

Is Russia a Constitutional Democracy? Checks and Balances in the Russian Constitutional System

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Abstract

In my thesis I explore the problem of constitutional democracy in Russia from the perspective of the system of checks and balances. I ask whether all branches of power in the Russian constitutional system are sufficiently independent and able to control each other. For the investigation of the problem, I focus on the analysis of the “law in books” and the “law in action”. The conclusion I come to is that the Russian Constitution has not provided the basis for the establishment of a democratic state and has created favourable conditions for the domination of presidential power over others.

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Introduction

When Russia became an independent country in December 1991, dramatic changes in state structure and governing processes followed. The new Russian leadership endorsed the new constitutional system as the basis for transition to democracy. After the grave political struggles that lasted for three years, the new Constitution was passed in 1993, establishing new state bodies; it entrenched human rights and freedoms according to international law; it permitted pluralism of opinions and activities. However, even today, when we can observe strengthening presidential power in this country the questions arise: can Russia be considered as a democratic state or at least as a political regime in a difficult democratic process? Had the Russian political elite initially laid the foundation for the constitutional state? Are there any tendencies to power usurpation in the Russian governmental structure as it was in the Soviet Union? Are the Russian governmental bodies sufficiently independent to check each other? To answer these questions, it is important to look at the contemporary Russian political order and to examine if the system of checks and balances in it complies with principles of constitutionalism. I believe that my research of the Russian constitutional system nowadays is relevant and interesting from a theoretical point of view of political science and constitutional law, since a little research has been done in the retrospect of the system of checks and balances.

The system of checks and balances in Russia has been developed in the circumstances of transition from totalitarian to democratic state. Scholars as Thomas Remington, Michael McFaul, Nikolai Petrov, Andrei Ryabov, Timothy J. Colton, Aitalina Azarova, Sergei Markov, and others have devoted their works to the analysis of the political situation and institutions in Russia. Thomas Remington, for instance, pays much attention to legacies of the communist state as the main constraint on the way to democracy in Russia. He affirms that strong patrimonial patterns of state-society relations inherited are the main reasons for weak

civil society and constitutional and electoral institutions in the post-1993 system. Thus, Remington concludes that simple transformation of state institutions after the collapse of the USSR has not constituted a transition to democracy. Liberation from the old value system, in Remington's view, is the main condition for establishing a democratic state¹.

Michael McFaul in 1999 compares Russia under Boris Yeltsin and Vladimir Putin and explains the popularity of the latter by improvements in the economy. McFaul notes that the Russian political system during Yeltsin's term lacked many attributes of a liberal democracy. However, in his opinion, the regime was definitely more democratic than Putin's, since opposition political parties had the opportunity to influence the politics, even though the formal political institutions did not change significantly in Putin's period. McFaul sums up, that again Soviet legacies played their role in people's mind, who choosing between democracy and economic welfare, made a choice in favour of the latter².

Timothy J. Colton in 2003 analyzes Yeltsin's figure and his role in establishing the new constitutional framework in post-communist Russia. He acknowledges Yeltsin's efforts in bringing democracy, but criticizes his "failure to establish constitutional safeguards" which could have prevented the country from authoritarian tendencies³. Colton, probably, is the one of few scholars who look at Russia through the prism of constitutional democracy.

Many authors, like Michael McFaul, Aitalina Azarova, and Matthew Hyde, call much attention to the phenomenon of "managed democracy" and Putin's course toward building a strongly centralized state. They concentrate mostly on the recent political reforms, attitude to human rights, NGOs activity and participation of political parties in Russian politics.

¹ Thomas F. Remington, *Politics in Russia*, 2nd ed. (New York: Longman, 2001), 15.

² Michael McFaul, "Lessons from Russia's Protracted Transition from Communist Rule", *Political Science Quarterly* Vol. 114, no. 1 (Spring, 1999) : 114.

³ Timothy J. Colton and Michael McFaul, *Popular Choice and Managed Democracy: The Russian Elections of 1999 and 2000*, (Washington D.C.: Brookings Institution Press, 2003), 36.

Consequently, they come to the conclusion that Russia is on the crossroads of democracy and authoritarianism, following its specific third way, and connect the authoritarian tendencies with the Russian mentality. However, they often neglect the fact that the current events are a product of the constitutional choice of the Russian political elite, entrenched in constitutional provisions. In my thesis I explore the Russian case from the different perspective: from the perspective of checks and balances by making the textual analysis of the Russian “law in books” and investigating political practices. By my research I hope to make a contribution to political science.

In my research I set the goals to analyse the basic principles of constitutionalism – the principles of separation of powers and checks and balances; to analyse the constitutional design of the current Russian political system; to examine the practice of the implementation of this design, from the perspective of constitutionalism; to estimate legal and political consequences of the deviation from the constitutional principles mentioned.

Thus, my research question is: whether Russia is a constitutional democracy from the perspective of the doctrine of checks and balances. In my thesis I will argue that the Russian constitutional system is not democratic since though the principle of separation of powers has been present in the institutional design at the federal level, the system of checks and balances is not properly implemented in it because of the domination of the presidential power. In addition, I will show that the same problem of unbalanced power distribution exists in the relationships between the federal governmental center and the peripheral governments.

Three main sets of literature are used as a basis for my MA thesis: 1) theoretical concepts of the separation of powers and checks and balances concentrating on the reasons of their necessary establishment in constitutional system; 2) Russian legislation, specifically focusing on constitutional and some special laws as a foundation of the Russian constitutional

order, in order to parallel theoretical frameworks with the real political practice in Russia; 3) historical analysis, statistical data and analytical materials produced both by the Russian political scientists and foreign researchers.

The scope of the investigation covers the period from 1991 to 2007, i.e. from the moment Russia became an independent state till nowadays. During the work with the sets of literature necessary for my research, I have used textual analysis of normative documents in order to find out what kind of system of checks and balances was laid down and how it works in real politics. While handling the first set of literature for my research I have used historical method, analytic narrative, and process tracing methods in order to reveal historical events which had a significant impact on the establishment of the Russian constitutional system.

In the first chapter of my thesis I will review the theoretical frameworks of the doctrine of the separation of powers and define of the principle of checks and balances. In the second chapter I will briefly analyse the process of constitution making in Russia in 1991-1993, and the peculiarities of the conflict of separation of powers in it. Then, in order to identify what kind of constitutional system has been established in Russia after the collapse of the Soviet Union I will concentrate significantly on the analysis of the “law in books”. Applying the theory to these normative documents will help to examine whether they have been the basis for building a democratic state or not. In the third chapter of my thesis I will discover legal practices, or in another words make out the “law in action” in order to show how checks and balances have worked in the Russian constitutional system.

Chapter 1 - Analysis of the Basic Principles of Constitutionalism: Theoretical Background for the Doctrine of the Separation of Powers

The notion of the separation of powers is open to many interpretations and its various senses turn out to be very different in their effects. Having combined and taken the ideas from a range of theories, today the doctrine of the separation of powers is one of the basic pillars for the constitutional governmental order.

Together with principles of rule of law, fundamental rights, limited government, etc., the separation of powers comprises a system of constitutionalism. Entrenchment of the separation of powers in governmental design pursues to guarantee human liberty and prevent from the concentration of power in the hands of a single person or body, i.e. to secure from tyranny. Moreover, in some cases it is appropriate to speak not only about the “horizontal” separation of powers into three functions and agencies, but also about the “vertical” division of power between the center and periphery what may allow to limit and control the central government’s authority twice. Thus, the separation of powers is can be considered as a means of achieving a constitutional government.

In order to avoid junction of powers in one center, constitutional laws should guarantee an effective control over the state organs. The essence of this control system is the mutual accountability of the powers which check and balance each other. However, only together with the additional mechanisms of external control in the form of constitutional adjudication, can internal control and mutual dependency of authorities prevent abuse and provide freedom.

In this chapter I will reveal main aspects and problems of the separation of powers as a constitutional principle, characterize its key methods of control, and show why it is extremely important to have it entrenched in constitutional laws.

1.1 Meaning of the separation of powers as a principle of constitutionalism

Some elements of the doctrine of the separation of powers were founded in the antiquity, in particular in writings of Aristotle and Polybius, and since that time they have been largely modified. Modern idea of the separation of powers has been shaped in the works of John Locke, Charles Montesquieu, James Madison, Alexander Hamilton, and Benjamin Franklin. It has combined such overlapping theories as a theory of mixed government (the purpose of which is ensuring a balance of social groups while exercising political power), the idea of limited government, a theory of checks and balances (the idea of which is in the separation of organs and functions), the idea of a balance of power, and the ideas of representation and responsibility⁴.

There are a lot of views and interpretations concerning the meaning of the separation of powers, but all of them agree that the essence is in prevention of the exercise of arbitrary power and in protection from the tyranny which emerges from the concentration of power, rather than in making the government efficient. Thus, it is necessary to oblige the government to control itself through the separation of functions and their checking each other⁵.

The essence of liberal constitutionalism is a government which is “grounded in, limited by, and devoted to the protection of individual rights”⁶. Constitutionalism encompasses “institutional devices and procedures” which determine the formation and functions of government and embodies the basic “ideas and principles” of a polity which

⁴ Richard Bellamy, “The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy”, in *The Rule of Law and the Separation of Powers*, ed. Richard Bellamy (Aldershot: Ashgate/Darmouth, 2005) : 258.

⁵ Eric Barendt, “Separation of Powers and Constitutional Government,” in *The Rule of Law and the Separation of Powers*, ed. Richard Bellamy (Aldershot: Ashgate/Darmouth, 2005) : 278.

⁶ Donald P. Kommers and W. J. Thompson, “Fundamentals in the Liberal Constitutional Tradition”, in *Constitutional Policy and Change in Europe*, ed. J. J. Hesse and N. Johnson (Oxford: Oxford University Press, 1995) : 24.

allow its members to participate in the government⁷. Thus, constitutionalism helps to solve the problem of organizing political institutions in the way of ensuring that political power is exercised effectively while respecting individual rights.

The separation of governmental functions can take two forms: the separation into legislative, executive, and judicial, i.e. horizontal separation of powers, and the territorial, i.e. vertical division, embodied in federalism.

1.1.1 Horizontal separation of powers

While studying problems of the separation of powers, modern scholars distinguish between the “*pure doctrine of the separation of powers*” and the doctrine of the “*partial separation of powers*”. According to Maurice Vile, there are three main components which comprise the “pure” doctrine of the separation of powers. The first one is a “functional distinction between legislative, executive and judicial acts of government”; and each branch of the government should solely execute each of these functions⁸.

The second component is the splitting up government into three corresponding agencies (three branches of government) under the condition of being kept distinct from each other. The “separation of agencies,” therefore, is an essential element in a theory which assumes that the government must be checked internally by the creation of “autonomous centers of power that will develop an institutional interest”⁹.

The third component implies that there should be “no overlap amongst the personnel who staff these three agencies”, in other words it means the “separation of persons”, when the

⁷ Ulrich K. Preuss, “The Political Meaning of Constitutionalism”, in *Democracy and Sovereignty: American and European Perspectives*, ed. Richard Bellamy (Aldershot: Avebury, 1996) : 12.

⁸ Maurice J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1969), 8.

⁹ Ibid.

three branches of government are consisted of distinct groups of people, with no overlapping membership¹⁰.

Thus, the separation of powers between the three branches aims to guarantee that such functions as “formulation, interpretation, application and enforcement” of laws are executed by different bodies¹¹. The denotement on the fact that junction of different powers in the hands of a single person or organ inevitable leads to usurpation and diminishing of political freedoms comprises the core of the doctrine of the separation of powers.

An important element in the doctrine is the idea that if separation within agencies, functions, and persons are ensured then each governmental power is able to check the others on the exercise of arbitrary power. Hence, each power, being restricted in its activity, has no opportunity to dominate the other powers and exceed its control functions. However, the pure doctrine of the separation of powers is an ideal form which has rarely been held and even more rarely has been put into practice. Indeed, the degree of the separation of powers depends greatly on the form of government, since, for instance, the extent of power separation in presidential systems are more than in parliamentary ones. In Maurice J. C. Vile’s opinion, the inadequacy of the controls to the checking of arbitrary rule provided by negative approach, leads on to the needed accepting of other ideas modifying the doctrine of the separation of powers¹². Specifically, the doctrine of a partial separation is more real to achieve and that is why more often applied.

The partial (territorial) separation of functions also pursues the “avoidance of arbitrary rule and the insurance that power is not concentrated in the hands of one branch though it is

¹⁰ Maurice J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1969), 24.

¹¹ Richard Bellamy, “The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy”, in *The Rule of Law and the Separation of Powers*, ed. Richard Bellamy (Aldershot: Ashgate/Darmouth, 2005) : 254.

¹² Maurice J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1969), 32.

partial”¹³. Unlike the pure separation of powers, the partial doctrine does not require the complete separation of powers and allows overlapping of functions. Through such overlapping the mutual control and balance of powers is possible to implement. Below I will return to this point.

1.1.2 Vertical division of powers

Vertical division of powers can be considered as an additional control mechanism for the countries with a federal governmental structure. Federalism can effectively provide a framework for governing vast and diverse countries, since federal structures help to link “together diverse people who happen to end up in a single political entity”¹⁴. However, federalism can also conduce to secessions, as it is a case in Russia who continues struggling with separatist tendencies throughout its federal units. Thus, the outcome of implementing federal structures can be different: some federal systems can be successful while operating democratically; other federations can facilitate division and the use of non-democratic means in order to struggle against the division.

