairness is another challenge faced by us. Is the established procedure for the distribution of budgetary funds, grants, subsidies fair enough? Unfortunately, no consensus has been reached between the federation and the regions, or between the regions themselves, on this issue.

Attempts are currently being made to reform the federal structure laid down in the Constitution, for example, by creating mega-regions or districts that include several subjects. The question is about the possible form of introducing such changes, and whether the Constitution provides for their possibility or whether it is necessary to amend it in this part. And given that there is no true federalism in Russia, whether something that does not exist can be reformed. This is an extremely important question. Within the framework of this issue, it should be noted that just in order to ensure the independence of judicial power, the criteria of the formation of the subjects of the RF and judicial districts should be divided. These steps have already been taken, in particular in the framework of the creation of appellate districts in the system of courts of general jurisdiction. However, one should not be satisfied with what has been achieved.

One of the achievements of the drafters of the text of the 1993 Constitution should be considered to be the absence of provisions on the right to secession (departure from the federation) in it. Right, the Constitution contains the right of peoples to self-determination, but only within the federation and within the framework of the effective Constitution. With regard to the equality of the constituent entities of the Russian Federation, the Constitution enshrines the provisions on their equality in relations with the federal authorities, but not among themselves, because the status of the constituent entities in our country is very different, starting from the type (republic, territory, region, etc.) and ending with the size of the population. In this regard, the problems of the status of subjects and their relationships can be resolved within the framework of constitutional laws.

With a view to objective representation of the interests of the regions, the Council of the Federation should be formed on the basis of representation of the heads of the executive and legislative branches of the respective constituent entity in it. This procedure of forming the Council of the Federation can be determined in the relevant constitutional law which does not exist today. In my opinion, only if the Council

of the Federation is formed in such a way that the executive and legislative bodies of the constituent entities themselves are directly involved in the development and adoption of federal laws affecting the life of the regions, it will be possible to fully implement the decisions of the federation at the regional level.

Lyudmila Borisovna Eskina. Russian federalism is the most complex federalism in the world, because it is a mixture of a lot of different criteria and, moreover, it took shape under the Russian Empire, and in this regard, this is the most complex system which would be called federalism known to history and the world. When the structure of regions was created as far back as in the pre-revolutionary period, no clear criteria were determined, and the Soviets exacerbated the complexity of the territorial structure, adding a national criterion of creating constituent entities of the federation within the framework of the idea that the Soviet state is to implement national sovereignty which also received territorial outlines. But it was just impossible to take account of the interests of all nationalities; thus, this criterion was not fully implemented, either. At the same time an additional gradation of constituent entities based on their type was created: autonomous republics, autonomous districts and regions, this gradation surviving to this day.

Therefore, when the 1993 Constitution was development, there was a difficult task of finding a compromise between the subjects of the federation, which was reflected in the position of equality of subjects in relations with the federal power (Article 5 of the Constitution). But it was not possible to smooth over all the contradictions in this way, and they are just now becoming obvious, because the power keeps reproducing the imperial models of governance, creating governance structures parallel to constituent entities: federal districts, judicial districts, economic territories and territories with a special status. Such trends clearly evidence the intention to reform the federal system, and attempts to find a way and a criterion for its reforming. There is obviously a need for such a reform in order for the governance to correspond to the contemporary realities. But it is necessary to find a thought-out adequate criterion of distribution of the power.

To find such a criterion, it is necessary to turn to the origins of the emergence of federalism, namely to recall that the purpose of the distribution of power within the federation was initially to combine the advantages of large and small, when it was easier to implement large projects at the federal level and to ensure a democratic regime, that is, to bring the population closer to power, at the level of regions, constituent entities of the federation. This last task is still extremely relevant today.

Regarding the fact that the Constitution does not provide for the right to secession of a constituent entity of the federation, I would like to note that this prohibition is not directly enshrined in the Constitution, despite the fact that secession from the federation can be considered one of the forms of self-determination of the people, the right to it being recorded in the Constitution, and despite the fact that there are no options of forms of self-determination in the Constitution. Unfortunately, the mechanisms for exercising the right to secession have not been developed either at the level of various states or at the international level, but at the same time, this right is implemented in practice (Transnistria, Abkhazia, Ossetia, Catalonia in Spain, for example). Sidestepping on this issue will maintain tension on this issue both at the domestic and international levels.

Andrey Aleksandrovich Zakharov. The paradox of the nature of Russian federalism which, on the one hand, is enshrined in the 1993 Constitution, and on the other hand, almost never finds its practical application. Of particular interest in this situation is the question of why this happens. And if the provisions of the Constitution concerning federalism are dormant, then what will happen when they find their application? What makes us maintain this situation of contradiction between the desired and the actual?

