

# Materials of the Third Conference “The Constitution of Russia Yesterday, Today, Tomorrow” (St. Petersburg, December 9–10, 2019), second part<sup>1</sup>

## ABSTRACT

This material is devoted to a review of experts' 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 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; possible ways of developing the state system of the Russian Federation in the direction of federalism, confederation and unitary state; discussed the current issues and features of federalism.

**Keywords:** Constitution of the Russian Federation, federalism, federalism, confederation, unitary state, Federal Republic of Germany

In December 2019, St. Petersburg hosted the 3<sup>rd</sup> conference “The Constitution of Russia Yesterday, Today, Tomorrow” dedicated to the problems of the constitutional law in the Russian Federation. The conference was organized by the Law Department of the North-West Institute of Management, RANEPa, the Boris Yeltsin Presidential Center Foundation, the Commissioner for Human Rights in St. Petersburg and the B. N. Yeltsin Presidential Library.

The conference discussed the topical issues of the Russian constitutionalism, including the problems of the federal structure of the state, the role, problems and prospects for the development of federalism both in Russia and at the international level. The Theoretical and Applied Law Journal continues publishing the materials of the conference which it began in the previous issue<sup>2</sup>.

The framework of the second day of the conference traditionally included the Yeltsin memorial lectures dedicated to the events of the early 1990ies and the participation of the first President of Russia B. N. Yeltsin in these events. Last year, the conference was attended by the Dean of the Higher School of State Audit of Moscow State University, Head of the Center for Legal Support of Socio-Political Processes of the Institute of Socio-Political Research of the RAS Sergey Mikhailovich Shakhrai with a memorial lecture on the topic **“Boris Yeltsin. Conflicts, Compromises, Legitimation of Power, Constitution”** and the former Prime Minister of the Republic of Estonia, ex-Mayor of Tallinn Edgar Savisaar, the topic of the lecture: **“Memories of Yeltsin”**.

**Sergey Mikhailovich Shakhrai.** It seems important to me to tell about the events that preceded the adoption of the Constitution of the Russian Federation, for two reasons: firstly, I was directly involved in all these events, and secondly, my colleagues and I thoroughly checked and rechecked the history of the Yeltsin time through the archives many times, studied and analyzed it both from the inside and on a scientific, archival, factual basis; published a large series of books, collections, documents under the auspices of the Contemporary History Foundation. Some of them are kept here, in the Presidential Library. I have selected several striking episodes that will reflect that era to the greatest extent.

Episode one. On December 8, 1991, the Belovezha Accords were signed. A widespread myth says that on this day over a merry feast in the Belarusian forest three men wrecked the USSR: a powerful nuclear power with an army of almost two million people and a super-KGB. The rule of propaganda says: for a lie to be believed, it must be monstrous, but it must contain a drop of truth. The only drop of truth in the story about Belovezha is that there was a table there, but there was no fun at all, it was more like a commemoration. And the monstrous lie is that on December 8, 1991 it was supposedly still possible to wreck something. But by that time the USSR was gone. As of December 8, 1991, only two republics remained in the USSR: Russia and Kazakhstan. The other 13 had already become independent states. Ukraine was the last to leave the USSR on December 1, 1991; at an all-Ukrainian referendum 92% of the population voted for seceding from the USSR.

By the way, it is these dates from August to December 1991, that is, until the date of signing of the CIS Treaty, that are officially considered the days of the formation of independent states from the former Soviet republics, which are recognized by the UN, and therefore it is on these dates that our President and other world leaders send official congratulations on the Independence Day to our former USSR

<sup>1</sup> The review was prepared by the editors of The Theoretical and Applied Law Journal of the North -West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration.

<sup>2</sup> See: Materials of the Third Conference “The Constitution of Russia: Yesterday, Today, Tomorrow” (St. Petersburg, December 9-10, 2019) // The Theoretical and Applied Law. 2020. № 1. Pp. 66–78.

neighbors. In addition, back in August 1991, the single government of the USSR, the single army, security forces and law enforcement came to an end. Instead of them, the Supreme Soviet of the USSR, mind you, not the Russian parliament, but the union one, created some kind of vague inter-republican coordination structures. Therefore, on December 8, 1991, three presidents of the republics, two of them already being independent states, Ukraine and Belarus, signed the “USSR death certificate”, legally formalized the accomplished fact and created a platform for the integration of the commonwealth of independent states.

A frequently asked question is whether it was possible to preserve the USSR. I usually answered that by that time it was already impossible, because the factors of disintegration were too strong: a severe economic crisis, irreconcilable contradictions between the republics, and most importantly, the struggle within the CPSU: the only organization of the country that was not essentially a party, but it was precisely the power that held the entire structure of the USSR. The internal struggle for power led to drastic steps such as an attempt to remove Mikhail Gorbachev from the post of the president and party leader. In response, Mikhail Gorbachev removed the party from power, stepped down as the General Secretary of the CPSU Central Committee and called on all honest communists to withdraw from the CPSU. Within a month, from late August to early September 1991, all republican organizations withdrew from the CPSU. The party was gone, and the state was gone.

But now, after years and a ton of studied documents, I think that the USSR could have been preserved but not in December or August 1991, but around 1989–1990, if the President of the USSR had not turned towards a union treaty, the idea which was offered to him by the Estonian delegation.

The point is that at first there was an idea, and an absolutely correct one, to adopt a new Constitution of the USSR which would take into account all changes: a single constitution for a single state. And there was such a project: Academician Kudryavtsev reported on it at a meeting of the Central Committee of the CPSU. But since 1989, the President of the USSR was inclined towards the idea of a union treaty.

The idea of a union treaty was based on the following historical premises: in 1940, Estonia, as well as Lithuania and Latvia, was annexed to the USSR by force on the basis of the Molotov-Ribbentrop Pact, and, according to some opinions, all this legally, aesthetically, politically looked ugly, illegitimate, undemocratic. The delegation from Estonia approached Mikhail Sergeevich Gorbachev with a proposal to sign a union treaty so that the relations between the countries would become politically and legally formalized. At the same time, Estonia emphasized that it did not offer secession from the USSR, but, on the contrary, sought to formalize the accession of Estonia into the USSR formally and legally beautifully. Subsequently, the topic of the union treaty, but already for reformatting the entire state, was raised by the deputies of the USSR at their first congress. There were also subjective reasons for the idea of a union treaty to be accepted positively and by the majority: the internal party struggle for the course, for the methods of the country development. M. S. Gorbachev saw that the attempts to overrun the political movements in the union republics by force led exactly to the opposite result. And at a meeting of the USSR Security Council in early April 1991 he announced that he was abandoning tough measures and was taking a course towards developing a new program of action together with the popular leaders of the union republics who were in favor of preserving the renewed union. At that time, the USSR had three independent states, 7 sovereign republics and 8 presidents. One of them, Boris Nikolaevich Yeltsin, was the brightest, most influential and decisive. In order to weaken the leadership positions of B. N. Yeltsin the union central officials decided to make an agreement with his subordinates. Accordingly, the union center promised the Russian autonomies that, in exchange for refusing to support B. N. Yeltsin and democratic Russia, they would receive the status of union republics and would establish a new union on par with them, union republics. This did not certainly sound so dramatic and was very democratically called the autonomization plan, but it was a collapse for Russia, because as a result of the implementation of the plan, 16 autonomies, that is, 51% of the territory with all strategic resources, seceded from the RSFSR. That was the beginning of the “parade of sovereignties” within Russia which echoes to this day.