That is why in creation of federalism the need for mutual control and restraint of the central and local power must be a driving motivation; the federalizing process starts when some divergent subgroups intend to govern themselves in “all but a few select spheres of joint interest and joint need”¹⁵. The restraint of power is the crucial objective. Through the balancing the power of the national and state governments it is possible to limit the powers of the both levels. Consequently, as Carl J. Friedrich has noted, “only territorially delimited

¹³ Eric Barendt, “Separation of Powers and Constitutional Government,” in *The Rule of Law and the Separation of Powers*, ed. Richard Bellamy (Aldershot: Ashgate/Darmouth, 2005) : 284.

¹⁴ Frank L. Wilson, *Concepts and Issues in Comparative Politics: An Introduction to Comparative Analysis* (New Jersey: Pearson Education, Inc.: 2002), 167.

¹⁵ Ibid: 196.

communities have been able to achieve mutual restraints and joint operation on a limited scale”¹⁶.

Federal form of government aims at restricting the power of national government by creating a second layer of local governments. Under the vertical principle of division of government, power and functions are allocated between the national and state governments, and each government is delegated a set of functions and authority which only this government can exercise (residual powers), while other powers can be shared¹⁷. Thus, federalism is a constituent part of modern constitutionalism since federal division operates as an effective restraint upon the abuse of governmental powers by the central as well as local authorities. Indeed, as Carl J. Friedrich has noted, in many situations “territorial division is likely to be more effective than a functional division”¹⁸.

In this section I have shown that the doctrine of the separation of powers is an important constitutional principle served to found basics for governmental design, the main goals of which are the protection of liberty and the limitation of governmental power. These goals can be best achieved by setting up functional, agency, and personnel separations and center-periphery divisions in order to prevent the concentration of the power in the hands of a single group of men.

1.2 Controlling mechanisms of ensuring the separation of powers

Since the partial separation of powers allows some deviation from the functional, structural, and personnel separation, the system of controlling mechanisms should be presented in order to the separation of powers be maintained in the as far as possible extent.

¹⁶ Frank L. Wilson, *Concepts and Issues in Comparative Politics: An Introduction to Comparative Analysis* (New Jersey: Pearson Education, Inc.: 2002), 196.

¹⁷ Federalism - Checks and Balances, the Federalist Papers: The History of Federalism, Supreme Court Tilting Toward States' Rights? - Conclusion <<http://law.jrank.org/pages/6819/Federalism.html>> (Accessed: 8 April, 2008).

¹⁸ Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (Waltham: Blaisdel, 1968), 226.

For this reason, internal and external mechanisms of control over the powers should be provided.

1.2.1 Internal (mutual control and dependence of all powers)

The essence of the internal control over the separation of powers is in mutual dependency and accountability of legislative and executive powers. Each branch, while exercising its constitutional functions, should be capable of controlling the other. In particular, as Richard Bellamy put it, each branch is given the power to exercise a degree of control over the others “by authorizing it to play a part, although only a limited part, in the exercise of the other’s functions”¹⁹. The extent of such checking depends on the character of the governmental form. However, in any form of constitutional government the goal is to prevent concentration of powers in one center. The important point, which must be provided in constitutional law and practice, here is that the power to “interfere” is only a limited one, so that all bodies should be independent while exercising their constitutional functions²⁰. Such mutual control of independent powers can, to some extent, guarantee the prevention of the abuse and provide liberty.

Checks and balances refer to the different procedural rules, varying from the forms of government, which allow one branch to limit another. Thus, in presidential forms of government, like in the US system for instance, legislative branch may exercise checks on the executive through the procedures of impeachment, giving consent on high official appointments and treaties, overriding Presidential vetoes, and others. Moreover, President must, from time-to-time, deliver its addresses to the legislative. Since the legislative branch in many governmental structures is bicameral, it also has checks on the legislature – the

¹⁹ Richard Bellamy, “The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy”, in *The Rule of Law and the Separation of Powers*, ed. Richard Bellamy (Aldershot: Ashgate/Darmouth, 2005) : 254.

²⁰ Maurice J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1969), 254.

legislative branch has a degree of self-checking. Thus, law drafts must be passed by both houses of Parliament; and each of them may put a veto on the legislative initiative of the other²¹. Executive branch has got checks on the legislature also through the veto power, non-confidence votes, recessing appointments, emergency calling into session of the Parliament, and etc. Internal control within the executive branch can be expressed in the possibility to suspend the President from discharging his duties of the office by the Government²².

In parliamentary systems powers between parliament and government are not clearly separated: they are all based on “legislative-executive power sharing”, and the legislature holds the supreme power²³. That is why the system of checks and balances is extremely important for such form of government. In a parliamentary system, like the British government, checks and balances may operate through the choosing the Prime Minister, a head of the government, by members of the legislature from among their own number. Thus, since British Prime Minister is a member of the legislative body, he or she is directly accountable to the Parliament. Besides, the Prime Minister must answer questions from time to time put to him or her by the members of Parliament. The Cabinet members must also belong to the legislature, and they are asked the same kind of questions that the Prime Minister experiences²⁴.

Checks and balances may also function under parliamentary systems through the exercise of a parliament’s power to express a no-confidence vote against a government; the government, in turn, may dissolve the parliament.

²¹ <http://www.usconstitution.net/consttop_cnb.html> (Accessed: 7 April, 2008).

²² Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (Waltham: Blaisdel, 1968), 184.

²³ <<http://teacher.scholastic.com/researchtools/researchstarters/presidents/>> (Accessed: 23 April, 2008).

²⁴ Ibid.

If talking about the internal control within the executive power, so, the Prime Minister has the right to retire a cabinet member at any time, and cabinet members who oppose government's policy should resign. Moreover, a Prime Minister is expected to resign in case of losing the support of the majority of a government party.

Besides the opportunity to check legislative power through the presidential veto, bicameral structure of most of Parliaments in parliamentary systems allows providing more control through the checking of the upper house over the power of a lower house, where the executive comes from. The only rule is that none can be a member of both houses at the same time. So, in law-making process most law drafts must pass two readings in both houses, each of which can overrule the legislative initiative of the other²⁵.

Thus, due to the system of checks and balances, governmental powers overlap, but simultaneous power balancing ensures that none of branches can grow too powerful and dominate in the government.

In federal systems the sharing of power between the local and the national governments is an additional check in a governmental structure. Power division between the national and regional levels of government, accompanied with the instruments of checks, is set up for controlling over any "factions and preventing them from gaining a total control of the government and suppressing the minority"²⁶. Such balances as regional autonomy, authority divided between the center and periphery, and insurance that local representatives participate in federal legislation make it extremely unlikely that national government can concentrate all the power in its hands or fall into the hands of any minority²⁷.

²⁵ <<http://teacher.scholastic.com/researchtools/researchstarters/presidents/>> (Accessed: 23 April, 2008).

²⁶ Frank L. Wilson, *Concepts and Issues in Comparative Politics: An Introduction to Comparative Analysis* (New Jersey: Pearson Education, Inc., 2002), 166.

²⁷ Donald S. Lutz, *Principles of Constitutional Design* (New York: Cambridge University Press, 2006), 121.

1.2.2 External control (constitutional adjudication)

Although mutual power control between legislature and executive exercised through the checks and balances plays an important role, it is still insufficient, because, for instance, in case if the collective actions and decisions are needed to make, there is a threat that one of the parties can refuse to cooperate on the grounds of accusation the other of “being unconstitutional”²⁸. In case when one of the branches is authorized to act alone, none of the other branches have the opportunity to use appropriate sanctions which could prevent from the unconstitutional acts. Further, in different countries regular courts do not have the right to review laws and confirm their accordance to constitution. Additionally, sufficient protection against possible arbitrary decisions of constitutional “guarantor” should be provided in the constitutional system, since he is often granted power over the other branches²⁹.

So, as the mechanisms of internal control within the separation of powers have some shortcomings and does not often work, additional external controlling instruments must be also provided. Thus, the institute of constitutional adjudication is extremely important as such an additional control.

The idea is that constitutional tribunals are given jurisdiction over different branches of power in order to check and decide “solely” and “on the constitutional grounds” if the legal act corresponds to the constitutional law of this state or not³⁰. In the process of constitutional adjudication any legal norm adopted by the authorities at all levels is not only voided or confirmed as constitutional. The courts may also decide whether laws correspond to international treaties; validate elections and referenda and impeachments of the highest officials. Besides, constitutional courts may deal with the “constitutionality” of parties and

²⁸ Andras Sajó, *Limiting Government: An Introduction to Constitutionalism* (Budapest: CEU Press, 1999), 225.

²⁹ Ibid.

³⁰ Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (Chicago: University of Chicago Press, 2000), 22.

resolve disputes between “national or lesser authorities or between different national authorities”³¹. The amount of power and functions of any constitutional court depend on its type, but all have at least some of the jurisdiction mentioned above.

However, some legitimacy and political dependency problems may arise in the case of constitutional adjudication. Although constitutional justices are supposed to be independent, they are, most often, purely political appointees which is a result of peculiarities of the formation process and procedures which organize the work of constitutional courts. Further, judges who lack legitimacy of popular representation and are democratically unaccountable, may be involved in creation of laws and constitutions, which is incompatible with the function of judiciary³².

There is also a problem of the real force of the constitutional courts’ acts. That fact, that in some states constitutional courts may make decisions only in form of recommendations, raises the question of validity of the constitutional adjudication procedures. Advisory functions of the organs responsible for the constitutional review can not ensure an adequate control over the powers. So, I believe in order to be powerful and able to exercise control constitutional tribunal’s decisions should be obligatory.

Conclusion

In this chapter I have shown that entrenching of the principle of power separation in a state’s constitution is extremely important since it comprises that basis which the whole constitutional system is founded on. Through the separation of powers and the system of checks and balances, any constitution is able to set limitations on the governmental authority

³¹ Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (Chicago: University of Chicago Press, 2000), 22.

³² Andras Sajó, *Limiting Government: An Introduction to Constitutionalism* (Budapest: CEU Press, 1999), 239.

in order to prevent concentration of power on either the local or national level and to protect individual rights.

I have tried to argue that the separation into the executive, legislative, and judicial branches in its “pure” form is not the best option since it does not guarantee mutual control of the all powers. That is why all elements of constitutional design must be directed towards achieving the partial separation of powers which allows overlapping of the powers’ functions. Combination of such constitutionally provided measures as checks and balances and constitutional adjudication allows limiting political actors from fully exercising their political and legislative ambitions in the government because of the institutional constraints of the government. Thus, the constraints of power among the branches and levels of government make it possible to force all powers to cooperate and cope with their different positions on political issues, simultaneously not allowing one of the powers to dominate. In my opinion these are the questions of the stable functioning of constitutional regime, accountability of the power, and a guarantee of a legitimate government. Thus, it is vital in federal states that two forms of the power separation are provided and different powers concentrated with different branches and levels of government limit the political power of each of the levels and branches of government.

In the next chapter of my thesis I will analyse the constitutional design of the Russian government, according to the Russian working Constitution and for this reason I will look at the Russian legislation, specifically focusing on constitutional and some special laws as a foundation of Russian constitutional order, in order to parallel theoretical frameworks put in this chapter with the real political practice in Russia.

Chapter 2 - Constitutional Design of the Russian Government, According to the 1993 Constitution ('Law in Books')

2.1 Peculiarities of the constitution-making in post-Soviet Russia

After the collapse of the USSR, Russia faced the problem of choosing a new course of political and constitutional development. This process was characterized by the struggle for power and uncertain steps of the Russian political elite, often expressed in contradictory legal decisions. But the main problem concerned the relevance of old Soviet rules, norms, institutions, and procedures to the creation of a new democratic system.

G.D.G. Murrell affirms that the “revolution” which followed the attempted coup in August 1991 was not completed, and this aggravated the situation³³. The old institutions and the old Russian Soviet Federative Socialist Republic (RSFSR) Constitution (adopted in 1978) were in force when the USSR was broken up, including the parliament that emerged in the Soviet period and enjoyed almost unlimited power. Elections and the formation of a new legislative body might have created the necessary institutional basis for a new democratic political system, but a full abruption with the old regime in the current political circumstances was impossible, because of strong positions of conservative Parliament. Thus, new Russian leaders implemented liberal reforms using the old non-democratic governmental apparatus. This fact, besides other circumstances, greatly impacted the constitution-making process in Russia.

At the beginning of the 1990s the acting 1978 RSFSR Constitution was the least useful source for a starting point. In the period between its validity until 1993, the 1978 Constitution was heavily amended and became “internally inconsistent and contradictory”,

³³ G.D.G. Murrell, *Russia's Transition to Democracy: An Internal Political History, 1989-1996* (Brighton: Sussex Academic Press, 1997), 7.

granting both the executive and the legislative branches supreme power³⁴. In 1990, as a result of the adoption of one of the constitutional amendments, a Congress of People's Deputies (CPD) was created, which by the break-up of the Soviet Union together with Supreme Soviet became supreme legislative bodies with broad powers. Russian legislature was dominated by conservatives in its composition and was able to block the executive's initiatives for constitutional change and economic reform³⁵.

At the same time, without any reduction of the parliament's power, the institute of presidency was established. The lack of procedures that would regulate the relationship between legislative and executive powers raised "legal uncertainty over the respective powers of the executive and the legislature"³⁶. The decision to create the presidency together with sharp ideological and policy cleavages over the process of market reforms, contributed to serious tensions between the Russian Parliament and Russia's first President, Boris Yeltsin³⁷.