Considering that we inherited the current status of the federation from the Soviet past, and the Soviet state accepted this situation from the Russian Empire, respectively, an interesting question arises: why, when creating a new state on the ruins of the empire, the Soviet government chose and retained the federal system of the state structure strange at that time? There is the inevitable conclusion that the Soviet government just had no other way to secure support for itself and to win the Civil War, it had to use federalism to meet the demands of self-determination that were set by the ethnic groups inhabiting the empire. Right, these requirements were met partly but sufficiently to win the Civil War. Subsequently, it does not seem possible to take away even that, albeit incomplete, degree of sovereignty once granted to one or another ethnic group. Thus, at the stage of the reforms in the 1990ies Russia just had no other choice but to preserve its internal organization according to the territorial-national principle. Is it possible to change this way of organizing the territorial structure of the Russian Federation? It is, but the costs of this kind of transformation are likely to be too great.

Besides, it is important to take account of the fact that the Soviet Union practiced what is called affirmative action in relation to ethnic minorities inhabiting the country, and began doing this even earlier

than other federal states, and in this sense the federalism of the Soviet state showed itself as a means of harmonizing the relations between ethnic groups within the entire state. This experience is important for us even now within the framework of the Russian Federation, so it should not definitely be abandoned.

In this respect, the right to secession was declared in the USSR as a way to oppose the union state to other traditional empires that existed at that time which could be seceded only arms in hand. While the new state of workers and peasants provided freedom of such secession. However, no one believed that this right would have to be recognized or exercised one day. But the consolidation of such a right as it is was not accidental.

At present, the process of globalization increases the demand for federalism, for creation of quasi-federal and federal entities, but at the same time, globalization also exacerbates the ethnic sensitivity of the groups inhabiting the planet. And this means that it is necessary to look for new forms of federalism in the conditions of unresolved national and ethnic problems.

Andrey Nikolaevich Medushevsky. While discussing the problem of federalism, we cannot ignore the changes currently taking place in the world. It is important to try to look ahead immediately, analyzing the possible prospects of the world changes related with globalization. Many people write that globalization actually generates the phenomenon of global constitutionalism or global federalism. And from this point of view, it is important to keep in mind such a phenomenon as the convergence of international and constitutional law.

Sometimes the concept of constitutionalism of international law is used. This means that international norms strongly influence the constitutional ones, on the one hand, and, on the other hand, constitutional norms are integrated into international acts in such a way that the phenomenon of international constitutional law emerges. This is certainly of fundamental importance for federalism, since a completely new type of law emerges. Some people call it global law, others talk about transnational law.

A kind of such law may be said to be the modern European law. It cannot be defined either as international or as constitutional. That is, this is a completely new phenomenon. From this point of view, we can talk about a change of the global trend in the understanding of federalism and constitutionalism. In my opinion, the meaning of this global trend is that there is a process of rethinking the principle of separation of powers. As has already been stated, federalism is part of the separation of powers. This is vertical separation as opposed to horizontal, but new parameters of the separation of powers also arise, in particular, into institutions based on international law, international organizations, and institutions based on constitutional law.

Thus, there is pluralization of systems of separation of powers and pluralization of hierarchies. Where does federalism play in this process? Some believe that now is a transitional period which will result in formation of a new hierarchy of levels of global separation. We are talking about the separation of powers already at the level of international regimes, such as, for example, the European Union, the level of national states, the level of the subjects of the federation and the level of local self-government. Thus, the problem of federalism is extremely complex, including in relation to Russian federalism which combines problems of integration in the post-Soviet space and creation of new integrative associations.

The second important question to be discussed in the context of the problem of federalism is whether there are actually historical prerequisites for the emergence of federalism in the territory of Russia. The Russian empire did not know any federalism, of course. We can talk about the ideas of federalism which found some practical application, but as a whole it was an empire that viewed itself as a single state. It was only at the end of the imperial period that decentralization projects appeared, but they did not reach the level of federalism in substance, it was only about granting certain autonomy to potential subjects, such as Finland, Ukraine and Poland. This, in fact, is the state of implementation of the ideas of federalism in Russia which took shape by 1917.

Another important aspect to be paid attention to is whether a system of federalism was created in the Soviet Union. The simplest answer is yes, because it was recorded in the Constitution. But upon closer consideration, it turns out that Soviet federalism can hardly be defined as federalism. Why? Because it was not based on the scientific concept of federalism developed at that time by the academic science. The scientific concept proceeded from the fact that decentralization and the solution of the national question, including in the form of federalism, are completely different things. Linking federalism with ethnic nationality and national self-determination is the path to the disintegration of the state.

When discussing any concept of federalism, it is obviously necessary to decide whether an equal status should be given to all subjects or it is better to think of a gradual movement towards federalism in the form of autonomies, cultural, functional, etc. And as a consequence, within the framework of the federation it is necessary to have a judicial instance that would resolve conflicts arising between levels of power in the form of the Supreme or Constitutional Court.