In those conditions, the declaration of sovereignty on June 12, 1990<sup>3</sup> was intended to weaken this very process: the process of the collapse of the RSFSR. 86% of the delegates to the Congress of People's Deputies of the RSFSR were members of the CPSU, heads of large enterprises. The declaration does not contain a single word about independence; it refers to a renewed union, union citizenship, union legislation.

<sup>3</sup> See: Declaration of the Congress of People's Deputies of the RSFSR dated 12.06.1990 № 22- 1 “On the State Sovereignty of the Russian Soviet Federal Socialist Republic” // Vedomosti SND I VS RSFSR. 1990. № 2. Art. 22. — Editor's note.

When the coup happened in Moscow in August 1991, M. S. Gorbachev was isolated in Foros in the Crimea, and Boris N. Yeltsin had not yet “climbed on the tank” to declare the coupists outlawed, the leaders of the Russian autonomies, every single one, were already sitting in the reception office of Vice-President G. I. Yanaev who declared himself President of the USSR. They all came to receive the status of the union republics; they wanted to make sure that State Committee on the State of Emergency would not take away the previously promised status from them. If the coup had not failed, on August 21, 1991 the RSFSR could have already become a confederation, and this is the best case, or even could have ceased to exist as a state. Indeed, in addition to the autonomization plan, the union center had other ideas in the fight against the new Russian leadership. For example, on July 14, 1989, a document was published in The Izvestia newspaper as part of preparations for the September meeting of the Political Bureau and the Plenum of the CPSU Central Committee. In this document, it was proposed to create 7 union republics on the territory of the RSFSR. Seven new republics instead of one Russia. Almost like the current federal districts.

In general, during 1990–1993 Russia could have collapsed more than once both due to external intrigues and from the internal ones, because people often unite in the face of an external enemy, and when it disappears, internal squabbles and civil strife among the elites begin. This happened in Russia after the disintegration of the Soviet Union. A power struggle began between the old party members and the new Russian leaders.

Episode two: the referendum. Over the years, it becomes clear that any serious reforms, any big matters and even big business need political and legal protection, but when in the late 1980ies everyone was talking about the need for reforms in the USSR and Russia, no one seriously thought about their legal and political protection. Therefore, the first law of the RSFSR, on which I worked, was precisely the law on the referendum. It was adopted on October 16, 1990. The idea of the law was that in the most critical situations people should go to ballot boxes rather than to barricades; it was a kind of valve to let off steam from an overheated social political pot.

It may be a little immodest, but I found my old address in the Supreme Soviet of the RSFSR, when my colleagues and I presented this law, and the Supreme Soviet of the RSFSR did not want to adopt it. I said that “I am worried about the conflict between the federal and republican parliaments, this can be called a paralysis of power, but there is a supreme judge over all parliaments: the people, and if we do not pass the law on the referendum, we will thereby deprive ourselves of one of the few opportunities for a normal civilized way out of the conflict, without confrontation, without a civil war, but by addressing the people, putting issues on a national vote.” My position has not changed one iota since then. I believed and still believe that it is the nationwide vote — a direct appeal to the people — that is one of the possibilities for a normal civilized way out of the conflict, without confrontation, without civil war. And the experience has shown that it is the mechanisms of the referendum, the mechanisms of direct democracy that took the country away from the brink of the abyss. One may have different feelings about the past referendums: the referendum on the preservation of the USSR and the referendum that went down in history based on the formula “yes-yes-no-yes”<sup>4</sup>. But the fact is the fact: the country did without revolutions and civil war.

Today, when the time of crisis has become history, when stability has come, the referendum law seems to have fallen asleep, although it is this political, legal and absolutely constitutional mechanism that could solve many acute issues that have now appeared to be driven into the depths and are actually leading to increased tension again.

Be that as it may, but I am firmly convinced that referendums will be in demand both as a mechanism to release social tension and primarily as a mechanism for the direct participation of citizens in power, direct decision-making using modern information technologies, such as blockchain technologies, which guarantee confidence in the results of the referendum. Soon we will not need a parliament at all, we will make all decisions ourselves online, especially considering that 72% of the Russian population already has access to the Internet and Russia is ranked eighth in the world ranking by this indicator.

Episode three: the assault on the White House. The events of October 1993 resulted from the failure in the work of the referendum mechanisms, when the formalized instruments of seeking a consensus failed. It was an episode of a real civil war, albeit limited by the perimeter inside the Garden Ring in Moscow, but no less bloody. Precisely because it was a civil war, where a brother goes against a

<sup>4</sup> The All-Russian referendum on April 25, 1993 which included four questions: on the confidence in Russian President B. N. Yeltsin; on the approval of the socio-economic policy pursued by him; on the necessity of holding early elections of the President of the RF; on the need for early elections of deputies of the People’s Assembly of the RF. — Editor’s note.

brother and no one is right or wrong, being the leader of the then third largest party in the State Duma, the Party of Russian Unity and Accord, I proposed a draft resolution on the amnesty of all participants in the events of the autumn 1993. Civil war cannot end in courtrooms. Only amnesty, only consensus and only reconciliation. We passed this resolution by a majority of one vote, and I am proud of it. B. N. Yeltsin could not psychologically treat these events that way, and therefore did not forgive me for this decision.

As always, the question arises, was it possible to do without such a conflict? It was, probably, but history does not know the subjunctive mood. In any case, we definitely had a historical fork, after which the situation turned onto the road where there were no options. This fork is called “zero option”.

To resolve the conflict, extraordinary simultaneous elections of both the president and the congress of Russian deputies were announced. Now it has already gone down in history, and before it was not even said that literally on the eve of the bloody climax in October 1993, negotiations took place at St. Daniil Monastery with the mediation of Patriarch Alexy II, when the delegation headed by B. N. Yeltsin signed a protocol on consent to the “zero option” and the beginning of the surrender of weapons by those who were in the White House, and, accordingly, on the withdrawal of troops. However, at first this protocol was not even shown to the deputies sitting in the White House, and then they perceived B. N. Yeltsin’s consent to the “zero option” as weakness and began pressing, and with weapons in hand. The chance for reconciliation was lost.