In June 1990 the first Russian Congress of People's Deputies set up the Constitutional Commission in order to prepare a new constitution. However, the majority of deputies were interested in the old version, since the adoption of a new Constitution would lead to the dissolution of the Congress and the consequent end of the extensive power of those deputies. Thus, the balance between executive and legislative powers became an issue of political struggle and not the case of constitutional approval by the parliament.

In those conditions President Yeltsin and his team of young reformists saw legislature as a major obstacle to the course of reform. Thus, Yeltsin's first steps were directed at diminishing the role of the soviets by concentrating real decision-making power in the hands

³⁴ Richard Sakwa, *Russian Politics and Society*, 3d ed. (London: Routledge, 2002), 61.

³⁵ Ibid: 47.

³⁶ G.D.G. Murrell, *Russia's Transition to Democracy: An Internal Political History, 1989-1996* (Brighton: Sussex Academic Press, 1997), 6.

³⁷ Andrea Chandler, "Presidential Veto Power in Post-Communist Russia, 1994-1998", *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 493.

of president³⁸. In October 1991, Yeltsin, who was seeking strengthening executive power, attained from the CPD temporary extraordinary power. In its two decisions on “The organization of the executive power during the time of radical reform” and on “Legal implementation of economic reforms” CPD allowed the President to act by decree from that November of 1991 till December of 1992³⁹ for implementation of his radical economic program⁴⁰. Besides, Yeltsin also got the authority to appoint not only the head of central but also of local governments instead of holding local elections for heads of the executive branch. In exchange it was agreed between the CDP and the President not to call parliamentary elections during one year. After Yeltsin had acquired broad additional powers, Russia ceased to be a parliamentary republic and became a presidential state⁴¹.

The implementation of Yeltsin’s economic reforms had dramatic impact on the Russian economy and society and drifted apart the political elite placing the Parliament against the government and eventually the President himself⁴². The President, Vice-President, Parliament and government pursued separate political agendas with minimal co-operation or contact. The crisis of 1992-1993 was not just a struggle for dominance between the legislature and the executive but a struggle for the total power, deepened by the personal ambitions of the President and the Chairman of the Supreme Soviet. At the centre of the debate between the President and the legislature were two different conceptions of the government. Yeltsin aimed at a presidential system, while Ruslan Khasbulatov, a Chairman of the Russian parliament,

³⁸ Graeme Gill and Roger D. Markwick, *Russia’s Stillborn Democracy? From Gorbachev to Yeltsin* (Oxford; New York: Oxford University Press, 2000), 128.

³⁹ In December 1992 when the debate between the CDP and President increased, they came to the compromise which allowed extending Yeltsin’s decree power until the referendum on Constitution.

⁴⁰ Alexander Blankenagel, “Where Has All the Power Gone?” *East European Constitutional Review*, Vol. 2, no. 1 (Winter 1993) : 28.

⁴¹ Thomas F. Remington, *Politics in Russia*, 2nd ed. (New York: Longman, 2001), 48.

⁴² Graeme Gill and Roger D. Markwick, *Russia’s Stillborn Democracy? From Gorbachev to Yeltsin* (Oxford; New York: Oxford University Press, 2000), 141.

was seeking a parliamentary form of government⁴³. The legislature was trying to restore its authority over the government, insisting that Government must be accountable to the elected representatives, and Parliament should control the composition of Government and public spending⁴⁴. Yeltsin was pursuing the “hegemonic presidency” with limited power of legislature and consolidating his extraordinary powers and entrenching them in a new constitution⁴⁵.

In this fight in the fall of 1992 the Supreme Soviet issued a new bill simultaneously depriving Yeltsin of his special powers and placing the Council of Ministers under the control of the Supreme Soviet, granting the presidency a more symbolic role. As a result, Russia was left with a system of separation of powers that contained little or even no separation at all⁴⁶.

The results of the April 1993 national referendum, which asked for confidence in Yeltsin and in his economic program, supported the President, but did not resolve the crisis of institutional legitimacy. Khasbulatov’s and Yeltsin’s attempts to discredit each other led to the government’s disability to make any decisive action in economy and consequently harmed the reputation of the state institutions as a whole⁴⁷. Yeltsin did not pay much respect to the existing constitution, having suspended Vice President Shumeiko from his office and firing the Vice President Aleksander Rutskoi, while he had no constitutional authority to do it. Yeltsin also dissolved the Supreme Soviet and the CPD, while stating that he had violated the

⁴³ Graeme Gill and Roger D. Markwick, *Russia’s Stillborn Democracy? From Gorbachev to Yeltsin* (Oxford; New York: Oxford University Press, 2000), 141.

⁴⁴ Stephen White, “Russia: Presidential Leadership under Yeltsin”, in *Postcommunist Presidents*, ed. Ray Taras, (Cambridge: Cambridge University Press, 1997), 46.

⁴⁵ Stephen Holmes and Christian Lucky, “Storm Over Compatibility”, *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1. (Winter 1994) : 122.

⁴⁶ Alexander Blankenagel, “Where Has All the Powers Gone?” *East European Constitutional Review*, Vol. 2, no. 1 (Winter 1993) : 29.

⁴⁷ Graeme Gill and Roger D. Markwick, *Russia’s Stillborn Democracy? From Gorbachev to Yeltsin* (Oxford; New York: Oxford University Press, 2000), 160.

constitution only “in order to save the country”⁴⁸. As a result, the confrontation between the President and the Parliament was transformed into a violent conflict on October, 3 1993, that had ultimately finished with the victory of the executive branch and the adoption of a new constitution.

The Constitutional Court, established in July 1991, might have acted as a mediator and brokered a compromise in the conflict between the two other branches of power. It had even made an attempt to assert its authority in order to attain the separation of powers by overturning several presidential decrees; however, the fight between the executive and the legislature “marginalized the judiciary and trampled on the rule of law in its entirety”⁴⁹. Particularly, in March 1993, the Constitutional Court held that Yeltsin violated the constitution by issuing the decree by which he declared the “special regime” (that meant acting presidential regime until the parliamentary elections) and his right to restrict executive and legislative powers on the grounds of contradictions of their acts to the presidential decrees. The next day after Yeltsin dismissed the legislature, the Constitutional Court concluded that Yeltsin had violated the constitution and could be impeached. Though this decision was made in accordance with constitutional provisions, on October 7, 1993 Yeltsin suspended work of the Constitutional Court by decree and forced the Court’s Chairman Valery Zorkin to resign. Thus, though the Constitutional Court had some influence over the conflicting sides, eventually, it failed to present the adequate mechanisms of resolving conflict between the executive and legislative powers⁵⁰.

Unlike in many other post-communist countries, the Russian constitution was not approved through a broad consensus, but rather it was prepared by the victors of the October

⁴⁸ Andrea Chandler, “Presidential Veto Power in Post-Communist Russia, 1994-1998”, *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 487.

⁴⁹ Richard Sakwa, *Russian Politics and Society*, 3d ed. (London: Routledge, 2002), 67.

⁵⁰ Robert Sharlet, “Chief Justice as a Judicial Politician”, *East European Constitutional Review*, Vol. 2, no. 2 (Spring 1993) : 35.

1993 political crisis. Constitution-making was a part of the political struggle and, eventually, became “the prize” in it⁵¹. So, the new constitution was prepared in the circumstances when the work of the lawyers should have taken into consideration the desires of the politicians: the Constitutional Assembly, established after the April 1993 referendum, prepared the draft of the future Constitution under the Yeltsin’s supervision. Moreover, Russia’s 1993 Constitution was approved by means of a referendum, official results of which raised serious concerns about possible falsifications⁵². Nevertheless, the adoption of the constitution brought an end to the period of violent conflict between the president and the parliament.

The new Constitution created a new balance of political power in Russia - the balance in favor of the president - and a super-presidential governmental system. In my opinion, this constitutional choice might be explained by two factors: Yeltsin’s intention to protect the presidential (see: Yeltsin’s) power in future relying on authoritarian legacies from the Soviet times, and, to a lesser extent, on the external factor (i.e. foreign political advisors’ influence). Personal ambitions of the political leaders, their desire to get the total power, and, in Valerie Sperling’ opinion, the existing “state policy of patronage” instead of competition and new rules of recruitment were the obstacles on the way of establishment of constitutional framework for building a democratic state. Sperling argues that exactly the “highly inefficient economy and a politically hostile environment” were the reasons for Yeltsin’s “relying on trusted individuals” through the appointments of the regional governors and broad concessions to the regions⁵³. Eventually, Yeltsin aimed to maintain his support against the Parliament during the 1992-1993 executive-legislature conflict and to build a “vertical chain” of the executive branch from the power centre to the local level.

⁵¹ Richard Sakwa, *Russian Politics and Society*, 3d ed. (London: Routledge, 2002), 68.

⁵² Viktor Sheinis, “The Constitution”, in *Between Dictatorship and Democracy*, ed. Michael McFaul, Nikolai Petrov, and Andrei Ryabov (Washington: Carnegie Endowment for International Peace, 2004), 58.

⁵³ Valerie Sperling, ed., *Building the Russian State: Institutional Crisis and the Quest for Democratic Governance* (Boulder: Westview Press, 2000), 70.

Additional “support” for super-presidentialism came from many Western constitutional specialists, lawyers and economists, who were consulting the Russian political elite in the end of 1980s-beginning of 1990s and were mostly focused on decentralization and creation of a new form of Russian federalism, whereby power would be allocated among the central government and Russia’s federal subjects⁵⁴. At the same time the distribution of power within the central government was granted far less attention.

Besides, Valerie Sperling considers, that also crucial to the strong presidency choice was popular perceptions that Russia should be governed by a strong leader and mass support of Yeltsin as such a figure⁵⁵. In his interview to the Russian newspaper *Izvestia*, made on 15th of November, 1993 Boris Yeltsin, trying to justify his desire for the presidential republic said:

I will not deny that the powers of the president outlined in the draft are considerable. What do you expect? How can we rely on Parliament and Parliament alone in a country that used to czars or “leaders”, in a country that does not have well defined interests groups, where normal parties are only now being formed, in a country with very low executive discipline and with wide-spread legal nihilism? In half a year or earlier, people will demand a dictator. I assure you that such a dictator will be found quickly, and very possibly in Parliament⁵⁶.

All these preconditions allowed Russian political elite to grant and embody in the 1993 Russian Constitution minimal powers to the Parliament, strong powers to the President, and broad powers to the republics. As Graeme Gill and Roger D. Markwick put it, through the Constitution Yeltsin “sought to give sanction to the informal power structures that shaped his regime”⁵⁷.

⁵⁴ Dwing Semler, “The End of the Russian Republic”, *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 107.

⁵⁵ Valerie Sperling, ed., *Building the Russian State: Institutional Crisis and the Quest for Democratic Governance* (Boulder: Westview Press, 2000), 180.

⁵⁶ Stephen Holmes, “Superpresidentialism and its Problems”, *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no.1 (Winter 1994) : 125.

⁵⁷ Graeme Gill and Roger D. Markwick, *Russia’s Stillborn Democracy? From Gorbachev to Yeltsin* (Oxford; New York: Oxford University Press, 2000), 166.

Conclusion

As I have shown the process of making the first Russian constitution followed in the circumstances of profound economic and political changes and was characterized by the political struggle between the different branches of power aiming at the dominance of their vision of a new order and, consequently, to more power for themselves. Those dramatic events at the beginning of the 1990s impacted greatly on the content of the new Constitution and were expressed in the efforts to prevent legislature-executive deadlocks in future and Yeltsin's personal desire to protect the presidency from the other government bodies by strengthening presidential power.

2.2 Horizontal separation of powers according to the 1993 Constitution

The Russian Constitution has entrenched world standards for human rights and basic principles of democratic state-building such as ideological neutrality of the state, political pluralism, competitive elections and the separation of powers. In this regard, Russian Constitution seems to be a liberal document. However, the critics of the Constitution claim that while the principle of the separation of powers might have been upheld, it lacks the balance of powers, having placed the President above the constitution's checks and balances, which in turn undermines the principles of constitutionalism "that it claimed to enshrine"⁵⁸.

The Russian Constitution establishes a super-presidential system, formally resembling the French system but with stronger executive power due to the increased independence of the president in comparison to the French model⁵⁹. Legislative power is exercised by the bicameral Federal Assembly; executive branch is represented by the Government of the

⁵⁸ Robert B. Andiech, *Russia's Constitutional Revolution: Legal Consciousness and the Transition to Democracy 1985-1996* (University Park: The Pennsylvania State University Press, 1997), 166.

⁵⁹ Andrea Chandler, "Presidential Veto Power in Post-Communist Russia, 1994-1998", *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 488.

Russian Federation; judiciary has been assigned to the Constitutional Court, Supreme Court, Superior Court of Arbitration and other courts of the Russian Federation.

2.2.1 Presidential power

The President of the Russian Federation holds primary power in the Russian governmental system. The President, who is elected directly for a four-year term, is the head of state and the Supreme Commander-in-Chief⁶⁰. He determines “guidelines for the domestic and foreign policy of the state”⁶¹. Although the President may preside over Government meetings, he is not the head of the Russian Government. In Edward W. Walker’s opinion, the Constitution has not provided a Vice President post since Yeltsin’s experience with his first Russian Vice President, Aleksander Rutskoi, was not successful⁶².

Article 80 of the 1993 Constitution grants the President certain reserve powers in his capacity of a “guarantor of the constitution” who is supposed to “ensure the coordinated functioning and interaction of the organs of state power”⁶³. This constitutional provision is a controversial issue since it advantages the President among the other governmental powers and could in certain circumstances be used to subvert the constitution.