The Bolsheviks completely disregarded this academic concept. As a result, a model of federalism appeared which in no way corresponds to scientific and academic ideas about it. Then the question arises, what the Soviet federalism was like. Formally, legally, when discussing the state structure of the Soviet Union, we cannot speak of federalism, because the Soviet model enshrined the right of secession of the subjects of the federation, and this is a sign of confederalism. Thus, we can say that Soviet federalism was a confederation and not federalism at all, although this entity was called a federation in the Constitution.

And finally, in reality it was a unitary state. Thus, we get a contradiction in the definition of the notion of federalism already at the level of resolving these issues by the Constitutional Commission of 1918, when very different models of federalism competed: both the comparative (presentation of federalism as an aggregate of regions), and the Leninist-Stalinist concept which eventually triumphed — the concept of national-territorial division of the country. My colleague says here that there was no alternative. But I believe that there was an alternative, and I wish it had been implemented. In my opinion, the alternative would be not to create a single scheme of federalism and impose it on the entire country, but to introduce differences of the subjects using a very differentiated scale, based on how much the potential subjects themselves are ready to become subjects of the federation.

In other words, the general model of federalism was imposed on the regions. If we consider this imposed construction of federalism implemented in 1918, the lawyers of that time compared this model to the colonial rule of the British Empire, that is, the federal subjects that were created resembled the dominions of the Westminster model. This model was extremely contradictory, it included a federation within a federation, a large number of subjects of various types: those were union, autonomous republics and all other entities. And the regulation of this asymmetric model, I would say, the regulation of this artificial asymmetric division was organized in such a way as to only maintain control over this system. That is, it was a model that was easy to manage, but not a federation by and large.

Since this model was actually reproduced in the 90ies, when the status of the union republics and autonomous republics was equalized, and since this model actually passed over into modern Russia, the question is whether we should hold on to it or raise the question about a radical revision of this model in accordance with the demands of the contemporary globalizing society, on the one hand, and from the standpoint of the concepts of federalism and, in general, decentralization that modern science offers, on the other hand. And is this model worth defending? Perhaps it is worth raising the question of the transition from a schematic interpretation of federalism to other forms of decentralization, for example, devolution, administrative self-determination, autonomy, regionalization, etc.

Regarding the recognition of the right to secession in the Constitution of the USSR, I would like to note the following: the Bolsheviks certainly wanted to create a world federation, and some believe that the introduction of the right of secession is related with this, but the right of secession and generally the construction of federalism on a national and ethnic basis, rather, contradicts Marxism, therefore it is rather difficult to explain it by ideological reasons. I would say that it was rather a tactical move to retain power in a disintegrating country. I would not think that this is some basic principle that can be useful, because recognition of such a right was certainly a time bomb under the entire building, which actually happened, since the collapse of the Soviet Union, in which Russia played the key role, was carried out precisely on the basis of the Soviet constitution and the right of secession.

Has the 1993 Constitution renounced the right to secession? It does enshrine the principle of the sovereignty of the multinational people of the RF and says nothing about the sovereignty of the subjects, and the more so about the right of secession. All this is true, but nevertheless, it cannot be said that the Constitution of the RF has finally resolved this issue, because there are still serious disputes over whether we have a constitutional or contractual federation. Please note paragraph 3 of Article 11 of the Constitution of the RF which says that the delimitation of the subjects of supervision and powers between the state authorities of the RF and the state authorities of the subjects is carried out by this Constitution, federal and other agreements on the delimitation of the subjects of supervision. Thus, the federal treaty has not been canceled by the current Constitution, but the federal treaty enshrines, firstly, the sovereignty of the republics, secondly, the right of the republics to control their resources, thirdly, the joint implementation of legal proceedings, and fourthly, coordination of the introduction of a state of emergency with the center. If we imagine the situation of a crisis in the central government, I assure you that the idea of contractual federalism will quickly reappear.

What can be the way out of this situation? In my opinion, the optimal model of state structure for Russia is a strong federal center and broad development of local self-government. The Soviet model of federalism inherited by Russia is ineffectual and needs to be revised.

Sergey Lvovich Sergevnin. Secession from the federation is impossible within the framework of the system of legal terminology as the right to secession is a sign of such a state association as a confed-

eration. There is certainly a different practice at the international level, but if we proceed from the Russian political and legal tradition, then we should look at this issue in this way. In its constitutional provisions the Soviet Federation did provide for the right of the Union republics to secession which was ignored until the relevant socio-economic and political factors arose, which led to the collapse of the Soviet Union. This sad experience was taken into account in the preparation of the 1993 Constitution, and the right to secession was not enshrined in it, and from the legal point of view the Russian Federation really became a federation, while the Soviet Union, rather, formally resembled a confederal union.

Resulting from the right to secession, or rather its denial in the constitutional practice of the federal state, is the principle of the unity of sovereignty which was also to be fought for very seriously. Mechanisms for attracting higher courts were to be used in order to state the impossibility of two-stage sovereignty in our political and legal realities, since the source of this sovereignty in a single state is the people and it cannot be distributed among different levels.