I personally believe that the “zero option” should have been taken immediately after the April 1993 referendum. It was necessary to use the energy of the referendum and its unique results, and to announce simultaneous early elections of the president and deputies already in June. But that did not happen.

By the way, one of the reasons for such an aberration of consciousness, when the president’s proposal to move to the “zero option”, albeit in October, was perceived as weakness, was the current constitution. Reversed and amended many times within 18 months, it simultaneously gave arguments both in favor of a popularly elected president and in favor of a congress of people’s deputies. Actually, overcoming this constitutional ambiguity resulted in the birth of the new Constitution of the RF.

Episode four: the Constitution. As you know, the farther from the moment of adoption of the current Constitution, the more authors it gets. Especially after the current President of the RF V. V. Putin firmly said that the Constitution must remain stable. For example, one of the versions is that the author of the current Constitution was A. A. Sobchak.

The point is that A. A. Sobchak and S. S. Alekseev, later the co-author of the current Constitution of the RF, had their own draft Constitution in 1992. They actively promoted it, but when the presidential draft appeared written by S. S. Alekseev and me, S. M. Shakhrai, A. A. Sobchak did not support this project; moreover, he strongly opposed it. For example, in the early August 1993, a forum of the city and regional deputies was held here in St. Petersburg at which more than 400 people, 32 parties, non-governmental organizations discussed, or rather condemned the presidential draft Constitution and did not approve it, the same as A. A. Sobchak who criticized the draft at the presidential councils.

Whatever news we have learned in the recent years, the fact remains that the text of the Constitution of 1993 was written on the direct instructions of B. N. Yeltsin by two people: S. S. Alekseev and me, S. M. Shakhrai. S. S. Alekseev wrote the second section, the strongest one, about human rights and freedoms. The rest of the sections were written to me, and we wrote the section on the President of the Russian Federation, like Ilf and Petrov: one guarded the manuscript, and the other ran and coordinated the text with the President.

As you know, there is a conspiracy theory that the Americans wrote the Constitution of Russia and handed it over to B. N. Yeltsin through the American embassy, and S. M. Shakhrai and S. S. Alekseev only formalized this parcel from the Americans. But any lawyer will say that if you look for a constitution that would be farthest from ours, it’s the American one: it does not coincide on any point. In the United States, the president is the head of the executive power. There is no government, such as a cabinet of ministers. This is a completely different system of power: there is an executive person and state secretaries around him.

The system of governance being the basis of the Constitution of Russia is almost older than the United States itself; it has its roots in the work of M. M. Speransky in 1809 “On the Code of Laws of the Russian State”. He did not write the whole draft Constitution at that time, but he found some golden rule that allowed him to solve a non-trivial task: to write the sovereign into the constitution, to determine his place in the system of the constitutional order. And when B. N. Yeltsin or V. V. Putin is called the tsar today, this joke is only half the joke, because it is the sole ruler, the head of the state in our historical tradition that is a symbol of unity and the ultimate arbitrator for the citizens of the huge multinational country.

Of course, those who call B. N. Yeltsin or V. V. Putin so are most likely trying to hint at their authoritarian governing style. But, firstly, someone must take personal responsibility for the decisions made in difficult situations. The captain whose ship got in a storm without means of navigation is unlikely to choose a course through parliamentary debates. And secondly, the current Constitution contains all the necessary checks and balances for our leader to be precisely a symbol of unity and the ultimate arbitrator rather than a dictator. By the way, political analysts and historians know that the dictatorship of the parliament is worse than the dictatorship of the president.

I would also like to draw your attention to the fact that V. V. Putin is the first head of state in our constitutional history not to rewrite the Constitution as he sees fit after coming to power. Before that, we had Lenin's constitution, Stalin's constitution, Brezhnev's constitution.

N. S. Khrushchev wrote a very good Constitution in 1964. M. S. Gorbachev also had his own draft Constitution. The current head of state was the first to break this tradition. Our Constitution was created specifically for our country, and if now it is replaced with another constitution, more logical, as some critics believe, an American one, or a more democratic German model, then the political system and the whole country will simply collapse, fall apart.

I have already said repeatedly that when we were writing the current Constitution, we worked quite long on the section regulating the powers of the President, including because S. S. Alekseev and I knew the character of B. N. Yeltsin very well; therefore, contrary to what critics say, we had to think more about limiting the President's powers more reliably rather than about expanding them. As a result, using the ideas of M. M. Speransky, we decided to withdraw the head of the state from the system of executive power and transfer only five or six powers to him which are called dormant powers in any normal, non-revolutionary state: pardon, presentation of the candidacy of the prime minister, judges of the Constitutional Court and the Supreme Court, the Attorney General and other officials to the Parliament. As a joke, we called this construction "the Russian model of the British queen". This did not mean at all that we were going to make the presidential post decorative; on the contrary, in a situation of an acute conflict between the authorities, the country needed a strong authoritative figure standing above the battle, capable of being an arbitrator and possessing sufficient constitutional powers to force the conflicting parties to find a compromise.

Therefore, norms and procedures have appeared suggesting that the President does not show much activity when everything is in order in the country, but when disagreements arise between the branches of the government, between the center and the region, he immediately becomes active and starts acting. He has a whole arsenal of possibilities for this: for example, to resolve any contradiction he can use mediation procedures, if it does not help — an appeal to the Constitutional Court, removal of an official from office. If such methods turn out to be ineffective, he can use the institution of a state of emergency or even the institution of direct federal intervention. Even in the event of a serious conflict between the federal parliament and the government, the President has the right and duty to resolve this conflict in one of two ways: replace the government or appoint new elections of a new parliament.

The fact that the "model of the British queen" could not be fully implemented in practice is largely due to the need for active action in the difficult socio-economic situation of that period, as well as to the character traits of B. N. Yeltsin, and the current President.

By the way, in the initial draft of the Constitution which we wrote with S. S. Alekseev, the President was not empowered to adopt decrees having regulatory and legal force, the force of law, but the final text put to a popular vote had this right of the President: this is the result of the work of the Constitutional Conference and the categorical consent of President B. N. Yeltsin himself with this.

For example, immediately after the adoption of the new Constitution, the legislators sabotaged the adoption of a number of laws necessary for the implementation of the Constitution for quite a long time. The President had to fill these gaps with his decrees, and this was his right and duty, which was confirmed by the Constitutional Court on April 30, 1996<sup>5</sup>. There were situations when members of the government did not want to assume responsibility for some unpopular measures and hid behind the back of the President, even Viktor Stepanovich Chernomyrdin shifted the main decisions to the President, and only one prime minister, Yevgeny Maksimovich Primakov, managed to take full advantage of the model enshrined in the Constitution, because he came to the post of the Chairman of the Government of the

<sup>5</sup> Ruling of the Constitutional Court of the RF dated April 30, 1996 No. 11-П "On the case of verifying the constitutionality of paragraph 2 of the Decree of the President of the Russian Federation No. 1969 dated October 3, 1994 "On measures to strengthen the unified system of executive power in the Russian Federation" and paragraph 2.3 of the Regulation on the head of the administration of the krai, region, city of federal significance, autonomous oblast, autonomous district of the Russian Federation approved by the said Decree".