As “the guarantor of the Constitution” the President has been endowed with certain extraordinary powers which, in the opinion of Gennady M. Danilenko and William Burnham, place the President above the three main branches of government and allow him to act as “an arbiter” among the legislative, executive and judicial branches of government⁶⁴. The President may use conciliation to resolve disputes between the federal government and governments of

⁶⁰ Constitution of the Russian Federation, 1993 (Articles 80 (1), 81 (1), 87 (1).

⁶¹ Constitution, (Article 80 (3).

⁶² Edward W. Walker, “Politics of Blame and Presidential Powers in Russia’s New Constitution”, *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 116.

⁶³ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 145.

⁶⁴ Ibid: 147.

the Federation subjects and disputes between the various subjects of the Federation⁶⁵. In case if such conciliation fails to resolve the dispute, the President may refer the dispute to “the appropriate court”⁶⁶. On the basis of decisions of the Supreme or Constitutional Courts, the President may suspend “the acts of organs of executive power of the subjects of the Russian Federation if such acts contravene the Constitution of the Russian Federation and federal laws, the international obligations of the Russian Federation, or violate the rights and freedoms of the human being and citizen”⁶⁷.

As a head of the state the President appoints the members of the Government and directs its activities. While in general the presidential “direction” of the activities of the Government is limited to establishing guidelines, under the 1997 Constitutional Law on the Government the President has a special authority over ministries dealing with defense, security, internal and foreign affairs⁶⁸. Thus, the President directly controls the activities of these ministries, which actually contradicts Article 113 of the Constitution and the Articles 12 and 24 of the Federal Constitutional Law “On the Government of the Russian Federation”. These norms tell that while the Chairman of the Government of the Russian Federation determines the guidelines for the activity of the Government and organizes its work⁶⁹, the Government directs the work of the federal ministries and other federal organs of the executive power and exercises control over them⁷⁰. Through such mechanism of directing the activities of the Government, making important governmental appointments, dissolving or

⁶⁵ Constitution, (Article 85 (1)).

⁶⁶ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 146.

⁶⁷ Constitution, (Article 85 (2)).

⁶⁸ The Federal Constitutional Law “On the Government of the Russian Federation”, 18.12.1997 # 2-FCL (Article 32 (1)).

⁶⁹ Constitution, (Article 113).

⁷⁰ The Federal Constitutional Law “On the Government of the Russian Federation”, 18.12.1997 # 2-FCL (Article 12 (1), 24 (1)).

reorganizing the Government at any time, the President has the opportunity to check the executive branch of power⁷¹.

One of the most important powers of the President is the power to issue normative decrees and executive orders which are declared to be binding throughout the territory of the Russian Federation⁷². Decree power is based on the President's authority to make new laws or suspend older laws without first having been delegated the power by the parliament, and the presidential decrees are issued at least insofar the "Parliament fails to reach certain areas with legislation"⁷³. Although under Article 90 of the Constitution, presidential decrees "may not contravene the Constitution of the Russian Federation and federal laws", the Constitution does not impose any "subject-matter restrictions" on the President's power to issue them⁷⁴. Such quasi-legislative powers given to the President may be considered as the intervention into the sphere of the legislative branch and their danger is in the possibility of making the president's favorable legislation while ignoring legislative bodies.

The Russian President has also been granted the authority to control the legislative branch. So, while the Parliament adopts federal laws, the President has strong veto powers. However, the President is restricted to interpose a veto on constitutional laws; he has only the power to veto ordinary legislation⁷⁵. According to the Russian Constitution, the President may reject to sign a bill passed by the Parliament within fourteen days of receiving it for approval. If the President declines the law, it must be reexamined by the State Duma and by the

⁷¹ Eugene Huskey, *Presidential Power in Russia* (Armonk, N.Y.: M.E. Sharpe), 1999.

⁷² Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 148.

⁷³ Erik S. Herron and Kirk A. Randazzo, "The Relationship between Independence and Judicial Review in Post-Communist Courts", *The Journal of Politics*, Vol. 65, no. 2 (May, 2003) : 257.

⁷⁴ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 148.

⁷⁵ Ibid: 156.

Federation Council. President's veto can be overturned by a two-thirds majority of both houses of the Federal Assembly⁷⁶.

The President also has the right to determine whether a statute approved by the Parliament was adopted in accordance with the procedural requirements of the Constitution⁷⁷. If they were violated, he may reject a statute on procedural grounds and refuse to publish it. However, practice shows that the President has often rejected laws "without consideration" of their merits on procedural grounds. According to the conclusion of the Constitutional Court, a law rejected on procedural grounds can not be considered "an adopted federal law", and, as a result, such rejection is not a veto. Thus, such president's power of rejecting federal statutes is uncontrolled since it can not be overridden by qualified majorities of both houses of the Federal Assembly.

Finally, the Russian President has the power to dissolve the lower house of the Federal Assembly - the State Duma⁷⁸. At the same time in the interests of parliamentary stability, the 1993 Constitution limits the power of the President to dissolve the State Duma by a strict time frame and a number of conditions. Thus, the President may dismiss the lower house of the Parliament only if (1) "the State Duma rejects three successive candidates proposed by the President for Chairman of the Government", (2) "the State Duma adopts two non-confidence votes in the Government within three months of each other" or (3) "the State Duma denies a vote of confidence requested by the Chairman of the Government"⁷⁹. Last two grounds for dissolution of the Parliament are a particularly strong power in the hands of the executive

⁷⁶ Stephen Holmes, "Superpresidentialism and its Problems", *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 123.

⁷⁷ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 156.

⁷⁸ Ibid: 153.

⁷⁹ Constitution, (Article 111 (4), 117 (3, 4).

branch, because the Government and the President are able to request a confidence vote by the State Duma at any moment.

Further, the President cannot dissolve the State Duma for one year after its election for denial of a confidence vote requested by the Chairman of the Government or for two non-confidence votes within three months of each other⁸⁰. The President also has no power to dissolve if the State Duma has filed a criminal charge against him or during a state of emergency or martial law. The President can not also dissolve the State Duma within the six months preceding the expiration of the President's term of office⁸¹.

Besides the other constitutional devices, Yeltsin has protected the constitutionally entrenched amount of presidential power (read: Yeltsin's) by the mechanisms of constitution amendment. The Constitution's provisions make amendments extremely difficult to enact, since they must be approved at least by the two thirds of the State Duma deputies, by the three fourths of the Federation Council members, and then by the two thirds of the all federation's subjects. Or the constitution can be amended by the popular referendum after the Constitutional Assembly approves the necessity of the amendments⁸². There were a lot of proposals to amend the constitution and, consequently, to diminish the presidential power while increasing the parliamentary and government's powers after a series of governmental replacements by Yeltsin in 1998 and 1999. In October 1998 the Duma even made an attempt to pass the amendments to the Russian constitution, which could transform the presidential republic into a parliamentary republic. However, this attempt failed because it was not supported by the qualified majority of deputies⁸³.

⁸⁰ Constitution, (Article 109).

⁸¹ Constitution, (Article 110 (1)).

⁸² Constitution, (Article 135).

⁸³ Alexey K. Pushkov, "Constitutional Reform", *East European Constitutional Review*, Vol. 7, no. 4 (Fall 1998) : 77.

2.2.2 The Government

According to Article 110 (1) of the Constitution, the Government of the Russian Federation (the Council of Ministers), which exercises executive power in the Russian Federation, is composed of the “Chairman of the Government, deputy chairmen and the federal ministers”⁸⁴. The Chairman of the Government is the head of the executive⁸⁵. The principle of the separation of powers within the executive branch is expressed in the rule that the members of the Government cannot be the members of any federal and regional Russian legislatures and hold any positions of the other organs of the governmental power⁸⁶.

According to the Constitution of the Russian Federation, the Government can issue decrees and orders to ensure the implementation of the Constitution, federal laws and President’s decrees⁸⁷. Such government’s powers are close to the President’s rule by decree. Thus, simply by filling in the legislative gaps left by Parliament, the President and the Government can issue rulings without legislative approval⁸⁸. Moreover, the Government has the amending power over the pending bills, can direct to the Parliament official references concerning them, and is also endowed to make remarks to the bills dealing with taxes, state loans, and federal expenses⁸⁹. The Constitution Article 134 grants the Council of Ministers the right to make proposals on amendments and revision of constitutional provisions⁹⁰.

The opportunity of putting the question of confidence in the Government of the Russian Federation before the State Duma by the Chairman of the Government may be

⁸⁴ Constitution, (Article 111 (1)).

⁸⁵ The Federal Constitutional Law “On the Government of the Russian Federation”, 18.12.1997 # 2-FCL (Article 24 (1)).

⁸⁶ The Federal Constitutional Law “On the Government of the Russian Federation”, 18.12.1997 # 2-FCL (Article 11 (1)).

⁸⁷ Constitution, (Article 115 (1)).

⁸⁸ Edward W. Walker, “Politics of Blame and Presidential Powers in Russia’s New Constitution”, *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 117.

⁸⁹ The Federal Constitutional Law “On the Government of the Russian Federation”, 18.12.1997 # 2-FCL (Article 36).

⁹⁰ Constitution, (Article 134).

considered as a rather risky mechanism of checking the legislative by the executive. Anyway, such procedure allows influencing the Parliament by the Government.

2.2.3 Legislative power

The legislature - the Federal Assembly - consists of two separate houses: the State Duma and the Federation Council⁹¹. The State Duma, directly elected to four-year terms, consists of 450 deputies, and the Federation Council is comprised of two deputies (one from the representative and one from the executive bodies of state authority) from each Federation subject⁹². The principle of separation of powers within the legislative is expressed in the rule that the same person may not simultaneously be a deputy to the both chambers of the Parliament⁹³.

Internal checks and balances within the legislative power work through the procedure of the Federation Council's reviewing of the laws adopted by the State Duma and giving its consent to them⁹⁴. In the case of the bill rejection by the Federation Council, the State Duma, in its turn, may override the rejection by a two-thirds vote⁹⁵.

The legislative branch may check the presidential power of the Russian Federation through hearing the addresses of the President of the Russian Federation by both houses of the Federal Assembly; giving approval to the decree of the President of the Russian Federation on the introduction of martial law and a state of emergency; granting consent to the President of the Russian Federation for the appointment of the Chairman of the Government of the Russian Federation, the Chairman of the Central Bank, the Procurator General and the

⁹¹ Constitution, (Article 95 (1).

⁹² Constitution, (Article 95 (1, 2).

⁹³ Constitution, (Article 97 (2).

⁹⁴ Constitution, (Article 104, 105 (3).

⁹⁵ Constitution, (Article 105 (5).

members of the Constitutional Court, Supreme Court, and Court of Arbitration, etc⁹⁶. However, in case if the State Duma rejects the President's nominee for the Chairman of the Government post thrice, the President must appoint the Chairman of the Government, dissolve the lower chamber of the Parliament, and call new elections. It is evident that this norm, eventually, creates the opportunity for the President to force the legislature to approve an unpopular nominee for chairman of the government rather than to check the President.

Since the President has the right to legislative initiative, the Parliament, while exercising the mechanisms of checks and balances, may reject it. Finally, in the law-making process the Parliament can also balance the president through the overturning his veto by a two-thirds majority of both houses of the Federal Assembly, thus obliging the President to sign the law.

The institute of the impeachment is an important instrument of parliament's control over the President of the Russian Federation. Again, after the Yeltsin's experience of being almost impeached by the Parliament, the Russian President is very difficult to impeach. Impeachable offenses are limited by the Constitution to treason and high crimes⁹⁷. Removal of the president from office requires the "filing of a charge of treason or high crime by the State Duma", and that charge must in turn be confirmed as an impeachable offense by the Supreme Court⁹⁸. Then the Constitutional Court must rule that the appropriate procedures have been followed in bringing the charge⁹⁹. For filing the charge, a two-thirds vote is required in the State Duma, while actual removal requires a two-thirds vote in the Federation Council within three months of the filing of the charge by the Duma¹⁰⁰.

⁹⁶ Constitution, (Article 100, 102 (1b,c), 103 (1a).

⁹⁷ Constitution, (Article 93 (1).

⁹⁸ Edward W. Walker, "Politics of Blame and Presidential Powers in Russia's New Constitution", *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 117.

⁹⁹ Constitution, (Article 93 (1).

¹⁰⁰ Constitution, (Article 93 (2), 92 (2), 93 (3).

The executive power of the Russian Federation may be controlled by the legislative branch through the Parliament's rejection of the legislative initiative of the Government; as well as through the approval of all government ministers except defense, foreign affairs, and internal affairs by the State Duma¹⁰¹.

The Government is obliged to bring in the federal budget and the report of its implementation to the State Duma examination¹⁰². Further, members of the Council of Ministers answer the questions and the requests of the legislature's members¹⁰³.

Finally, the jurisdiction of the State Duma includes the possibility to make decisions on confidence in the Government of the Russian Federation¹⁰⁴. This provision is rather curious and makes no sense of its existence as a parliamentary check over the executive, since in case of expressing non-confidence in the Government twice within three months, the President may either dissolve the Government or dismiss the Duma. Thus, I agree with Edward W. Walker, who noted, that it seems that the State Duma has no power to bring down the government, and there is a question why a device to issue a vote of non-confidence exists at all¹⁰⁵.

The legislative may check the judicial power of the Russian Federation through the hearing the addresses of the Constitutional Court of the Russian Federation, the appointment of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, and the Supreme Court of Arbitration of the Russian Federation¹⁰⁶.

¹⁰¹ Constitution, (Article 83 (d), 83 (f)).