For a more accurate understanding of the differences between federalism and confederation, it is necessary to recall such an instrument that is characteristic of confederations as ratification, which is more inherent in international than domestic law. Nevertheless, the experience of using this tool in Russia took place, for example, in some constituent entities of the RF with attempts to introduce mechanisms for suspending the operation of federal laws issued on matters of exclusive federal jurisdiction.

In some cases, they were stipulated by an additional mechanism for suspending the effect of regional laws which redistributed the matters of federal jurisdiction, until the federation issues its laws on the matters of its exclusive jurisdiction. In fact, this is a variant of ratifying federal legislation at the level of a constituent entity of the federation: a direct path to the collapse of the state. Examples of the exercise of the right to secession, for instance, Catalonia in Spain, primarily concern the so-called regional states rather than federal. And this is a relatively new phenomenon on the political and legal map, practically not studied so far.

The second panel "Human Rights and Freedoms: the Foundation of the Constitution" was attended by Olga Leonidovna Pokrovskaya (panel moderator)[9]9, Mikhail Yurievich Biryukov[10] [11], Maria Georgievna Matskevich[11]11, Kimmo Nuotio[12]12, Viktoria Viktorovna Filatova[13], Ilya Georgievich Shablinsky[14], Aleksandr Vladimirovich Shishlov[15]. Friedrich Memmel[16]and Nikolai Viktorovich Razuvaev[17] also spoke during the discussion on the issues under consideration.

Aleksandr Vladimirovich Shishlov. The range of the rights protected by the state should be wider than provided for by the Constitution. It is necessary to strive to increase the range of recognized and protected rights and freedoms, but the fundamental rights and freedoms, the requirement for the protection of which by the state is directly enshrined in the Constitution, still create a system of feedback in the society. The degree of their regulation and protection determines the implementation of the rest of the range of the rights: social, cultural, environmental, labor, etc. And where the feedbacks are broken, the system becomes at best inadequate to the needs of the governance objects, and at worst it just goes downhill, it becomes unstable. Unfortunately, justice is often not found in the Russian legal system. In this regard, it is very important that Russia retains its membership in the Council of Europe and that the human rights court is available to Russian citizens.

Ilya Georgievich Shablinsky. In my opinion, the main problem in terms of exercising electoral rights in the current period is the created practically insurmountable barrier related with the registration of candidates. The signature verification instrument is ineffective and creates conditions for abuse.

Video recording during elections is not a bad idea, but no conditions for its full practical implementation have been created. Access to the archive of records is extremely difficult, and the practice of considering such records as evidence has not yet been established within the framework of legal proceedings.

---

[9] Member of St. Petersburg Election Commission with a casting vote.

[10] Attorney of Moscow Bar Association, deputy of Krasnoselsky municipal district, Moscow.

[11] Senior research associate at the Sociological Institute of the RAS, Cand. of Sc. (Sociology).

[12] Professor of the University of Helsinki, Finland.

[13] Associate Professor, Department of International and Integration Law, RANEPA, Cand. of Sc. (Law), member of Moscow Bar Association.

[14] Professor of the Department of Law of the National Research University — Higher School of Economics, Doctor of Law.

[15] Commissioner for Human Rights in St. Petersburg, Vice President of the European Ombudsman Institute, Cand. Sc.

[16] President of the Constitutional Court of the Free City of Hamburg (FRG).

[17] Head of the Department of Civil and Labor Law of the North-West Institute of RANEPA, Doctor of Law, Editor-in-Chief of The Theoretical and Applied Law Journal.

In these conditions, an effective and fair instrument seems to me to be the electoral deposit, its use canceled in 2005. The return of such an instrument as the electoral deposit would allow returning the conditions of competition to elections, its absence negatively affecting the development of the state, economy and society.

Mikhail Yurievich Biryukov. Indeed, the value of democracy is growing, but at the same time there are growing costs, expenses that we pay for exercising our rights, for democratic elections, democratic procedures. Especially alarming against this background is the strengthening of criminal responsibility and the unlawful prosecution of the persons who took part in peaceful actions. The absence of open platforms for discussing problems in the society, for example, the All-Russian Civil Forum, including for discussing the problems of relations between the population and the authorities, cannot lead to a positive scenario of the development of the state, since the effect of the accumulation of unresolved issues can create a threat of their explosive resolution.

Viktoria Viktorovna Filatova. I would like to note that such a concept as the illusiveness of justice which we are witnessing now in our society must certainly become a thing of the past. And in this sense, the positions and the legal approaches being developed by the European Court of Human Rights, including the focused attention on this problem, the problem of illusory justice, can certainly help the state in solving internal problems with a careful reading of the judgments decisions delivered by the European Court in the cases regarding the Russian Federation. Analyzing these decisions can help bridge the gap between what is written in the Constitution and the actual exercising of rights that we see.

Twenty-year-experience of Russia's participation in the Convention for the Protection of Human Rights and Fundamental Freedoms has been accumulated, and, despite all the complexities of the relations between Russia and the Council of Europe, despite the ambiguous assessment of some judgments of the European Court by the legal community, this experience is certain to be significant for the legislative system and legal practice of the Russian Federation.