RF as a figure of consensus between the parliament and the President, and he was supported by almost all factions even within the parliament. The President did not interfere and could not interfere with his powers. This was exactly the model supposed to be implemented according to the current Constitution: the executive branch is headed by the government headed by the Chairman of the Government.

Episode five: the Constituent Assembly. The civil war in Russia and all the problems began not in February or even in October 1917, but after January 6, 1918, when the Constituent Assembly was dissolved. Few people know that the first decree signed by the Bolshevik government was a decree calling for elections to the Constituent Assembly. The society was waiting for the Constituent Assembly, and even the Bolsheviks could not ignore this expectation after the coup.

The resolution on elections to the Constituent Assembly<sup>6</sup> was the most democratic in the world at the time. The resulting composition of the Constituent Assembly was said to be representative of the Russian state, but the Bolsheviks received half as many seats as the SRs, and therefore the fate of the Constituent Assembly was a foregone conclusion. Close in nature to the Constituent Assembly was, in my opinion, the Constitutional Conference of 1993 which, although being a representative body, had exclusively consultative powers, and it was convened by the decision of the President, there were no elections, but nevertheless the Constitutional Conference of 1993 actually played the role of the Constituent Assembly for adoption of the Constitution. Since it was clear that the deputies would not adopt the Constitution by their own decision, two options for adopting the Constitution were considered: through the Constituent Assembly or at a national referendum. Fortunately, the latter option was chosen.

The problem of the powers and legal personality of the Constituent Assembly is the problem of the legitimacy of the power. Inattention to this issue leads to the fact that the building of the state governance is built on sand and then collapses in an instant, I mean the building of the CPSU and the USSR.

In the contemporary history, we have employed the tactics of dual legitimacy. The Constitution itself was adopted by popular vote, and that's half the battle. The second half was the fact that, according to the rules of this Constitution, the presidential and parliamentary elections were held several times.

Quite unexpectedly, history gave us confirmation of the correctness of this approach as applied to the Republic of Tatarstan. The 1993 Constitution was not recognized on the territory of the republic, elections to the Federation Council, the State Duma were not held, the delegation of Tatarstan was present in the Venice Commission<sup>7</sup> pending confirmation of the recognition of the republic's constitution and the republic itself as an independent state. It was only the federal agreement with the Republic of Tatarstan which had been painfully worked out for three years, that allowed preserving the republic within the Russian Federation, and the possibility of concluding such an agreement was stipulated by Article 11 of the 1993 Constitution. A month after the agreement with Tatarstan was signed, the elections of two members of the Federation Council and five deputies of the State Duma were held. Accordingly, the results of these elections were presented to the Venice Commission as confirmation that participation in the national parliamentary elections is the recognition of the national sovereignty and the fact of recognition of the accession of this constituent entity to the single state. The distribution of the powers within the state is another matter, but the participation in the national elections is the recognition of national sovereignty.

Episode six: Union Treaty with Belarus. I do not think that practically anyone remembers or knows about this, but when we were preparing the first treaty with Belarus on the Union State, Tatarstan insisted on becoming the third participant in this union giving as a reason that the republic was an independent state living according to the international law and, therefore, could join the union with Belarus as an equal member and founder.

The very idea of the union treaty appeared after the factions of communists and agrarians received more than 40% in the new State Duma and started trying to adopt some acts to turn back the course of history. For example, on March 15, 1996 the State Duma adopted a resolution on deepening the integration of the peoples united in the USSR, canceling the resolution of the RSFSR Supreme Council dd. December 12, 1991 on denunciation of the agreement on formation of the USSR, etc.

The preparation and signing of the union treaty with Belarus turned the course of history in a different, positive direction.

In those days A. G. Lukashenko was almost the main active participant of the creation of the Union State. He personally traveled around almost half of Russia, campaigning for the union. It was very similar

<sup>6</sup> Resolution of the Soviet of People's Commissars of the RSFSR dated 27.10.1917 "On the convocation of the constituent assembly at the appointed time". — Editor's note.

<sup>7</sup> European Commission for Democracy through Law — an advisory body on constitutional law, established under the Council of Europe in 1990. — Editor's note.

to the primaries of the future president of the new country. Now the situation looks diametrically opposite. A. G. Lukashenko clearly understands that if a more integrated union state is created, he will not be able to take the presidency in such a state, and therefore restrains the process of integration of states.

Episode seven: the Constitution and splitting of reality. Going back to B. N. Yeltsin and the Constitution, I would like to note that in the early 1990ies the Constitution was absolutely real, which means that what was written in it was implemented. However, as experience in our country shows, the historically prescribed, statutory institutions and mechanisms rather quickly are at variance with the actual ones. This is perhaps one of the stable features of our state and society. Therefore, sooner or later, in contrast to what is established by the Constitution, parallel, almost mirror-like, *de facto* institutions of power start being created.

This splitting can be traced throughout our history. For example, it is obvious that the splitting of power, legal and actual, existed in the Soviet period between the representative bodies, soviets and the CPSU. When in the early 1990ies the slogan "All power to the Soviets!" sounded at 100,000 rallies in Moscow, it was truly revolutionary because it called for the return of real power to those bodies to which it was assigned in the Constitution.

An attempt to set out the rights corresponding to the real state of affairs in the system of power in the USSR, to reduce the degree of fictitiousness of the Constitution and thereby increase the degree of social and political stability in the Basic Law is known to have been undertaken only in the Constitution of 1977, its Article 6 establishing that the leading guiding forces of the Soviet society, the core of the political system of state and public organizations is the Communist Party of the Soviet Union, which corresponded to the real state of affairs.

In 1992, when the Constitutional Court considered the case of the CPSU, the ban on the party was recognized as consistent with the Constitution, and the party was "condemned" not for the communist ideology or criminal atrocity, the decision and the legality of the party's dissolution were based on the circumstance that the CPSU substituted the bodies of state power, appropriated the state power.

Then, as I said, after the adoption of the 1993 Constitution, it began creating a new reality, at a certain period of time there was practically no discrepancy between the legal and actual Constitution, but the situation changed gradually.