¹⁰² The Federal Constitutional Law "On the Government of the Russian Federation", 18.12.1997 # 2-FCL (Article 36).

¹⁰³ The Federal Constitutional Law "On the Government of the Russian Federation", 18.12.1997 # 2-FCL (Articles 38, 39).

¹⁰⁴ Constitution, (Article 103 (1b)).

¹⁰⁵ Edward W. Walker, "Politics of Blame and Presidential Powers in Russia's New Constitution", *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 118.

¹⁰⁶ Constitution, (Article 100, 102 (1g)).

Parliament may also reject the legislative initiative of the Constitutional Court and Supreme Court.

2.2.4 Constitutional Judiciary

The Constitutional Court of the Russian Federation is authorized to resolve cases about “compliance with the Constitution of the Russian Federation” of federal laws, normative acts of the President, both chambers of the Parliament, and the Government of the Russian Federation¹⁰⁷. Moreover, the Constitutional Court has been granted the power to interpret the Constitution of the Russian Federation¹⁰⁸.

The Constitutional Court of the Russian Federation is the final arbiter of the constitutionality and plays an important role in powers’ conflicts, having been endowed with the duty to resolve disputes over the jurisdiction between the federal state bodies; between the state bodies of the Russian Federation and the state bodies of the subjects of the Russian Federation; between supreme state bodies of subjects of the Russian Federation¹⁰⁹. In addition, the Constitutional Court has got an internal mechanism of control on the misbehavior of its justices and the decisions of the other judges.

Conclusion

In this section I have shown that the 1993 “Yeltsin’s” Constitution emphasizes the strong role of the President in the governmental system and formally establishes four branches of power for the federal state: the presidency, the government, the legislature, and the judiciary. Though the system of the separation of powers has been established constitutionally, it lacks balanced separation of powers. It seems that the system of checks and balances works only for the president. He may veto legislation and dissolve the Parliament, deny

¹⁰⁷ Constitution, (Article 125 (2).

¹⁰⁸ Constitution, (Article 125 (5).

¹⁰⁹ Constitution, (Article 125 (3).

the acts of the executive and dismiss the Government. At the same time the Russia Parliament is rather weak because of its lack of oversight authority. It does have certain control functions, however it cannot block the President's decrees, has no power to call on government officials at parliamentary hearings, and any attempt to express non-confidence to the Government may turn by the legislature's dissolution¹¹⁰. The Parliament does not have enough checks' power to counter the President in case of his exercising the pressure by threatening to dissolve the parliament. Thus, it comes that the only state body, capable to check the presidency, is the Constitutional Court.

2.3 Vertical division of powers according to the 1993 Constitution

The Russian Federation consists of 84 federal subjects (including ethnic enclaves with the status of republics, autonomous okrugs, autonomous oblasts, krais, oblasts, and cities of federal significance with the same status as the oblasts). These subjects have equal federal rights expressed in their equal representation in the upper chamber of the Russian parliament; at the same time they possess different degree of the autonomy. The federal subjects are the second level of federal division and are subject to the federal laws (first level)¹¹¹.

Russian federal system started its development against the background of de jure federal and de facto unitary Soviet Union¹¹². The structuring of a new federal system also began at a disadvantage, because of the famous Yeltsin's offer to the all Russia's regions to take "as much sovereignty as they could swallow". Eventually, this led to the situation of the strong regions able to ignore central legislation and weak center unable to impose its directives.

¹¹⁰ Stephen Holmes, "Superpresidentialism and its Problems", *East European Constitutional Review*, Vol. 2, no. 4 (Fall 1993)/Vol. 3, no. 1 (Winter 1994) : 123.

¹¹¹ <<http://www.answers.com/topic/federal-subjects-of-russia?cat=travel#wp-note-Constitution>> (Accessed: 3 April, 2008).

¹¹² Ibid.

The basic distribution of powers between the central government and its sub-units has been defined by the Federal Treaty of 1992 and the Russian Constitution of 1993. By the Treaty the Congress of the People's Deputies amended almost all norms of the 1978 RSFSR Constitution regarding federal matters, and "incorporated the Treaty itself into the then-existing Constitution"¹¹³. As a result, the 1992 Treaty brought significant changes in the distribution of powers between the federal Government and the Russian Federation subjects. The Treaty had granted different amount of powers to the different regions of the federation. Yeltsin allowed adoption of declarations of sovereignty by the Russian autonomous republics and regions, and placed "disproportionately large subsidies, tax breaks, and soft credits to those federation units who declared sovereignty and had more days lost to protests and strikes"¹¹⁴.

However, though formal hierarchical relations were set, it was not in the interest of the federal government to set clear rules of the game¹¹⁵. The exercise of the "contractual federalism" policy (which I will discuss in the Chapter III) by Yeltsin resulted in strengthening the regional political elites while diminishing the power of the federal center. It allowed the republics to unilaterally redefine federal-states relations and, as a result, to create a system of the center-periphery checks and balances. In this system of checks and balances the governors obtained substantial powers to carry forward the interests of their regions (through the control over the local economy and resources; local media and electoral blocks and parties; appointments of presidential representatives and federal officials; taxation

¹¹³ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 163.

¹¹⁴ Ibid.

¹¹⁵ Aitalina Azarova, "Formal Institutions and Informal Politics in Russia", in *Formal Institutions and Informal Politics in Central and Eastern Europe*, ed. Gerd Meyer (Opladen and Farmington Hills: Barbara Budrich Publishers, 2006), 265.

strategies; and implementation of the privatization program, and etc.)¹¹⁶. Conversely, Kremlin also developed leverage over the regional heads (through fiscal transfer policies; resource allocations among budget donor and recipient regions; local official's appointments; challenging or ignoring regional laws that contradicted the Constitution; setting the costs of energy supplies and transportation through state-controlled natural monopolies, etc.)¹¹⁷.

On the other hand, such decentralization led to the apparent disability of the federal power to control and rule over its constituent parts, and endangered the further existence of the Russian Federation in the form of federation. Simultaneously, the federalism asymmetry has deepened as a result of the shortcomings of federal legislation and the dominance of bargaining model of cooperation, when the most economically successful regions enhanced their political autonomy.

The 1993 Constitution granted the extensive power to the federal government and its subjects; its provisions concerning the federal set-up are too vague, what, on the one hand, make them possible to be interpreted in different ways depending on the line-up of the political forces and, on the other hand, often create contradictions. At the same time, as Mikhail A. Alexseev states, the most significant changes that the Constitution made to the 1992 federal arrangement was recognizing the principle of constitutional equality for the all Russian Federation units¹¹⁸. Moreover, the Constitution expanded the powers of the Federation; it gave the federation the power to establish “general principles of the organization of the system of organs of state power and local self-government”¹¹⁹. The

¹¹⁶ Robert Orttung, “Kremlin Has Many Tools to Keep Even Elected Governors in Line”, *Russian Regional Report* Vol. 5, No. 8 (March, 2000b).

¹¹⁷ Ibid.

¹¹⁸ Mikhail A. Alexseev, “Decentralization versus State Collapse: Explaining Russia’s Endurance,” *Journal of Peace Research* Vol. 38, No. 1 (January, 2001) : 102.

¹¹⁹ Constitution, (Article 72m).

Constitution has proclaimed its superior legal force over the inconsistent provisions of the Federal Treaty and provided that in case of their conflict, the Constitution dominates¹²⁰.

According to the 1993 Constitution, state power of the Russian Federation is divided between the federal organs of the state power and subjects' organs of state power. This division of power is based on the principle that the subjects of the Federation "enjoy full state power" in all areas that have not been expressly delegated to the Federation or defined as spheres of joint competence¹²¹. The Constitution enumerates the jurisdiction of the federal subjects, the exclusive competencies of the federal government, and the joint jurisdiction, which imply that the laws and the other normative legal acts of the "subjects" in areas within the exclusive jurisdiction of the Federation or joint jurisdiction may not contradict federal laws¹²².

At the same time the federal units in the face of the Federation Council may balance the federal power through the approval of changes of borders between the subjects of the Russian Federation; the President's decrees on the introduction of martial law and a state of emergency; making decisions on the possibility of the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation; impeachment of the President of the Russian Federation. The Federation Council is also responsible for the appointment of judges of the Constitutional Court, the Supreme Court, and the Supreme Court of Arbitration, and the appointment to office and the removal from office of the Prosecutor-General and the deputy Chairman of the Accounting Chamber and half of its staff of its auditors¹²³.

¹²⁰ Constitution, (Part II, Article 1).

¹²¹ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Yonkers, N.Y.: Juris Pub., 2000), 165.

¹²² Michael McFaul, "Lessons from Russia's Protracted Transition from Communist Rule", *Political Science Quarterly* Vol. 114, no. 1 (Spring, 1999) : 121.

¹²³ Constitution, (Article 102 (1)).

Besides, while, according to the Constitution, Russian federation subjects do not have much autonomous power to formulate their own policy, they compensate for this by their direct influence on the federal state, being represented in the Federation Council, through the enactment of federal legislation. The members of the Federation Council are appointed by the legislative and executive organs of the federal units. As a result, the subjects participate through the Federation Council in the legislation and administration of the Federation. Thus, the subject's direct participation in the enactment of federal laws is an important tool of presenting their interests, considering that fact that most federal laws are carried out not by federal organs but by the subjects of the Federation. However, a great disadvantage is rooted in the peculiarities of the Federation Council formation due to the recent President Putin's federal reforms, whereby the central government in the face of the President may influence the Federation Council attitude and politics. In a result the more or less balance of the centre-periphery powers is being broken. In the Chapter III I will talk about this in details.

Conclusion

Thus, looking at the Russian Constitution of 1993, we can see that while the balance of powers between the federal government and its subdivisions is kept in "law in books", it is not the same situation with the checks of powers within the central government. The presidential power is given the dominant place among the others, whereby it performs as a central arbiter, not allowing the other branches of power to control itself. In the Chapter III of my thesis I will try to discover legal practices, or in another words to make out the "law in action", in order to prove or reject the inferences concerning the distribution of powers at the central and centre-periphery levels made in this chapter.

Chapter 3 - The Practice of the Implementation of the Russian Constitutional Design, from the Perspective of the Principles of Constitutionalism ('Law in Action')

As I have shown in the previous chapter of my thesis, the Russian Constitution endowed the President with broad competence having consequently entrenched the imbalance of governmental powers in favor of the presidency at the federal level and more or less balanced powers between the federal center and regions. In this chapter I will trace the events of potential crises which took place in 1993-2007 in order to see whether and how particular checks and balances worked.

3.1 Checks and balances in the horizontal separation of powers

3.1.1 Veto power under Boris Yeltsin

Analysis of the legislation period of 1993-1999 denotes that the President resorted to the veto power in case of passing the laws which could defeat the President's political course. Exactly the continued tensions between the executive and legislative powers were the reasons of the frequent use of the presidential veto in Russia. The overall amount of opposition voices in the 1993-1995 State Duma was 31.33% (distributed among the Communist Party of the Russian Federation, the Agrarian Party of Russia, and the coalition of the Russian Christian Democratic Union (New Democracy), the Social Democratic Party of the Russian Federation, and the Republican Party of the Russian Federation, and the Democratic Party of Russia)¹²⁴. The party of power¹²⁵, the Choice of Russia, with its ally the Party of Russian Unity and Consent gained 23.78% of seats in the lower chamber of Parliament¹²⁶. In the 1995-1999 State Duma the situation was worse for the party of power, the Our Home is Russia, who gained 14.67% of the seats against 42.44% attained by opposition parties (the Communist

¹²⁴ Official website of the Institute "Public expertise" <<http://www.freepress.ru/publish/publish029.shtml>>, (Accessed: 18 May 2008).

¹²⁵ The party of power is the party of political and administrative establishment, whose main goal is to channel the presidential influence into the federal legislature and to form a strong pro-presidential majority in it.

¹²⁶ Official website of the Institute "Public expertise" <<http://www.freepress.ru/publish/publish029.shtml>>, (Accessed: 18 May 2008)..

Party of the Russian Federation and the Russian Democratic Party “Yabloko”)¹²⁷. Thus, the President was more likely to veto bills initiated by Parliament. Besides, the veto power was not used in less favorable moments for the President, for example during elections, “because of the possible negative publicity to vetoes of popular legislation”¹²⁸.

In the period of Yeltsin’s presidential term, when he was still the opponent to Parliament in their views concerning the implementing of economic policies, it was most obvious that through using his vetoes the President clamped down on any of Parliament’s attempts to block his economic reforms. As Andrea Chandler has noted while discussing the legislation process in Russia in 1994-1998, “the use of the veto showed elements of unpredictability and opacity that defy the conventional wisdom that laws are vetoed simply because of policy differences”¹²⁹. In her view, the absence of the constitutionally fixed distinction between a veto¹³⁰ and return without examination¹³¹ (to which Yeltsin frequently resorted), is a significant shortcoming of the Russian constitutional legislation¹³². The absence of such a clear distinction has made law-making less transparent and sometimes led to the President’s arbitrary objection of the laws, coming from the legislature.

From 1995, when the State Duma activated its role in passing the legislation, the veto has become a real issue in the law-making process, which clearly caused the Duma’s attempts to counterbalance the President. However, again, Yeltsin vetoed legislation, when it

¹²⁷ Official website of the Institute “Public expertise” <<http://www.freepress.ru/publish/publish029.shtml>>, (Accessed: 18 May 2008).

¹²⁸ Andrea Chandler, “Presidential Veto Power in Post-Communist Russia, 1994-1998”, *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 502.

¹²⁹ Ibid: 508.