First of all, it is necessary to note the pilot judgments of the European Court delivered regarding the RF: these are the rulings revealing some structural problem, in respect of which the court suggests that the state take general measures in order to prevent such violations in the future and reduce, accordingly, the flow of complaints on this issue.

We have identified several problems of the kind. For example, such a problem as the length of non-enforcement of court judgments. As many as two pilot rulings were delivered on this issue, and the response was changes in the legislation of the RF: the adoption of the law on compensation for violation of legal proceedings and the execution of a judicial act within a reasonable time, which created a domestic remedy, ambiguously assessed, but nevertheless recognized by the European Court as an effective remedy.

The European Court of Human Rights is a subsidiary mechanism in addition to domestic remedies of protection of human rights and freedoms which are of the highest value in Russia as well, which is enshrined in our Constitution. And the message given by the European Court of Justice to states is that rights and freedoms must be primarily implemented at the national level, a strong judicial system must be created allowing these rights to be exercised precisely at the domestic level, while the international way of protection is extraordinary.

Most states lose human rights cases in the European Court to their citizens, and Russia is no exception. But these defeats in court should not certainly be perceived as a loss, because the European Court in this case is a way to look at the domestic structure from the outside, and, ultimately, a careful study and attitude to such cases creates opportunities for reforming the legal and judicial system of the relevant state.

Friedrich Joachim Memmel. One of the tools of exercising human rights and freedoms is undoubtedly the availability of an independent judicial system which can ensure an impartial and independent instance for the protection of rights and freedoms from violation. In fact, the issues of the independence of the judicial system in Europe, for example France, Germany, Poland, Bulgaria, are no less relevant than in Russia. And in many ways the solution of this problem certainly depends on the intentions of the authorities.

Globalization in this sense creates both opportunities and difficulties, in particular, the boundaries of a person's self-identification are blurred, which complicates the search for solutions, since the request for a particular solution is not always obvious and understandable. An individual often no longer understands which group he belongs to. And such a situation creates conditions not for real democracy and politics, but for populism and manipulation, which, naturally, negatively affects the general condition of the society and the state.

Therefore, in order to preserve statehood and sovereignty, it is important to start small, from the local level, involving people in solving local problems and creating conditions for people to identify themselves with the local community.

Nikolay Viktorovich Razuvaev. Basic human needs include the needs for public goods, their satisfaction being stipulated by the Constitution of the Russian Federation. The state cannot be the only producer of such goods, since the state monopoly in the public sector negatively affects the quality of public goods.

Their production should be based of the competitive activities of non-profit organizations. The participation of the state and local self-government bodies in the public sector should be primarily reduced to financing of citizens' expenditures for the consumption of public goods, as well as to the regulation and control of the activities of non-profit organizations.

The constitutional basis for the creation of non-profit organizations based on membership is the right to association guaranteed by Art. 30 of the Constitution of the Russian Federation. The creation of conditions for the citizens to exercise their right to association requires a system of guarantees, including socio-economic, political, legislative and other guarantees. A special role among the guarantees of the citizens' right to association is played by its judicial protection against unlawful actions of the state and local self-government. Such protection should be aimed at applying measures of responsibility to public entities, their bodies and officials in case of violation of the rights and legitimate interests of non-profit organizations or their members.

Maria Georgievna Matskevich. A significant influence on the exercise of human rights in the state is exerted by the circumstance what ideas regarding human rights and freedoms the citizens themselves have. Few people in Russia are informed about what rights and freedoms are enshrined in the Constitution of the RF, and think about it. The results of opinion polls show that about 2/3 of the respondents do not know when the Constitution of the RF was adopted, and only about 10% of the respondents know the date of the adoption of the Constitution. At the same time, the majority does not have information about the circumstances under which the 1993 Constitution was adopted, that is, they do not take into account and do not understand the historical processes that led to its adoption.

The results of the polls also demonstrate the priority of social and economic rights over political rights among our citizens. These results are often used to confirm the lack of the citizens' demand for democratic institutions in the society. However, this is not quite true. On the one hand, we really see that people do not often value, for example, freedom of speech, assembly, association, as the right to social protection, free medical care. On the other hand, when we begin questioning the respondents thoroughly, without being limited to general formulations, we often hear that political rights are something taken for granted.

Another question is whether such citizens' ideas correspond to the reality, but in the minds of the citizens their social and economic rights are infringed more often than the political ones. For example, some opinion polls show that young people in European countries are critical of democracy. Does this mean that they want to abandon democratic institutions? Not at all. On the contrary, the value of democracy in the eyes of the population is growing, but a critical attitude to the work of democratic institutions is also growing, and there is a demand for their change.

At the same time, it is necessary to identify another dangerous social trend: this is the emerging discrepancy between the concepts of "legality" and "legitimacy", since the ideas of what justice is are increasingly contravening the formal legal decisions taken. This situation leads to the undermining of public confidence in the entire institutional system of power, creating a threat to stability. In this situation, every step, every decision determines the further vector of the country's development.