The discrepancies between the formal and the actual Constitution can be illustrated by the following examples. We have the State Duma — a legislative and representative body that has all the authoritative powers, but the indicator of the authority of this body in the society is small. At the same time, the Civic Chamber was created uniting people of authority, leaders of public opinion, but lacking any real authoritative powers. We have the Federation Council — fully-fledged, but not authoritative due to the chosen order of its formation, when its members are not real representatives interested in the development of the region they represent. And there is the State Council, authoritative by its composition: comprising the top public officials of the regions, but lacking real powers. We have the Government — formally the supreme body of executive power, but not a politically independent and not authoritative institution, and the Presidential Administration in which all the most important decisions are made. The situation is similar in the judiciary power.

What I want to show on the basis of these examples is that authority and power are in different dimensions. And if this trend continues, the degree of fictitiousness of the Constitution, the degree of discrepancy between the actual social relations and the basic law will reach a critical point.

We still have the opportunity to return, to get away from this duality of the organization of the state governance. This requires adopting a constitutional law on the parliament, a constitutional law on the presidential administration. The tools for eliminating such inconsistencies are stipulated in the Constitution itself; what is needed is the political will to use them.

In my opinion, changing the existing situation should be started with the implementation of judicial reform which should bring us back to the ideals of the 1864 reform carried out by Alexander II. It is necessary at least to do what he did: he separated the boundaries of judicial districts from the borders of provinces, ensured the independence of the judiciary power, introduced the institution of a judicial investigator as an instrument of judicial control over the preliminary investigation; a judicial investigator was appointed by the emperor on the recommendation of the minister of justice, and had a huge salary. In my opinion, if such measures were implemented, it would prevent an unthinkable situation when, according to statistics, out of two hundred thousand criminal cases on economic crimes, only 15% reached court, but at the same time the business of the people who got into the preliminary investigation machine was destroyed, their property was taken away from them.

These particular questions would seem to have nothing to do with our life today and tomorrow. However, there are categories such as trust and fairness. It is no longer possible to restore the trust of

the society and business to power by slogans. Only real changes, reforms will help the state and society face each other. At the same time, it should be noted that the nature of our republic is not parliamentary; our transition from autocracy, monarchy to a republic is not based on the parliament. An independent judiciary was created forty years before the parliament, and thus in our country the judiciary power is the basis of the democratic structure of the state.

Finishing the story about the period when the current Constitution of Russia was created, I would like to note the most important thing about B. N. Yeltsin. In all the events of that era, the first President of Russia did not allow a civil conflict and civil war, did not allow the persecution of the old elite, did not follow the lead of the new elite entirely, maybe intuitively, but he maneuvered, and we have emerged from that stormy sea today. Let's remember this.

**Edgar Savisaar.** I believe that Boris Nikolaevich Yeltsin was a person who is of great importance to me and to all history. Without him, Estonia's fate could have had a completely different color and a completely different development in the early 1990ies.

I met B. N. Yeltsin for the first time in the spring of 1990, when he was yet a deputy chairman of the Construction Committee. At that time, he was not widely known or popular, and it was quite easy for my friends to organize our meeting.

In that period he did not enjoy the support of the party leaders, it is not a secret, and few believed that he would still be able to show himself.

This meeting began in a rather peculiar way: B. N. Yeltsin told me that the room was bugged and offered to go to another room. Which we did. This was the first time one of the Soviet leaders told me directly that the conversation was bugged. We talked about the future for both Russia and Estonia. He did not rule out the possibility of restoring Estonia's non-dependence, as it had been before World War II. In general, he was optimistic and promised me to visit Estonia in the same year.

Unfortunately, this did not happen, because both B. N. Yeltsin and I had difficult times. He visited Estonia only the next year and for completely different reasons, during the January crisis.

With the active participation of Boris Nikolaevich, an agreement on joint work between Estonia and Russia was signed in 1991<sup>8</sup>.

Unfortunately, the tragic events known as "the January crisis" took place in Lithuania at the same time<sup>9</sup>.

At this stage, we in Estonia also felt in a dangerous situation. We did not know what would happen next, since the Soviet authorities began using military force, but we did not expect this and, probably, were not psychologically ready for this.

I thought about what to do next, and, remembering my meeting with B. N. Yeltsin, I decided to call him and ask his opinion about the new situation, because it was clear that if Vilnius began active resistance, this will affect both the republics and the entire Soviet Union.

Boris Nikolaevich honestly warned that even he would not be able to contact M. S. Gorbachev, but we nevertheless tried to find a way out of this situation, and agreed that we would organize an official meeting. Our plan was that if we officially meet openly, it will influence M. S. Gorbachev and his entourage, everyone will understand that Russia is supporting Estonia, and then this may influence the decision of the leaders of the Soviet Union not to allow the use of force on Estonia.

At the beginning, B. N. Yeltsin suggested organizing this meeting in Russia, in Novgorod, then it was planned to move the meeting to Vilnius, but in the end we agreed to meet in Tallinn.

I would not say that we immediately managed to come to an agreement on the development of relations between Russia and Estonia. We had several negotiations by phone. Finally, the meeting took place in Tallinn.

We met in the evening in Tallinn, talked about the general situation, wrote several statements, including to the UN. By the way, M. S. Gorbachev did not at all like what Boris Nikolaevich was doing. It was important that B. N. Yeltsin addressed the Soviet soldiers deployed on the territory of Estonia. I think that this might have influenced the soldiers and officers, and when we had the most difficult times and tense relations between the countries, perhaps the speech delivered by B. N. Yeltsin played an important role in preventing the conflict escalation.

There are many legends about Yeltsin's return journey. In Estonia, the tense situation was aggravating, there were plans to prevent B. N. Yeltsin from leaving Estonia, to barricade the airport. As a result, it was decided that Boris Nikolaevich would return to Russia by car across the eastern border and via Leningrad.

<sup>8</sup> This refers to the Russian-Estonian treaty signed in January 1991 in Tallinn by Chairman of the Supreme Soviet of the RSFSR B. N. Yeltsin and Chairman of the Supreme Soviet of Estonia A. Ruutel. — Editor's note

<sup>9</sup> Clashes between the population and units of the Soviet Army in Vilnius from 11 to 13 January 1991. — Editor's note.



Later I had several more important meetings and negotiations with B. N. Yeltsin.

For example, during the August coup, I was in constant contact with his assistants, with whom we exchanged information about where the coupists were getting help from in Moscow, and I think that this was beneficial for both Moscow and Estonia, of course.

We had another important meeting before the November 6 [1993] event. — Editor's note], when the State Council of the Soviet Union was meeting, when I asked Boris Nikolayevich about his opinion on whether M. S. Gorbachev would give Estonia freedom or not. He replied that he did not know, but believed that if M. S. Gorbachev did not do this, then the whole world would consider itself deceived. Everyone knew about the Molotov-Ribbentrop Pact and knew on what conditions Estonia was taken into the Soviet Union. But I am very glad that this meeting ended positively for us and that M. S. Gorbachev did not argue. To be honest, he did not have any special opportunity for this, given that N. A. Nazarbajev, V. V. Bakatin, B. N. Yeltsin, and a number of other leaders of the Union spoke in our favor.