¹³⁰ Veto is a decline of a bill which can be overridden by the qualified majority of votes in two chambers of Parliament.

¹³¹ In the Russian legal practice return without examination is qualified as decline of a bill on the ground of the violation of law-making procedures. The return without examination does not equal veto, so it cannot be overrode by the qualified majority of votes in legislature. (Marat Baglai, “Constitutional Law of the Russian Federation” <<http://www.in1.com.ua/book/10341/7269/index.html>>, (Accessed: 27 May, 2008).

¹³² Andrea Chandler, “Presidential Veto Power in Post-Communist Russia, 1994-1998”, *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 497.

threatened to delimit the presidential power. Specifically, in 1997, a law on the presidential veto, which could limit its use, was declined by Yeltsin on “constitutional grounds”, i.e., as he argued, it was not in the Parliament’s competence to pass laws concerning the executive power¹³³.

In cases when it was not legally permitted, Yeltsin, in order to block undesired laws, used his veto power on the bills coming from Parliament. So, under the label of the “defense of the constitution”, he sometimes vetoed laws a second time, asserting that Parliament passed them in an unconstitutional procedure. The example of this was the famous case of the “Trophy Art” bill, which Yeltsin again declined to sign on the grounds of the “violation of the legislative procedures”, even after both chambers of Parliament had overrode the presidential veto. Only after the examination of this case by the Constitutional Court, did President Yeltsin sign the law¹³⁴. Since that very moment the President was not allowed to return without examination any bill that had been passed constitutionally in both chambers of Parliament. This case tells about potential importance of institute of the Constitutional Court in stabilizing the system of checks and balances in Russia.

The degree of confrontation between the President Boris Yeltsin and Parliament after the adoption of the 1993 Constitution is also proved by the statistics. Statistics say that during 1994-1999 approximately 25-30 per cent of all laws were vetoed by the President¹³⁵. Besides, Parliament during Yeltsin’s presidency faced the problem of the lack of internal ideological unity, which reduced its opportunity to override the presidential vetoes.

¹³³ Andrea Chandler, “Presidential Veto Power in Post-Communist Russia, 1994-1998”, *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 494.

¹³⁴ “Constitutional Watch”, *East European Constitutional Review*, Vol. 6, no. 2 (Spring 1997)/Vol. 6, no. 3 (Summer 1997) : 30.

¹³⁵ Andrea Chandler, “Presidential Veto Power in Post-Communist Russia, 1994-1998”, *Canadian Journal of Political Science / Revue Canadienne de Science Politique* Vol. 34, no. 3 (September, 2001) : 493.

Overall, the active use of the veto power by Yeltsin diminished the legislative role of Parliament and consequently contributed greatly to the slow development of Russian legislation. Besides, it seems that the checks and balances used by Parliament depended greatly on its composition. In comparison with Putin's period, laws on political parties and mixed majoritarian-proportional electoral system during Yeltsin's presidency, though prevented the establishment of a strong party system, yet allowed different parties to be presented in the legislature and balance the President. Specifically, it was possible for parties, which received more than five per cent of the popular vote on the party list ballot, to form a party faction, while independent deputies were able to do it, collecting thirty-five members¹³⁶. Party factions in its turn were given the right to form the Duma's agenda through the Duma's Council (since Committee chairs were divided proportionally between party factions), to control over speaking privileges on the floor, and to allocate staff to individual faction members. Due to the existing rules parties and party leaders became the strong actors in the lower house of Russian parliament and created incentives for non-partisan deputies to join a faction. As a result, internal Duma's unity made it a powerful opponent to the executive branch, and president, in particular¹³⁷.

3.1.2 Veto power under Vladimir Putin

According to the same statistics in 2000-2007 President Vladimir Putin vetoed just 0.4 per cent of laws, which is largely lower than in case with Yeltsin¹³⁸. I can explain such a difference by the degree of legislature-President cooperation. While Yeltsin's term was characterized by his deteriorating relations with Parliament it is different in case of President

¹³⁶ Michael McFaul, "Political Parties", in *Between Dictatorship and Democracy*, ed. Michael McFaul, Nikolai Petrov, and Andrei Ryabov (Washington: Carnegie Endowment for International Peace, 2004), 112.

¹³⁷ Ibid: 112.

¹³⁸ Official website of the State Duma of the Russian Federation, <www.duma.gov.ru/lawstat/>, (Accessed: 10 May, 2008).

Putin: due to the dominance of the “party of power” the United Russia in the State Duma, he simply did not need to contend with the legislative branch.

As for Putin’s period, since he came to power, the Federal Assembly has not acted as an independent governmental body, capable of checking the presidential power by overruling the President’s vetoes. At the beginning of Putin’s term, Russian ruling elite took the course to strengthen the “party of power” and implemented several political reforms concerning political parties’ activity. And today we can see that authorities have created all conditions for the formation of a new model of party system in Russia, where one party dominates the political field and does not allow other political parties to compete with itself on the equal basis. In particular, in the 2003-2007 State Duma 75.34 per cent of seats belonged to the party of power (the United Russia) with its ally (the Liberal Democratic Party of the Russian Federation), while only 19.33 per cent of the Duma’s seats were got by the coalition of opposition forces (the Communist Party of the Russian Federation and the Motherland)¹³⁹. As a result of the 2007 parliamentary elections the United Russia gained 64.3 per cent of seats, while the only opposition party the Communist Party of the Russian Federation got only 11.6 per cent¹⁴⁰.

According to the 2003 electoral reform law, single-mandate seats in the Duma were eliminated and all deputies have been elected only from party lists in line with the system of proportional representation, and threshold has been raised (7% instead of 5%), etc. Furthermore, the prohibition on forming electoral blocks has been a serious setback for opposition movements. As a result these regulations restrict the emergence of new parties, practically suppressing the formation of parties from below. They limit the opportunities for opposition movements to consolidate, and they privilege the parties already represented in

¹³⁹ Official website of the Institute “Public expertise” <<http://www.freepress.ru/publish/publish029.shtml>>, (Accessed: 18 May 2008).

¹⁴⁰ <http://en.wikipedia.org/wiki/Russian_legislative_election,_2007>, (Accessed: 18 May 2008).

Duma, basically enabling the pro-Kremlin majority in the Duma to secure its position¹⁴¹. Thus, today due to the domination of the United Russia in the State Duma, Russian Parliament seems to be just an “appendage” of the executive branch, supporting any of its initiatives.

3.1.3 Decree power under Boris Yeltsin

The right to issue decrees is a strong power, which allows the President to achieve his goals by establishing his policies without attaining parliamentary approval. Though a significant number of the presidential decrees deal with ceremonial issues (which are reflected in “awarding medals, honorary titles and pardons”) and routine executive administration directed at implementing existing laws, the Russian President can influence politics through issuing decrees on “appointments at the various levels of government” and initiating new policies¹⁴². Together with veto power, decree power gives the President an opportunity to be directly involved into the law-making process and makes him an uncontrolled legislator.

President Yeltsin was sometimes inclined to arbitrarily use the decree power, overusing the constitutionally given status of “guarantor” of the Russian Constitution. In particular, having taken advantage of this norm Yeltsin started the war in Chechnya in 1994 by the secret presidential decree without the declaration of a state of emergency and parliamentary confirmation of it¹⁴³. Moreover, this decree allowed to use regular army in the Chechnya conflict instead of the MVD (Ministry of Internal Affairs) and FSS (Federal Security Service) troops permitted in such situations¹⁴⁴. Considering the presidential power to

¹⁴¹ Aitalina Azarova, “Formal Institutions and Informal Politics in Russia”, in *Formal Institutions and Informal Politics in Central and Eastern Europe*, ed. Gerd Meyer (Opladen and Farmington Hills: Barbara Budrich Publishers, 2006), 256.

¹⁴² Oleh Protsyk, “Ruling with Decrees: Presidential Decree Making in Russia and Ukraine”, *Europe-Asia Studies*, Vol. 56, No. 5, (July 2004) : 638.

¹⁴³ Viktor Sheinis, “The Constitution”, in *Between Dictatorship and Democracy*, ed. Michael McFaul, Nikolai Petrov, and Andrei Ryabov (Washington: Carnegie Endowment for International Peace, 2004), 67.

¹⁴⁴ “Constitutional Watch”, *East European Constitutional Review*, Vol. 4, no. 1 (Winter 1995) : 23.

solely appoint the Minister of the Defense and the Interior Minister, Parliament was not able to influence the President in the Chechnya case.

Moreover, Yeltsin used the decree power when other opportunities to implement his political goals were clamped down by law-makers. It was a Yeltsin's usual practice to threaten Parliament with presidential decrees if the Duma refused to pass his legislative initiatives. In December 1994, for example, the Duma rejected Yeltsin's proposal regarding the declaration of the day of adoption of the Russian Constitution as a state holiday¹⁴⁵. Nevertheless, the President overbalanced Parliament having issued the same decree. Another example happened in fall of 1995, when Yeltsin, having issued a decree, regulating the local elections, revised the electoral timetable, fixed in the law, which he had previously signed¹⁴⁶. The constitutional Court resolved this issue in spring of 1996 in favor of Parliament. But after the August 1998 Russian financial crisis, Yeltsin again violated the Constitution, having issued some decrees on taxes, which belonged to sphere of the legislature. Thus, it seems that the presidential power to issue decrees was not under adequate control from the side of other branches, even if the judicial power could sometimes influence it. As a result, as Paul Kubicek rightly noted, assessing the period of confrontation between Yeltsin and Parliamentary, "rule by decree replaced the rule of law"¹⁴⁷.

Overall, it is difficult to estimate the exact number of decrees signed by the Russian Presidents, since there are also unpublished secret decrees, which are classified as "for official use only" (for example, they concerned the status of the closed city Kaliningrad, the use of wiretapping of criminal suspects, and social benefits for certain categories of state employees). However, we can imagine that the number of such decrees is significant,

¹⁴⁵ "Constitutional Watch", *East European Constitutional Review*, Vol. 4, no. 1 (Winter 1995) : 28.

¹⁴⁶ "Constitutional Watch", *East European Constitutional Review*, Vol. 4, no. 4 (Fall 1995) : 28.

¹⁴⁷ Paul Kubicek, "Delegative Democracy in Russia and Ukraine," *Communist and Post-Communist Studies*, Vol. 27, no. 4 (December 1994): 430.

considering the available data. In the period from 1994 to October 1996, there were issued 3528 published decrees, and 1,544 “secret” decrees¹⁴⁸. According to Thomas F. Remington’s statistics, the Russian Presidents issued more than 500 unpublished decrees each year from 1993 to 2000¹⁴⁹.

3.1.4 Decree power under Vladimir Putin

In comparison with Yeltsin’s period, Putin introduced the new pattern of using decree power, having decreased sufficiently the number of issued decrees (probably, because of the existence of the “pocket” Parliament, dominated by the party of power, Putin could have passed his legislative initiatives through the State Duma). However, in contrast, the Putin relied largely on the issuing unpublished decrees the number of which rose significantly. Particularly, already in 2000 the number of unpublished decrees peaked to more than 900 decrees, which was connected with Putin’s coming to power and his aim to rebuild the system in accordance with his plans¹⁵⁰. Thus, it is difficult to estimate the real impact Putin has made by decrees in the governing of different spheres of public policy during his presidential term, but it obvious that his involvement has been considerable.

Thus, the facts confirm that presidential decree power together with the presidential veto makes the Russian presidency the primary source of law-making, although the constitution endowed the Parliament with the legislative power. Finally, the decree power can be dangerous because of the opportunity to issue “secret” decrees, which provides grounds for serious concern about the transparency and accountability of the presidential power.

¹⁴⁸ Thomas F. Remington, “The Evolution of Executive-Legislative Relations in Russia since 1993”, *Slavic Review*, Vol. 59, No. 3, (Autumn 2000) : 509.

¹⁴⁹ Thomas F. Remington, “The Evolution of Executive-Legislative Relations in Russia since 1993”, *Slavic Review*, Vol. 59, No. 3, (Autumn 2000) : 508.

¹⁵⁰ Oleh Protsyk, “Ruling with Decrees: Presidential Decree Making in Russia and Ukraine”, *Europe-Asia Studies*, Vol. 56, No. 5, (July 2004) : 641.

3.1.5 Impeachment

There were several occasions in post-Soviet period of Russia when the deputies in the lower chamber of the Parliament raised the question of the President's impeachment, but only once was such procedure supported and initiated in the State Duma. Specifically, in autumn 1998 an impeachment case was initiated on the grounds of the five circumstances: illegal dissolution of the Soviet Union in 1991, illegal coup against the Supreme Soviet in 1993, illegal war in Chechnya in 1994, destruction of the Russian military, and genocide of the Russian people by implementing disastrous economic reforms since 1992¹⁵¹. Only the Chechnya subject was considered, however, it did not gain the required majority in the Duma, and the attempt to impeach Yeltsin failed. In order to attain this result, Yeltsin resorted to shadow bargaining, promising material benefits and political concessions (for instance, proposing new Prime Minister Sergei Stepashin, who could be accepted by most MPs) to the deputies¹⁵².

It seems that the fact that Parliament has been dominated by the party of power during Putin's term explains zero attempts to impeach him.

3.1.6 Cabinet formation/dissolution under Boris Yeltsin

The power to appoint or dismiss high governmental officials gives the President the opportunity to form and dissolve the executive branch. In order to be balanced by the legislative power, some high appointments are required to be approved by the Federation Council. However, it did not hamper Yeltsin to use broadly, and often without proper justification, his power to appoint the Prime Ministers, having changed them three times through the year 1998-1999. Additionally, the President has the opportunity to refuse "to

¹⁵¹ "Constitutional Watch", *East European Constitutional Review*, Vol. 8, no. 3 (Summer 1999) : 29.