Kimmo Nuotio. In Finland, the institution of human rights and freedoms did not develop immediately and uniformly, either, and even at the current moment it cannot be said to be perfect and to be in no need of further development. The Finnish constitution underwent changes during the 20th century. Initially, the Finnish Constitution of 1919 was largely conservative, focusing on the importance of political rights, protection of property rights. While social, cultural, economic rights were not adequately covered by it. Accordingly, during the reform period of the 1970ies, these rights, the significance of which was already recognized by the international community, were implemented and recognized in practice. Finland became a member of the Council of Europe, joined the European Convention on Human Rights taking it as a model for changing the Constitution of Finland, in particular, changing the section on fundamental human rights and freedoms. The constitutional reform which started in the 1970ies eventually led to the adoption of a new, future- and development-oriented Finnish Constitution in 1999. In particular, the right to a favorable environment was enshrined as fundamental human rights and freedoms, and the fundamental legal provisions received the status of a motivator for the development

of the legislation, in particular the legislation on environmental protection, administrative legislation, and authorization regulation.

It should be also noted that the majority of human rights and freedoms have received and are receiving recognition, regardless of whether they are written directly in the Constitution. After joining the Council of Europe and under the influence of the European Court of Human Rights, Finland came to realize that further development of the institution of human rights was necessary. Under the influence of the Strasbourg case law Finland introduced reforms in relation to the criminal procedure, the executive power, the police, and shortening of the length of court proceedings, which especially affects the trust in the judicial system. But even now there are problems in the field of human rights and freedoms in Finland.

For example, the issues of protecting women's rights, the problem of domestic violence, the search for a new definition of the concept of violence, and others are among the most important and topical in the contemporary world. The need to improve the Finnish legislation regarding the protection of human rights and freedoms is evidenced by one of the latest decisions of the Strasbourg court in relation to Finland, by which the country was found guilty of non-compliance with Articles 2 and 3 of the Convention on Human Rights. The reason was the deportation of a refugee seeking asylum in Finland. The Finnish migration services considered that the produced evidence of the threat to the applicant's life did not prove the existence of a real threat to him, as they are usual for the territory from which he fled. The Strasbourg court pointed out that such a generalized approach did not correspond to the appropriate level of protection of human rights and freedoms, and Finland needed to apply an individual approach.

The third panel discussion "Local Self-Government on the Political Horizon of Russia" was dedicated to the problems of local government in Russia. The participants of this panel were: Emil Markvart[18] (panel moderator), Sergey Alekseevich Tsyplyaev[19], Dmitry Petrovich Sosnin[20], Revekka Mikhailovna Vulfovich[21], Elena Vladimirovna Gritsenko[22], Yuri Albertovich Gurman[23], Patrick Terry[24].

Sergey Alekseevich Tsyplyaev. Local self-government requires people who want to solve their problems independently, firmly standing on the ground, who understand how to do this, and are able to organize themselves. This is the key problem for creation of local self-government, our culture has a low degree of self-organization. The second condition for the implementation of the local self-government system is a sufficient number of legislative grounds, because it is also a system of power, but it differs from the state one in that it does not have an immanent right to coercion, it acts only on the basis of and in compliance with laws.

Laws are adopted by the state authorities, and local self-government bodies act on their basis. Therefore, there is a need for a good legal framework giving a wide space for work. And one more necessary condition for the existence of a local self-government system is the availability of a financial base. In our country, money is traditionally concentrated at the level of the federal government and then returns back in the form of subsidies, subventions and grants, which leads to a situation of control over the actions of local governments in order to control the funds provided by the federation or the region. Thus, strong self-government requires people, powers, and finance.

In the existing vertical system of state authorities, public officials often fail to understand the fact that according to the Constitution local self-government bodies are excluded from this vertical and, therefore, cannot be directly influenced by the power. Although the Constitution provides for all the necessary tools to control the actions of local self-government bodies: laws, funding, and, eventually, party discipline.

But, unfortunately, we do not have the habit and tradition of using these tools, we are accustomed to the way of interaction within the framework of a hierarchically built system from bottom to top. Many people believe that this is the eternal heritage of our country, but this is not so. During the time of the zemstvo power created by Alexander II, the state power did not deal with the issue of economy at all, it was not interested in how zemstvos built the socio-economic relations, solved the problems of

---

[18] Professor of the Institute of Management and Regional Development, RANEPA, Doctor of Science.

[19] Dean of the Law Department of the North-West Institute of Management, RANEPA, Associate Professor, Candidate of Science.

[20] Coordinator of the project of the Committee for Civil Initiatives "Municipal Map of Russia: Growth Points", Candidate of Political Sciences.

[21] Doctor of Science, Professor of the North-Western Institute of Management, RANEPA, St. Petersburg, Russian Federation.