So that you understand correctly, we were clearly on the same side of the barricade with Russia, and not only with Russia, but with many republics of the Soviet Union, in Tallinn and Moscow many meetings were organized with the leaders of other union republics, and this influenced everyone positively. Russia was certainly the most powerful among them.

We met with Boris Nikolaevich later when I was no longer the prime minister. He invited me to the Kremlin, discussed not only memories, but also prospects for the future. He regretted that Estonia's policy was not entirely friendly towards Russia. And I don't like Estonia's approaches to relations with Russia, either. I have always maintained good and friendly relations with Russia — we are neighbors. And I still think that a friendly policy would be positive for both Estonia and Russia.

In fact, in Estonia there are different people who think like me and remember the role of B. N. Yeltsin in gaining independence for Estonia, but there are other people, like everywhere else, the only difference is who speaks with a loud voice and who is silent.

At the end I want to say that some time ago I was in Moscow, visited the Novodevichie cemetery and laid flowers on the grave of B. N. Yeltsin, and I think that we should all do this and remember this person.

The content of the second day of the conference was also the panel discussion **"Federalism in the Contemporary World"** (moderated by Sergey Alekseevich Tsypliyev<sup>10</sup>) which was attended by Andrey Aleksandrovich Zakharov<sup>11</sup>, Andrey Nikolaevich Medushevsky<sup>12</sup>, Friedrich Memel<sup>13</sup> and Sergey Mikhailovich Shakhrai whose reports developed the topics of the previous day.

**Andrey Nikolaevich Medushevsky.** Federalism is a compromise between two extreme positions: confederalism, which means an international union of modern states, and unitarianism, which does not imply any decentralization, and in any case does not imply decentralization in the form of preserving statehood within the state. Accordingly, federalism may be said to perform a diametrically opposite function in history: a federal state can emerge from the disintegration of a unitary state or, more precisely, from its decentralization, or, vice versa, federalism can be a certain transition to the creation of such a unitary state.

Federalism itself is not a value, but rather an instrument, because the tasks of decentralization and preservation of freedom within the framework of decentralization can be also achieved without federalism. We know other ways of decentralization, for example, a state of autonomies, like in Spain, it can be devolution, like in the United Kingdom, it can be a state built on a regional basis, what is called regionalization. So, federalism is one of the instruments of state organization, and it is important to understand when it is really needed and when it is not. Suffice it to say that after the collapse of the USSR, federalism is represented only in Russia, and there is no federalism in any of the former Soviet republics that have become states, and this, of course, requires apprehension.

I would say that if we approach federalism reasonably and perceive it not as a value, but rather as a tool, then we need to ask ourselves, what it is needed for. If federalism is needed in order to better represent the civil society, ensure decentralization and make the system more flexible, then I would support such an interpretation of federalism, but if this instrument is needed in order to build a state based on the national and ethnic principle, then such federalism is asymmetric, destructive and can ultimately lead to the disintegration of the country.

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You needn't look hard to find an example: this is the fate of the Soviet Union, all its constitutions included federalism built on a national-territorial principle and also allowing the right of secession, which is a sign of confederalism. Therefore, in my opinion, in different situations there may be different interpretations and models of federalism, and the model that we inherited from the Soviet Union is not optimal, therefore, in my opinion, it is legitimate to pose the question of how to make this federalism less asymmetric, more flexible and fill it with a different content, not Soviet, but civil law, that is, to introduce the concept of federalism that would contribute to the development of civil constitutional rights. From this point of view, federalism is certainly important and useful.

In addition, I believe that many fundamental reforms in this direction, I mean the reforms for the development of civil society and the rule of law, do not necessarily have to be related to the protection of the structure of federalism that exists now. Everyone recognizes that this construction is not effective, that we actually have a trend towards unitarianism, a trend towards deconstitutionalization of the principle of federalism. Therefore, I would suggest considering alternative interpretations of the content of the concept of federalism and even quasi-federal forms, other forms of decentralization, as well as a set of measures that would create a single civil nation in Russia. This, of course, requires a set of economic, budgetary, political, administrative, and judicial reforms that would make it possible to combine the integration of the state with its decentralization and flexibility of governance.

If we understand the task of Russian federalism in this way, and not just literally interpret and protect federalism in itself in isolation from the goals and objectives of its use, then I think that we can get a completely different content of federalism, including a different constitutional interpretation, and move away from the ineffective Soviet model of quasi-federalism, which was not federalism at all, to the creation of other alternative instruments that combine the principles of federalism with other ways of implementing representation and decentralization.

The fate of Russian federalism cannot be torn away from constitutionalism and the political system. The Russian Constitution does not exclude the authoritarian vector, but it does not make it mandatory. The provisions of the Constitution can be filled with different meaning depending on the logic of the political process. The fact observed by us today, when one party dominates both in the central and in all regional parliaments, does not at all follow from the Constitution. We actually have a situation of the absence of real political competition, and this situation leads to stagnation both in the issues of federalism and in many others. From this point of view, the constitutional provisions on federalism can have a diametrically opposite interpretation, depending on what will be the dominant vector of development of the political system.

As for the constitutional provisions themselves, the Constitution even purely legally includes the possibility of different vectors of development.

On the one hand, this is Article 11 of the Constitution of the RF which assumes that the 1992 federal treaty has not lost its force, but it contains a provision on the sovereignty of the republics, and in this sense it is the path to confederalism. If we imagine the situation of the weakening of the federal center, we can again see the "parade of sovereignties" and the restoration of the contractual concept of federalism.

On the other hand, we have a rather vague interpretation of federalism itself from the point of view of the separation of competences. For example, Article 71 of the Constitution of the RF defines the competence of the federal center, Article 72 speaks of joint powers defining them very broadly and vaguely, and Article 73 says that, beyond joint powers, constituent entities have their own competence. In reality, it turns out that through the use of the provisions of Article 72 of the Constitution, the federal center completely dominates in the constituent entities of the RF, it overtakes all the competences of the union republics, and as a result we get the formation of that very vertical of power instead of federalism and the deconstitutionalization of the principles of federalism. Such conditions give rise to a third variant of the development of the vector of the state structure in the direction of unitarianism.

These three vectors — confederative, federal and unitarian — can be derived from the present Russian Constitution, although it speaks of the sovereignty of a multinational people and cancels the right of secession. This means that Russia is faced with a choice between decentralization, centralization and atomization of constituent entities, and the disintegration of the country twice within one century is certainly a phenomenal fact.