¹⁵² Thomas F. Remington, "The Evolution of Executive-Legislative Relations in Russia since 1993", *Slavic Review*, Vol. 59, No. 3, (Autumn 2000) : 515.

come up with the nominees”, and, as it was in case with the Attorney General Alexei Ilyushenko in 1994, to appoint an “acting” official without been approved by Parliament¹⁵³.

In late 1994-beginning 1995 Yeltsin, following the Chechnya war and economic crisis, practically unilaterally implemented a series of replacements and dismissals in the Cabinet, showing that its Chairman Viktor Chernomyrdin was just a symbolic figure in the government¹⁵⁴. In October 1994 Yeltsin accepted the resignation of Chairman of the Central Bank Viktor Gerashchenko by the decree, having avoided the State Duma’s approval¹⁵⁵, and then offered another candidate for this post. In its turn, the Duma declined this nominee on the ground of not accepting the removal of the former Chairman. Yeltsin tried to advance this candidate again, after the Duma’s repeated decline, the debate could be resolved by the Constitutional Court. Only due to the fact that the Federation Council had recently rejected Yeltsin’s nominees for the Court’ judges, the case was not initiated. As a result, it became one of the rare situations when the legislative could balance the presidential power¹⁵⁶.

In winter 1995-1996 Yeltsin even tried to dismiss some governors and presidential representatives who were members of the Federation Council, on the grounds of “financial mismanagement”¹⁵⁷. The President was not entitled to do so in accordance with the law on the status of the Federation Council members, and they did not resign.

Again, Yeltsin resorted to non-legal means, threatening to dismiss the Duma in case of its refusal to approve the appointment of young inexperienced Sergei Kirienko as Prime Minister in spring 1997. Having rejected twice Kirienko’s nomination, the Duma voted for him only for fear of leaving the President alone, ruling with decrees and his changing the

¹⁵³ Alexey Alyushin, “Russia”, *East European Constitutional Review*, Vol. 4, no. 2, (Spring 1995) : 66.

¹⁵⁴ “Constitutional Watch”, *East European Constitutional Review*, Vol. 4, no. 1 (Winter, 1995) : 23.

¹⁵⁵ According to Article 103 of the Constitution, Duma with the presidential recommendation appoints and dismisses the Central Bank Chairman.

¹⁵⁶ “Constitutional Watch”, *East European Constitutional Review*, Vol. 4, no. 1 (Winter, 1995) : 23.

¹⁵⁷ “Constitutional Watch”, *East European Constitutional Review*, Vol. 5, no. 1 (Winter 1996) : 21.

electoral rules (elimination of the proportional-representation system), preventing current MPs from the next term in the Parliament¹⁵⁸.

Thus, it seems that having been endowed with the power to form and dismiss the government, the President often abused it, freely ignoring the constitutional law and legislative and executive checks provided by this law.

3.1.7 Cabinet formation/dissolution under Putin

Putin's Government has been quite stable and has not been undergone by frequent dismissals by the President. Putin used his power to dissolve the Government only twice: on the eve of presidential election in 2004 and 2007 (in 2007 Putin accepted the resignation of the Council of Ministers), that can be explained by his desire to animate electoral campaigns and to determine politicians who could be key figures in future. Specifically, in 2004 future Prime Minister in the 2004-2007 Government Mikhail Fradkov was appointed as an acting Chairman of the Council of Ministers. Further, in September of 2007 future Russian President elected in March of 2008 Dmitry Medvedev had been appointed as a first Vice-Prime Minister of the 2007-2008 acting Government.

3.1.8 Ability to propose referenda

I consider the legal inability of the Russian President to submit an issue to a national referendum and either hold or block a referendum on his or her own authority a positive constitutional provision. This norm can be one of the few checks entrenched in the constitution which prevent the President from bypassing Parliament. At the same time, the legislative branch also faces the same constraint¹⁵⁹.

¹⁵⁸ "Constitutional Watch", *East European Constitutional Review*, Vol. 7, no. 7 (Spring 1998) : 27.

¹⁵⁹ Thomas F. Remington, "The Evolution of Executive-Legislative Relations in Russia since 1993", *Slavic Review*, Vol. 59, No. 3, (Autumn 2000) : 507.

3.1.9 Vote of non-confidence/Duma dissolution under Yeltsin

In its post-1993 history in moments of political crisis the Russian Parliament made several attempts to express non-confidence to the government. However, most of these attempts were resolved in favor of the executive. In October 1994 Chernomyrdin's government was faced with the threat of non-confidence, but deputies did not collect the majority of votes required for it¹⁶⁰. Another attempt to state non-confidence in summer of 1995 failed as well as the government's counter request that the Duma vote on a motion of confidence.

Presuming that the President eventually has the power to dismiss the State Duma, Yeltsin often resorted to the means of threats and blackmail in order to impact the legislature and achieve his ends. Particularly, in 1997, he hinted that he would dissolve the lower chamber of Parliament if it failed to pass the Government's economic reforms. The Duma's initial rejections to confirm Sergei Kirienko's and Viktor Chernomyrdin's appointments as Prime Ministers in March 1998 and September 1998 respectively also faced the President's intention to dissolve the Duma¹⁶¹.

Thus, the periodicity of the Duma's attempts to express non-confidence to the Government shows that political confrontation between the executive and legislative powers was quite frequent, if not constant. However, it is also evident that while Parliament tried to resolve the crisis by the mechanism of non-confidence voting, it always faced the President's readiness to dissolve Parliament, and not the government. I believe, exactly for this reason, the State Duma during Yeltsin's presidency has never succeeded in its efforts to get the required majority among deputies.

¹⁶⁰ "Constitutional Watch", *East European Constitutional Review*, Vol. 4, no. 1 (Winter 1995) : 23.

¹⁶¹ Padma Desai, "Russian Retrospectives on Reforms from Yeltsin to Putin", *The Journal of Economic Perspectives*, Vol. 19, No. 1, (Winter 2005) : 102.

3.1.10 Vote of non-confidence/Duma dissolution under Yeltsin Putin

During Putin's term two attempts to vote for non-confidence in Government were made by the opposition party. In March 2001 the Communist Party of the Russian Federation initiated the vote of non-confidence in the Government, which was not supported by the other parties in the Duma¹⁶². In June 2003 an attempt to express a non-confidence to the Government again was undertaken, but it failed¹⁶³.

3.1.11 Constitutional adjudication under Yeltsin

Through the peculiarities of the Constitutional Court formation legislative and judicial powers can balance each other. However, for this reason, the Court has not seemed sometimes to be strong and independent from the other branches of power in the Russian governmental system. As the facts traced in this chapter show, the decisions made by the Court often were conditional on the number of "parliamentary" and "presidential" justices. For instance, in the 1995 Chechnya case, in which Yeltsin's influence was sound, the Constitutional Court declined to judge the presidential decrees concerning the invasion of the federal troops in the region¹⁶⁴. In summer 1999 the Constitutional Court finally resolved the debate about the execution of the presidential authority in case of the president's temporary incapacity to govern. In this case, according to the Court's decision, the Prime Minister becomes an acting President, though lacking the power to dismiss the State Duma and amend the constitution¹⁶⁵. It is important to note that this issue had not been solved for several previous years, but the case was over, exactly after Yeltsin determined his successor and appointed Vladimir Putin as Prime Minister. It is known that in the few months after these events Yeltsin resigned and Putin became the acting President.

¹⁶² "Constitutional Watch", *East European Constitutional Review*, Vol. 10, no. 2/3 (Spring/Summer 2001) : 40.

¹⁶³ "Constitutional Watch", *East European Constitutional Review*, Vol. 12, no. 2/3 (Spring/Summer 2003) : 45.

¹⁶⁴ "Constitutional Watch", *East European Constitutional Review*, Vol. 6, no. 1 (Winter 1997) : 26.

¹⁶⁵ "Constitutional Watch", *East European Constitutional Review*, Vol. 8, no. 4 (Fall 1999) : 42.

During Yeltsin's presidency, the Court's role was often restricted to the interpretation of the Constitution, rather than to solving political conflicts. Thus, in fall 1995 the Constitutional Court, having interpreted the norms of the Constitution, determined the procedure of the Federation Council formation. According to its interpretation, the Council should have consisted of the popularly elected governors and legislative heads¹⁶⁶. Nevertheless, this case helped to solve the debate about Parliament's upper chamber formation just for a while. In the next section of this chapter I will talk about the changes regarding the Federation Council formation after Putin became the Russian President. I should yet recall the "Trophy art" case, when the Constitutional Court probably for the first time imposed some limits on the use of presidential veto.

In Yeltsin's period, the Constitutional Court could not play its important role in the issue of bilateral treaties, made by the central government and subjects' administrations. Because some of them were kept in secrete in order to prevent grievances from other regions, they just avoided the constitutional review¹⁶⁷. Even when the Court examined the republic's constitutions and found them not in accordance with the federal constitution, it was unable to impose its authority to legally clamp down on the violations.

3.1.12 Constitutional adjudication under Putin

A revision of the Federal Constitutional Law on Constitutional Court concerning the establishment of mechanisms allowing to impose the Constitutional Court decisions was implemented in summer 2001. According to it, since that moment regional legislatures and executives should bring their legal acts in accordance with the federal constitution in a time fixed by law. In case of their refusal to fulfil the requirements, they can be dissolved¹⁶⁸. This

¹⁶⁶ "Constitutional Watch", *East European Constitutional Review*, Vol. 4, no. 4 (Fall 1995) : 28.

¹⁶⁷ "Constitutional Watch", *East European Constitutional Review*, Vol. 5, no. 1 (Winter 1996) : 25.

¹⁶⁸ Alexey Trochev, Implementing Russian Constitutional Court Decisions, *East European Constitutional Review*, Vol. 11, no. 1/2 (Winter/Spring 2002) : 97.

reform allowed rebalancing state power in favor of the federal government and enhanced the role of constitutional judiciary in Russia. According to the Article 79 of the Law on Constitutional Court, the Court's decisions are final, not appealable and take effect immediately after their announcement. Besides, decisions of the Constitutional Court act directly and do not require any confirmation by other state bodies¹⁶⁹.

In short, having examined above the checks and balances in the Russian governmental system, I can conclude that the constitutional arrangements adopted in 1993, founded the imbalance of powers in favor of the presidency. Most of the checks provided by the Constitution have not worked. Only the judicial power could have balance the presidency, but it does not seem to be independent now; the legislative is weak and is dominated by the executive power.

Conclusion

The events I have traced show that during Yeltsin's presidency relations between Russia's President and Parliament have often been tense and characterized by the struggle for the control over the government. While many conflicts between the executive and legislative powers were solved by mechanisms of checks and balances, more often in favor of the President, some of them were resolved through the use of informal mechanisms of bargaining and threats. Sometimes, when the absence of adequate balance of the powers could lead to a serious conflict, the desire to avoid the constitutional breakdown similar to that of 1993, made two branches to cooperate through discussing meetings and compacting paraconstitutional "pacts" between the President's and parliamentary faction and committee representatives. As a result, the President signed several bills which he was initially inclined to put veto on, or refuse to dismiss and to appoint the Government without Parliament's consent. In return,

¹⁶⁹ The Federal Constitutional Law "On the Government of the Russian Federation", 18.12.1997 # 2-FCL (Article 79).

Parliament agreed not to express the non-confidence in the Government or impeach the President¹⁷⁰.

Since Putin's United Russia gained majority in the State Duma in 2003 and again in 2007, the executive has exercised an additional control over the legislative process and government formation, and made the legislative branch disable to balance the President through such checks as impeachment and vote of non-confidence.

3.2 Checks and balances in the vertical division of powers

As I have concluded in the previous chapter, the Constitution has provided to some extent the balance between the central power and the power of the federal units. However, political practices I will discuss in this chapter show that this balance has changed depending on the political behavior chosen by the central authority.

3.2.1 Center-peripheral relations under Yeltsin

Although the Russian Constitution has proclaimed its superior legal force over the other legal acts adopted within the territory of Russian Federation, Yeltsin's politics of "contractual federalism" at the beginning of the 1990s, led to the existence of two legislation systems – federal and regional – which contradicted each other, thereby replacing "constitutional federalism". The notion of "contractual federalism" included a "policy of visits" and negotiations between the presidential side and regional governors, commonly used during Yeltsin's period¹⁷¹. These negotiations resulted in signing bilateral treaties and special presidential decrees in 1994-1998, according to which the republics gained specific privileges

¹⁷⁰ Thomas F. Remington, "The Evolution of Executive-Legislative Relations in Russia since 1993", *Slavic Review*, Vol. 59, No. 3, (Autumn 2000) : 505.

¹⁷¹ Ibid.

expressed in greater autonomy in exchange for Yeltsin's support by the governors. By mid-1998, 42 individual treaties had been signed with 46 subjects of the federation¹⁷².

These treaties basically returned to the republics some of the powers which had been taken by the constitution, and, further, they allowed the regions to practically unilaterally re-state federal relations and to create the imbalance of center-periphery power with strong regions and a weak center¹⁷³. The strong regions just ignored the central legislation, having created their constitutions, which conflicted with the federal constitutions; and the weak center was unable to impose its directives. According to the General Procurator's report, in 2000 approximately 70% of regional legislative acts deviated from the federal laws, and 34% contradicted the constitution¹⁷⁴. Neither the Procurator nor the Constitutional Court was strong enough to defend the federal constitution against violations.