[22] Professor of the Chair of Constitutional Law, Law Department, St. Petersburg State University, Doctor of Law.

[23] Executive Director of the Association of Urban and Rural Settlements of Chelyabinsk Region, Chairman of the Board of the Voice of the Urals Foundation, member of the European Club of Local Self-Government Experts, expert of the Council of Europe.

[24] Dean of the Law Department, University of Public Administration, Kehl, Germany.

hunger, education, treatment. Zemstvos created zemstvo schools, hospitals from scratch, and they did everything independently.

As estimated by researchers, the bulk of the budget remained at the local level. The paternalistic idea that everything is born in the center emerged a little later, but it perfectly fell on our psychology. If something is not approved from above, it creates fear. We are brought up in this way, we are used to it. Because of this, the local self-government system is often perceived as a kind of challenge, as a kind of danger, although it is not, in my opinion. The bulk of the issues that citizens should decide for themselves, and this is about 60% of issues, are resolved at the level of local government in developed countries rather than at the level of the state power.

It should be borne in mind that the local self-government system is to some extent an instrument of checks and balances in the relations between the federation and the constituent entities of the RF, in particular, it reduces the risk of strengthening of the power of the regions with a trend to disunite the country in case of weakening of the central power. In this situation, it is more logical for the federal government to rely on local government bodies than to seek to place them under the authority of the regions. As an example of such possible consequences, one can cite Moscow and St. Petersburg which were granted a special status as subjects of the federation, in particular, the opportunity was given to determine the issues of local self-government, which, as a result, led to the fact that local self-government bodies in these subjects were left exclusively symbolically, without real powers and opportunities, that is, these regions completely centralized the power authorities.

At present, the society is getting more complex both economically and politically. During the transition to the post-industrial economy, it becomes extremely diverse in terms of conditions and requires the participation of a free person. As the society becomes more complex, the management system must become more complex as well. It cannot be simple when all commands come from one center. That is why the mankind develops an actually three-level system of public power management: there are two state levels — federation, subject, and one is the local government. Such a three-level system allows taking account of the social diversity and responding flexibly to changes. Therefore, if a country wants to move on, wants to develop a complex society, then it will be necessary to build such a very complex and necessary management system, lower the maximum number of issues to the lowest possible level and refer them to the upper levels of power only if they cannot be effectively solved below or cannot be solved at all.

Another important element necessary for the development of the system of self-government in our country is the ability of municipalities to cooperate to resolve important or complex issues. Because in the absence of such a skill, all these issues will go to a higher level of power for solution, which will not contribute to the development of the institution of self-government.

Dmitry Petrovich Sosnin. Active population is one of the main conditions for ensuring the possibility of strong local self-government in our country. But the municipal authorities themselves should also be an important actor. At present, however, the conditions of their work (in particular, the appointment, rather than the election, of mayors) do not contribute to their activity and taking the responsibility for the development of the territories at the local level. Another problem is that the very decision to create a territorial municipal entity is made at the level of state authorities rather than the local population, for example, in the form of a referendum, which to a certain extent limits the right of citizens to self-organize at the local level to solve local issues.

Revekka Mikhailovna Vulfovich. Municipal entities in Russia are very different; they have different status and different resources. The municipalities of the second level, urban districts, include Russian million-plus cities, and the local self-government in these cities hardly has any power at all, given all our problems and existing shortcomings. However, there are only a few large cities that have used the right to create local self-government bodies and endow them with powers of authority, and this means that they are not ready and do not want to share the power. They themselves perceive themselves as a real powerful subject. And this is also basically a problem, when a city has a population of more than one million people, the decentralization of power is necessary.

In accordance with the European Charter of Local Self-Government, everyone should rely on the principle of subsidiarity of powers of authority which actually starts not from the local self-government, but from the individual level, at which citizens should be independent and self-sufficient, and this requires development of economy which should not again become 80% state. If we go in this direction, we will have still more problems than we have today, since the local self-government is physically objectively unable to provide the basic services absolutely necessary for a normal quality of life.

Within the framework of the problem of control over local self-government bodies by state authorities, the situations when the concepts of control and supervision are mixed with each other or combined

into a chimera called “control and supervision activities” are completely unacceptable. It is one thing when it comes to overseeing the compliance with the laws, that is, the implementation of legal supervision, and quite another thing is control over the rationality of the decisions made at the local government level. The latter is completely unacceptable.

Elena Vladimirovna Gritsenko. Active self-organization being the main feature of local self-government requires certain conditions which have not yet been created so far. This situation is facilitated, among other things, by the truncation of issues of local importance, centralized distribution of finances and the influence of state authorities on local self-government bodies. In general, the possibility of state power interference in the activities of local self-government should be allowed in exceptional cases, when it comes to the emergence of a crisis situation of the inability of local self-government bodies to provide the services required by the population and to resolve vital local issues. The problem is that legal forms of control are often transformed into measures of unlawful interference, in particular, organizational interference in the independence of local self-government, for example, by agreeing on the appointment of the head of a local self-government body which, along with issues of local importance, is engaged in the implementation of certain state powers, or a competitive procedure of the appointment of governors. Thus, conditions are created for the substitution of organizational measures for control measures.