How can we get out of this vicious circle between disintegration and dictatorship? The way out, of course, is to fill federalism with new content. We are talking about the need to implement a cooperative model of federalism which presupposes a very clear delineation of the subjects of jurisdiction between the federal center and the constituent entities, presupposes division of ownership at different levels, reforming the budget legislation, administrative reforms and many other factors.

If only we touch upon this problem, we see a huge set of unresolved issues that are just postponed for the future.

Therefore, the contemporary Russian federalism may be defined as deferred federalism.

Federalism is enshrined in the Constitution as a kind of strategy of movement, and I agree that this is an element of the separation of powers and democracy, but there is still a long way to go in the implementation of these constitutional provisions, and here one can use both the logic of federalism, when it is useful, and the logic of quasi-federalism, extraconstitutional impact on the situation, for example, through the creation of economic regions, judicial regions, which presupposes filling the concept of federalism with its authentic content.

From this point of view, the Russian legislation is very inconsistent. We see that the law on the general principles of organizing the legislative and executive authorities have been amended more than a hundred times, major changes have been made to the legislation on party building, on the procedure of forming the Federation Council. We see contradictory decisions of the Constitutional Court of the RF, unsettled issues of bicameralism, which is related with the uncertainty of the procedure of formation of the upper house of the parliament which has changed four times. All this taken together turns us to face the federal reform, but not the reform of the Constitution, not its revision, but basically to reforming the institution of federalism understood as an instrument of the state structure.

As for the citizens' habit of turning to the central government as a manifestation of the absence of working mechanisms of federalism, this tradition stems from history, since Russia is a monarchical country. On the other hand, this follows from the fact that, in fact, many fundamental issues of modernization have not been resolved, for example, the problem of the civil nation as the basis of the entire state process. It is also a manifestation of the incapacity of Russian federalism largely based on the German model but not presupposing the system of subsidiarity and clarity of the legal and economic support underlying the German federalism. The responsibility is delegated bottom-upwards due to the inadequacy of local institutions. And the population imagines that there should be a certain authority at the top to act as a mediator between various institutions, interest groups, and it is this authority that can express the people's ideas about the good.

In this situation, it is necessary to consider the rule-of-law state building not as a one-time decision, but as a process (for example, German federalism took shape gradually in the conditions of severe conflicts). We witness a certain process in Russia as well, and I see the way out of this contradictory situation in the development of full-fledged political competition, the development of a multi-party system, the transition from a simulated multi-party system to a real one. But since it was impossible to do this right away and, apparently, there is still a long period of limited pluralism ahead, I see a way out in the creation of a treaty of elites on the transition to full-fledged political competition, at least at the level of elite groups.

**Andrey Aleksandrovich Zakharov.** Federalism is a political and legal mechanism of disaggregation of authority, its deliberate and purposeful distribution over several power platforms, which is designed to prevent its concentration in the hands of a single person and, accordingly, its abuse. Federalism, in and of itself, protects minorities by preventing abuse of power, and this is its major function.

It seems to me that we should not counterpose the federalism understood as the purpose, and the federalism understood as a means, that is, in this case the instrument and value must be fused together, because there are instruments, the rejection of which leads to the death of the whole society. Federalism in the case of the Russian Federation and other multiethnic societies where the federal scheme is used is precisely the tool that turns into value. If it is abandoned, there is a significant risk of reducing the territory of the state within its borders.

If we turn to the experience of some of our neighbors in the post-Soviet space, for example Georgia, we can see that the refusal to turn to federal recipes in this country entailed a 20% decrease of its territory. What should be done in this situation? It would seem possible to return to the federal scheme again, but it is much more difficult now. I will not list all the examples, but there are at least a couple of countries to which federal recipes were recommended but were ignored, they did not see any value in them, and as a result, these states are experiencing troubles and stress.

The second thing I would like to say is that the national-territorial federation is sometimes presented as some kind of an eyesore a deviation from the norm, but such a federation is a way of self-determination of ethnic minorities inhabiting a large political space. From this point of view, the national-territorial federation is a very useful tool with a powerful value load. It allows creating spaces within a huge state where the minority feels like the majority. And this stabilizes this minority, allows them to feel comfortable and cozy within the framework of this state entity, and this is a powerful argument in favor of an apology for federalism. The asymmetry of national federalism is the price that has to be paid

to ensure that the minority does not destabilize the entire socio-political mechanism.

And we all know from our history that one percent of the Russian population is enough for the country to feel very bad if this 1% is not satisfied with the place assigned to it within the framework of the state mechanism.

The Constitution of the Russian Federation is rather supine in some of its provisions concerning federalism.

On the one hand, it says that our constituent entities of the federation are equal in their relations with the federal center, and in the next paragraph it says that in certain situations the relations between the center and the region can be regulated by special agreements.

There is a clause in the Russian Constitution that does not exist in the constitutions of other federal states. I mean the provision on how the decisions made by the upper and lower houses of the Russian parliament are related to each other. In our country, any decision made by the Chamber of Regions, the Federation Council can be blocked by 2/3 of the votes of the State Duma deputies. This means that if you have a controlling stake in the lower house of the parliament, the opinion of the regions which are supposed to be represented in the Federation Council, can be fully ignored. This is a rather strange norm for a federal state. And basically, the constitutional text could be edited in these aspects.

I would start restoration of federalism in Russia with restoring the elections of heads of regions. What is the point of going to a leader whom you did not elect or elected in a strange way? When normal free elections are restored, some issues will be automatically resolved. There will be no need to run up, because the elected people who will depend on local voters will settle things with the center more effectively as well. Where will they get funding for local issues? They will force the center to reconsider the current financial relationship, and the process will start moving.

It is necessary to bring together the right to make a decision and the possibility of its implementation at the relevant levels, only then will it make sense to apply to the appropriate level for a solution to a specific problem.

**Friedrich Joachim Memmel.** Germany is a federal state, and a federation implies alignment, a certain combination of the levels of the government which are represented by the federation, the federal states of Germany, in other words, the regions, and local self-government in Germany.

But the fact is that all countries are different, and the governance system will look different in each country. Here one cannot reason in terms of the black-and-white world, each country has to look for its own combination, a balance between these three levels, that is, the level of the federation, the medium level of government bodies and the local level.

In my opinion, in the contemporary world characterized by globalization, in which all connections and interactions become more complex, and individualization intensifies, we need to have a space that would provide for the possibility of diversity, including the creation, recognition of such diversity and its maintenance. This requires different levels of governance, federation, regions and local, and there is to be a possibility of combining them on a certain developed basis.

Naturally, all countries are different, everything depends on the immediate conditions. These are regional conditions, ethnic conditions, people's living conditions, living standards, and the more homogeneous the state is, the more different the role of federalism is: the more diversity, the more contradictions, the greater the desire for the central core. If we consider the Federal Republic of Germany, we can say that we have chosen the path of federation and are following it out of the desire to attract all citizens to us, to involve them in the path we are going.