The decrease of federal power was also expressed in the regionalization of federal military structures because of the material dependence of local military officials on regional political elites. During 1996-1998, as a consequence of the loans-for-shares deals (when oligarchic groups financed Yeltsin's election campaign in exchange for shares in state-owned industries soon to be privatized), private companies got access to the Russian raw material export economic assets¹⁷⁵. As a result, federal economic control of the profitable sectors within the periphery has been greatly diminished. Having created the "independent" (from the center) provincial communication and information networks, local governors also were becoming more independent from federal control. Finally, the implementation of foreign

¹⁷² Lynn D. Nelson and Iryna Y. Kuzes, "Political and Economic Coordination in Russia's Federal District Reform: A Study of Four Regions," *Europe-Asia Studies*, Vol. 55, No. 4 (June, 2003) : 508.

¹⁷³ James Alexander, "Federal Reforms in Russia: Putin's Challenge to the Republics". <http://findarticles.com/p/articles/mi_qa3996/is_200404/ai_n9376563/> (Accessed: 04 April, 2008).

¹⁷⁴ Matthew Hyde, "Putin's Federal Reforms and Their Implications for Presidential Power in Russia," *Europe-Asia Studies* Vol. 53, No. 5 (July, 2001) : 731.

¹⁷⁵ Graeme P. Herd, "Russia: Systemic Transformation or Federal Collapse?" *Journal of Peace Research* Vol. 36, No. 3 (May, 1999) : 261.

economic policy initiatives by some federal units has further strengthened autonomy within the periphery. The regions were already international actors, being able to sign agreements with foreign countries (for example, the agreement between Tatarstan and Ukraine; and the appointment of the Minister of International and Foreign Economic Relations for the Sverdlovsk Region; the Sverdlovsk Regional law about the status of the region as a subject of the international law)¹⁷⁶. All these circumstances, as a result, not only broke the constitutional balance of power between the center and periphery, but also led to secessionist tendencies throughout the periphery (e.g. Republic of Tatarstan, Republic of Bashkortostan, Republic of Sakha, and Sverdlovsk oblast)¹⁷⁷.

3.2.2 Center-periphery relations under Putin

Since the beginning of 2000, directly after Putin came to power, all efforts of the central government have been directed to restoring power. The main aims of the new President's reforms were to strengthen the vertical chain of power in order to make presidential policies implemented countrywide, and consequently, to reduce the privileges enjoyed by some regions. The system of bilateral treaties was abolished and regional constitutions and other legal acts had to be brought in accordance with the federal level. Besides, all the wealthy regions, which used to pay a disproportional, in comparison with the less successful regions, percentage of taxes, became dependent on the federal authorities after the raising the federal share of regional tax revenues up to the common level¹⁷⁸.

In May 2000 a federal territorial reform was initiated, established on the base of existing military districts administrative division into seven federal districts headed by

¹⁷⁶ Graeme P. Herd, "Russia: Systemic Transformation or Federal Collapse?" *Journal of Peace Research* Vol. 36, No. 3 (May, 1999) : 263.

¹⁷⁷ Ibid.

¹⁷⁸ Matthew Hyde, "Putin's Federal Reforms and Their Implications for Presidential Power in Russia," *Europe-Asia Studies* Vol. 53, No. 5 (July, 2001) : 719.

Presidential Representatives (envoys), who are appointed directly by the President¹⁷⁹. The duties of the federal districts' envoys have comprised overseeing the accordance of the federal subjects' actions with the federal laws. The location of the Presidential Representatives at the new supra-regional level and their direct subordination to the President and accountability to him allowed removing them from the control of local leaders.

Putin also initiated the reform regarding the formation of the Federation Council, which implied removing the governors and local Parliaments' speakers from the Federation Council. Since that time the regional executives and legislatures each have sent their representative for serving on a professional and full-time basis in the Federation Council. Considering the fact that the reform has endowed the President with the exclusive right to nominate regional governors, who are only approved or rejected by the regional legislatures upon the threat of being dismissed, the power imbalance in favor of the federal power (in the face of the President) is obvious. On the one hand, Putin's regional course was characterized by cutting the informal ties within regional elite in order to weaken it. On the other hand, Putin continued using informal negotiations with regional elite in order to strengthen his control over the periphery and to build "obedient" power vertical. As an illustration, in 2005 Putin appointed about a third of new regional governors who did not have any ties to those regions (for example, three former members of the Moscow Mayor team Valery Shantsev (appointed to Nizhnii Novgorod oblast), Georgy Boos (appointed to Kaliningrad oblast), and Michail Men (appointed to Ivanovo oblast). In other cases governors who were seeking for holding their posts got before 2005 expressed their loyalty and support to the President through the personal meetings. The President of Tatarstan, Mintimer Shaimiev, and the oblast

¹⁷⁹ Aitalina Azarova, "Formal Institutions and Informal Politics in Russia", in *Formal Institutions and Informal Politics in Central and Eastern Europe*, ed. Gerd Meyer (Opladen and Farmington Hills: Barbara Budrich Publishers, 2006), 267.

leader Yegor Stroeve were reappointed in the result of such informal procedure¹⁸⁰. Moreover, a number of regional governors and other high officials in Russia became members of the party of power. For example, in the acting Federation Council among 168 delegates there are 112 United Russia members¹⁸¹.

As a result the upper house of Parliament seems to become a body compliant to the President that can be proved by statistics. For instance, in the second Yeltsin's presidential term (from 1996 to 1999) the Federation Council has declined 401 bills coming from the State Duma, while in the period from 2000 (when Putin's reform regarding the governor's appointments was implemented) to 2007 the Federation Council has declined only 193 bills¹⁸². The difference in the numbers can be explained by the existence of strong opposition forces in the State Duma in the first period and domination of the party of power in the second. Today two houses of Parliament seem to be loyal to the presidential course and cannot effectively express their independent position and balance each other and the President.

At the same time, the 2000 reform balanced the regional leader's power to remove the President via impeachment in the upper chamber of the Federal Assembly, having entitled the President with the power to remove local governors and speakers. Now the President has the right to dissolve the regional assemblies after rejecting the nominated candidate twice, to dismiss elected governors and regional legislative assemblies in case of repeated violation of the federal legislation or civil rights by them or suspecting the governors of a crime¹⁸³. The procedure leading to the governor's dismissal can be initiated by the federal and regional

¹⁸⁰ Nikolai Petrov and Darrel Slider, "Putin and the Regions", in *Putin's Russia: Past Imperfect, Future Uncertain*, ed. Dale R. Herspring (Rowman & Littlefield Publishers, Inc., 2004), 89.

¹⁸¹ Official website of the United Russia <<http://www.er.ru/news.html?rid=3076>>, (Accessed: 30 May, 2008).

¹⁸² Official website of the State Duma of the Russian Federation, <www.duma.gov.ru/lawstat/>, (Accessed: 10 May, 2008).

¹⁸³ "Constitutional Watch", *East European Constitutional Review*, Vol. 9, no. 3 (Summer 2000) : 35.

Parliaments, by the federal government, or the state procurator's office, which increases the control over the governors. In April 2001, following new legal opportunities, Procurator General Vladimir Ustinov requested the President's approval for issuing the warnings to the governments of Tatarstan, Bashkortostan, and Ingushetia¹⁸⁴. Thus, the reform's novelties contributed to some extent to the elevation of the Constitutional Court's role, whose decisions became the legal basis for the federal government's acts. At the same time regional bodies were deprived by their right to recall their senators (and that they often had done before) in the way they have appointed them. As the procedure of recalling the governors must be first initiated by the Chairman of the Federation Council, it has been never implemented.

Overall, it seems that the reforms, implemented during Putin's presidency, fixed the existing imbalance in center-periphery powers in the way of increasing the federal power, which then led to the power aggregation in favor of the federal presidency. While the Russian President may control the regions through the procedures of appointments and firing its governors and dissolution of its legislatures, the regions in face of the Federation Council seem to be completely powerless and dependent on the President. In my opinion, as it was the case with legislature-executive relationships at the federal level, exactly the fear to be dismissed will make the regional authorities loyal to any of the President's courses.

Conclusion

To sum up, I have shown in this chapter that legal practices confirm the hypothesis that the Russian constitutional system is not democratic, since it does not provide the effective mechanisms of powers' checks and balances over each other. Thus, per se Russian constitutional system reminds more and more Soviet political organization, when executive and legislative powers were conjoined in one body, which judiciary was fully dependent on.

¹⁸⁴ "Constitutional Watch", *East European Constitutional Review*, Vol. 10, no. 2/3 (Spring/Summer 2001) : 40.

We can see that at the federal level the Presidents have enjoyed practically unlimited power, acting practically as legislators through their veto and decree powers, and diminishing the law-making power of the Federal Assembly. At the same time, as practice shows, Parliament has not been able to control the presidency through impeachment, vetoing its legislative initiatives, or cabinet formation, since the Presidents could negotiate for washing their hands of the accountability or just overpass the legal checks. Especially today, when the majority in the State Duma is composed of the party of power and the Federation Council consists of the President's appointees, the federal legislature seems to have no independence from the presidency at all. Even though the Constitutional Court recently has been granted more important powers in controlling the constitution's enforcement, it also does not seem to be autonomous because of the conditions of the Court's formation.

As for the distribution of power between the center government and the regions, the legal practices traced above show that the power center has moved during the last twenty years from the local authorities (that was possible due to Yeltsin's bargaining politics) to the power concentration at the federal level due to the implementation of the Putin's reforms. As a result, the powers of the regional elite have been reduced and their influence on the federal authorities greatly diminished, reminding, again, the de facto unitary republic within the Soviet Union. Thus, I should emphasize that the current distribution of powers in Russian Federation and the system of checks and balances provided threaten the existence of the constitutional state and are dangerous in their inability to prevent usurpation.

Conclusion

The analysis I have done in my thesis demonstrates that the Russian constitutional system is a complex phenomenon. Its development started at the beginning of the 1990s and has not finished with the adoption of the Constitution of the Russian Federation being still influenced by a range of formal and informal factors. As a result of my investigation I can answer the research question I have raised in the Introduction in the following way: Russia is not a constitutional democracy from the perspective of the doctrine of checks and balances.

As I have shown, the violent confrontation between the legislative and executive powers at the beginning of the 1990s impacted greatly on the establishment of the Russian constitutional system and system of checks and balances in particular. The personal struggle of the strong heads of these branches for total power was expressed in their preferences in future governmental structure and led to an open conflict. The intention to prevent in future such deadlocks between the two branches of power by strengthening one of them and Yeltsin's personal desire to make the presidency independent from the other government bodies were crucial in designing the new political system and were embodied in a new Constitution. Besides, legacies from the old regime like mass demand for the strong authoritarian ruler and Yeltsin's policy of patronage played their significant role in the process of constitution-making and allowed to create a superpresidential republic.

The analysis of the "law in books" I made proves my hypothesis that the Constitution granted the presidential power priority over the other branches of power and created the system of checks favorable for the President as a "guarantor of the Constitution". The presidential power is given the dominant place among others, whereby it performs as a central arbiter, not allowing the other branches of power to control it. The Russian President may control Parliament through the mechanisms of veto power and his right to dissolve the

legislature, and bypass the parliamentary checks through his decree power and threats to dissolve Parliament. The President of the Russian Federation may also annul the acts of the executive power, form and dismiss the Government. At the same time, Russian Parliament lacks the oversight authority and cannot effectively block any President's initiative like decrees and governmental appointments. According to the "law in books" the only state body, who has the opportunity to check the presidency, is the Constitutional Court. Thus, the 1993 Russian Constitution established the imbalance of governmental powers and, consequently, was not the foundation for building a democratic state.

The analysis of the "law in action" in regards to the horizontal separation of powers also proves that the Russian Presidents have been almost impossible to control. President Boris Yeltsin overused decree and veto powers in order to overpass Parliament and resorted to the informal means of resolving contradictions with the legislative branch. President Vladimir Putin enjoyed the existence of a loyal Parliament dominated by the party of power that allowed him to implement his policies without any genuine opposition. Today due to the fact that the lower house of Parliament is occupied by the party of power and the upper house consists of the presidential appointees, it is appropriate to conclude that the executive exercises an additional control over the legislative process, and has made the legislative branch unable to balance the President through such checks as impeachment and vote of non-confidence. Moreover, though the Constitutional Court has been recently granted more control powers, it does not seem to be autonomous because President and Parliament participate in the Court's formation. Hence, it seems that executive and legislative powers in the Russian governmental system have conjoined.

As for the vertical division of powers, the constitutional arrangements have entrenched the balance between federal and regional governmental powers. The federation subjects may

influence the central power through participation in law-making process in Russian Parliament; there is a distribution of exclusive competence between the regions and central government, which is supposed to prevent the overlapping of their authorities. The analysis of the legal practices shows that Yeltsin's policies led to the factual independence of regions and the disability of the center to control them. On the contrary, the tracing of recent reforms brought by Putin, demonstrates that the balance of the center-periphery powers has changed in the way of increasing the federal power and, in particular, of presidential power. While the Russian President may exercise control over the regions through the procedures of appointments and firing its governors and dissolution of its legislatures, the regions are weak and dependent on the President, since they have no powerful tools of checks and balances.

Thus, I can affirm, that the Russian constitutional system is not democratic, since it does not provide the effective mechanisms of checks and balances in horizontal and vertical separation of powers and the adequate control over the presidency. Hence, the current distribution of powers in the Russian Federation and the system of checks and balances are favorable for the concentration of power in a single body and usurpation and do not comply with the principles of constitutionalism.

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