Another important problem within the framework of local self-government and its possible reform is the lack of a clear understanding and idea of who the subject of municipal government is and what it should be like. The concept of a settlement as the main unit of local self-government is gradually being eroded in the course of the latest amendments to the legislation. This is manifested, in particular, by such measures as, on the one hand, the downsizing of urban districts to urban areas in order to bring the authorities closer to the population (changes in the legislation of 2014), and on the other hand, the enlargement of a municipal entity to a municipal district, refusal from the settlement as the main unit of local self-government (changes in 2017, 2019).

What type of organization of local power is the most effective, interesting, and meets the contemporary challenges? It turns out that there is no alternative that is more interesting and suitable for today, because local self-government allows taking account of the existing diversity, allows a flexible approach to solution of many problems and does not cancel the principles of the Charter (European Charter of Local Self-Government of 1985 — ed.) that can be adapted to the new challenges. In this sense, digitalization also provides very interesting opportunities, including from the point of view of awakening this very civic activity through the portals of an active citizen and various forms of local communities. To date, there is no more effective system for solving local issues than local self-government bodies.

Yuri Albertovich Gurman. When we talk about strong local self-government or that it must be strong, it should be remembered that local self-government is one of the foundations of the constitutional system of the Russian Federation, and a whole separate chapter devoted to local self-government is enshrined in the Constitution. That is, on the one hand, the main law formally contains provisions creating all the conditions for local self-government to be strong, and, on the other hand, these provisions are not implemented in practice. In particular, the reason for the weakness of local self-government is the lack of funding, while the lack of the citizens’ initiative is supported by the paternalistic model of public administration.

Unfortunately, the minds of representatives of state power still keep the former Soviet models of relations and governance which in no way contribute to the growth of citizens’ independence, including economic one, and therefore do not stimulate the development of the state’s economy.

As an example, I would like to cite a small populated locality in the USA, a local government representative of which came to the settlement of Chelyabinsk region as part of sharing of experience. A small American village with the population of about 7.5 thousand people has ten hotels, six representative offices of federal universities, its own court, its own hospital, its own theater. And the inhabitants of this village are exclusively independent in the distribution of their budgets and in making decisions. Local municipals do not consult with state officials, much less with federal authorities. This is the effect of empowering people at the local level.

Patrick Terry. Germany currently has certain problems at the local self-government level related with the fact that people have a certain mistrust regarding their ability to influence the decisions made in any way, in particular, there is an opinion that everything is solved at the federal power level. This entails a lot of problems with the active nomination of candidates to local self-government bodies, especially in rural local settlements. We have to conduct explanatory work, talk about how important it is to take part in solving local issues, talk about our own experience. Thus, now we are faced with an important task to reverse this trend of disbelief, to convince people that a large number of important decisions can and should be made at the local level.

However, the opposite problem is a certain overload of local self-government with the number of issues and problems to be solved by them, including with their own budgets, caused by the transfer of a significant number of issues to the local level. In this situation, the local self-government bodies would obviously benefit from the help of the federal authorities, in particular financial one.

It should be also noted that strong local self-government can only exist under the conditions when the community does not close itself, builds open relationships with the neighboring communities and when municipalities know how to unite to solve common issues or to share experience with each other regarding the solution of particular problems.

Emil Markvart. Experts have generally agreed that the main condition for effective local self-government is active self-organized population, financial resources and organizational independence of local authorities. However, there are problems in all these areas today, one of them being the disbelief of the population concerning the ability to influence anything. With regard to the powers of local self-government, the problem is manifested in the fact that a large number of issues that are traditionally solved at the local level, for example, health care, education, have been removed from the list of local functions; a large number of issues have been delegated or withdrawn for resolution at the level of the subjects of the RF. Thus, the principle of local self-government autonomy has been destroyed.

Regarding the financial independence of municipalities, it should be noted that even in an economically favorable period, 96% of municipalities were subsidized, not because of insufficient funds, but in connection with the applied mechanism of their withdrawal and centralized distribution by state authorities. It is difficult to talk about the organizational independence of local self-government, since it is deprived of the right to make decisions on determining its own structure, the procedure for forming local self-government bodies, due to the participation of state authorities in determining the candidacy of the head of a municipal entity. The consequence of such excessive state interference in local issues is stagnation and degradation of territories: the more the state interferes, the less is local initiative, the population does not believe that it can change anything, and just leaves these territories if possible.

The conference participants continued the discussion on **December 10, 2019**, when the panel discussion **“Federalism in the Contemporary World”** (moderator — S. A. Tsyplyaev) was held for a wide student audience. It was attended by A. A. Zakharov, A. N. Medushevsky, F. Memel, S. M. Shakhrai, in whose speeches the theme of the previous day was developed.