The discussion being held in Germany on the issue of improving the state structure often suffers from the disadvantage that it views the path exclusively as the path of developing democracy. But the state is the entity that provides services to its citizens, that is, the task of the state is to improve and create living conditions for citizens. If the state does not do this, it loses its citizens.

Which state has the best abilities of creating the necessary living conditions for its citizens? I believe that it is federalism from this point of view that is the best solution for creating the best living conditions for citizens, since it provides an opportunity to find out which conditions and needs are necessary for the citizens at various levels. If we take one top level of power only, it will be unable to know and take all this into account.

In the present conditions of loss of identity, change of ties, loss of ourselves in the format of the ongoing globalization, we need to create spaces for better self-identification. This is the biggest problem today, the challenge faced by the European Union, because it is the certain space that wants to be united and self-identified, but the laws, the resolutions adopted at the general level of the united Europe are not understood and are not implemented at the levels below, which we now see in the case of the UK.

Federalism implies better opportunities for the development of competition, including at different levels between areas, regions, between various forms of self-government. On the one hand, in the context of federalism, we create better conditions for competition, great opportunities for it, and on the other hand, we maintain the possibility of taking account of the needs of the population which are best known at the local power level in order to better plan and implement these needs. ...

Considering that there are states with a large number of ethnic groups, having groups of peoples, the state may have different languages, different size and different history which it has lived, and all this impacts the possible variant of the state structure.

Naturally, when choosing a variant of the state governance structure, the question should be posed about the goal to strive for. If the goal is power, including economic or political power, then one form of federation is chosen, and if the goal is democracy, democratization, then this will be another form.

On the one hand, people always express everything in the desire for power, which has its own expression in the policy. On the other hand, we want to improve the people's living conditions. For me, the question has an unambiguous answer: we need more democracy, care about improving people's lives, and this approach is supported by the aspirations of most states and peoples.

But in this case as well, there are differences in approaches at the state level. If we look at China, the situation in this state differs in that the greater independence of individual regions can lead to the disintegration of the state. European states are much more homogeneous from this point of view. If we look at the FRG, it is a federal state, consisting of 16 federal lands, regions. And each of the regions has its own communities, each having its own charters. Germany also has federal central governance bodies: the government, the chairman of the parliament and the constitutional court which exists separately from the rest of the court instances of the judicial system. The parliament creates an opportunity to work out questions, the government approves the decisions. At the same time, each of the regions has its own government, parliament and constitutional court. I see this as a certain peculiarity of our country which is important for us, this is the way in which the possibility of getting the citizens involved in governance and of taking account of their interests is ensured at every level. Thus, consideration for the conditions, consideration for the local interests enhances the competitiveness of each of the regions and thus contributes to the fastest development of the region.

In accordance with the Basic Law, great independence is also given to the level of local self-government: communities, communes which can have their own freely elected independent bodies, which no one can give instructions to, they can make their own laws in the areas important for them, naturally, within the powers given to them by the Basic Law.

The main requirement in such a state structure is to correctly and accurately define the competences: the competencies assigned to the federal level, so that the state should develop in a single direction; and the competences of the regional level. For this purpose, a special catalog has been developed in Germany containing the competencies assigned to the federal and regional levels. For example, financing issues, which primarily concerns subventions provided to the regional and local levels, and without solving the financing issues, neither competition nor independent solution of local issues is possible.

To ensure the conditions for observance of all these elements of the organization of the state, an effective judicial system is needed which would monitor all adopted laws and decisions and ensure their observance, since this is the only way to ensure trust in the state, and without trust, no system, existence within the state is possible. Only an effective judicial system which makes decisions quickly and transparently is able to increase public confidence in the power system, and when decisions are made long and in an incomprehensible way, then it becomes necessary to appeal to the supreme authorities, up to the president.

**Sergey Mikhailovich Shakhrai.** Federalism is a compromise, it is a guarantee of a democratic political regime, the same as the division of powers into legislative, judicial and executive horizontally, vertical division within a single but complex federal state, it is a guarantee of a political democratic regime. Federalism in Russia is the most complex in the world, the most interesting. The Constitution lays down a cooperative model of federalism, and it makes it possible to adapt federal rules and structures to the modern life.

Federalism is freedom and unity, the unity of the territory and the state, freedom of man and regions. Federalism is the art of governing a complex state, it is a way to get all of our so different constituent entities involved in the common cause of state development.

We are extremely limited in the freedom to choose the development of our model of federalism. We are not in a laboratory, federalism is not in a test tube, we cannot separate the current state of Russia from its history. Twice in the history of our country, federalism was a forced measure of uniting a col-



lapsed state, that is, it was not an abstract model of the delineation of powers, but was a form of returning to the unity of the state: a federal, complex unity. This was the case in 1922, when the country was withdrawing from the Civil War, and it was the same in the 1990ies. And it is good that federalism was not understood as the need to establish a new Russia. We have maintained continuity, tried to get rid of some rudiments and birthmarks of federalism, which we inherited from the Soviet Union, in particular, for the first time in the history of our federalism, the right to secession was restricted. We declared, at least verbally, our federation to be territorial, not national. A certain asymmetry has been preserved, as a kind of tribute to history, but it was impossible to do without it, either. A new model of federalism in Russia should be grown gradually, without hurry, we should start from life, from the interests of those people in whose territory they live, so that they want to join a neighbor or, on the contrary, develop within the economic opportunities of their region only, using the possibility of enlarging the constituent entities of the federation stipulated in the Constitution. The principle of “do no harm” should be applied here. For example, the treaty with Tatarstan was canceled last year, almost no one noticed this event, but I assure you that in a couple of years this pot will boil and explode and problems with language, history, etc. will arise again. Federalism is the art of running a complex state, but not a science

The Constitution of the RF is ingenious in its contradictions, because it provides a whole set of tools for solving federal problems. But the main thing in a federal structure is, of course, finance, taxes, property, and the economy. And for the development of federalism in our country, it is necessary to clearly resolve the financing issues, to determine what share of the collected funds remains at the local and regional level, and what is transferred to the federal center. Unfortunately, this proportion of income distribution is not fixed in the Constitution, but this could not be done in 1993.

And of course, when up to 80% of taxes go to the federal budget, it is difficult to talk about federalism, since this way of distributing funding clearly evidences a unitary system of governance organization. Therefore, the paradox of federalism in Russia is that the less money in the treasury, the more federalism in the country, because it is necessary to transfer the freedom of decision-making to the regions and, together with the freedom to make decisions, to shift responsibility to the regional level, realizing that the region is to survive on its own, to look for its resources in this issue and in this problem. Thus, freedom is converted into economy, into development.