

SOCIALIST CONSTITUTIONAL LEGACIES IN REGIONAL CONSTITUTIONS AND CHARTERS IN RUSSIA

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Russia has a federated structure. It is quite complex, with five different types of subjects of the Federation: republics, territories, regions, an autonomous region, cities of federal significance, and autonomous areas. Each of these subjects of the Federation has its own constitutive law. For a republic within Russia, this document is called a constitution. For each of the other subjects of the Federation, it is called a charter (ustav). These “figurehead” constitutions and charters obviously have great significance for their respective subject of the Federation. However, there are interesting disparities between them. This article explores one aspect of these. It considers the legacy of the Soviet approach to law in the precise wording of the constitutions of Russia’s republics and charters of the other subjects of the Federation. This careful textual analysis reveals that there are a few – although only a few – traces of Russia’s socialist past in the wording of these constitutive documents. However, that may not be the only “remnant of the Soviet past” in the approach taken in relation to these important laws. It is argued that the scarcity of an enforcement mechanism which might allow judicial consideration of any breach of a republican constitution or subject of the Federation charter is strongly reminiscent of the situation of constitutional unaccountability which existed under the Soviet regime.

Keywords: constitutions/charters of subjects of the Federation; constitutionality; Soviet legacy.

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Introduction

Words matter. This is generally true, but even more so if our topic is legislation. It is assumed that particular vocabulary used in important legal regulations is not a matter of whim or chance, but has some significance to the drafters and/or enactors. Whether that significance can be discerned is a separate question.

This article examines some of the vocabulary used in the constitutive documents of the subjects of the Russian Federation (RF), to see whether or not there appear to be direct legacies from the Soviet past embedded in their texts. It is not a complete survey, but highlights some interesting features.

1. The Federal Context

Russia is a federation, currently composed (according to Russia) of 85 subjects of the Federation (Federation subjects).¹ (The legality of the inclusion into the Russian Federation in 2014 of Crimea and the city of Sevastopol will not be discussed here.²) The Federation

¹ Constitution of the Russian Federation, Art. 65. English translation in William E. Butler, *Russian Law and Legal Institutions* 435–436 (2nd ed. 2018).

² For a detailed critique, see Anna Jonsson Cornell, *Russia's Annexation of Crimea: A Violation of Russian Constitutional Law?* in 1 *Uppsala Yearbook of Eurasian Studies* 263 (Kaj Hobér et al. eds., 2016).

subjects are of different types:³ there are currently 22 republics,⁴ one autonomous region⁵ and 4 autonomous areas⁶ which are theoretically based on a nationality principle. There are also 9 territories,⁷ 46 regions⁸ (sometimes called provinces in English) and 3 cities of federal significance⁹ based on a territorial principle.

Article 5 of the 1993 Constitution of the Russian Federation (Constitution RF) declares that the different types of Federation subjects “shall be equal subjects of the Russian Federation.”¹⁰ However, there are two major differences between the republics within Russia and the rest. Republics may have a state language alongside Russian, and also adopt for themselves a republican constitution, by whatever method they deem appropriate. For all the other Federation subjects the equivalent piece of legislation is called a charter (*ustav*), and must be adopted by the Federation subject’s legislature.¹¹ The current versions of these constitutive documents are available online.¹²

Most of the republican constitutions currently in force were adopted in the two or three years following the entry into force of the Constitution RF on the date of its official publication, 25 December 1993. On its own terms the Constitution RF is supreme:

The Constitution of the Russian Federation shall have the highest legal force, direct effect, and be applied throughout the entire territory of the Russian Federation. Laws and other legal acts applicable in the Russian Federation must not be contrary to the Constitution of the Russian Federation.¹³ [Article 15(1)]

³ Unless otherwise specified, all translations are by the author.

⁴ *Respubliki* – singular *respublika*: Adygeia, Altai, Bashkortostan, Buriatiia, Dagestan, Ingushetiia, Kabardino-Balkariia, Kalmykiia, Karachaevo-Cherkesskaia, Kareliia, Komi, Crimea, Marii El, Mordoviia, Sakha (Iakutiia), Northern Osetia-Alaniia, Tatarstan, Tyva, Udmurt, Khakasiia, Chechnia, Chuvashia.

⁵ *Avtonomnaia oblast’*: *Evreiskaia avtonomnaia oblast’* (The Jewish Autonomous Region).

⁶ *Avtonomnye okruga* – singular *avtonomnyi okrug*: Nenetskii, Khanty-Mansiiskii-lurga, Chukotskii, Yamalo-Nenetskii.

⁷ *Kraia* – singular *krai*: Altai, Zabaikal, Kamchat, Krasnodar, Krasnoiar, Perm, Maritime (Primorskii), Stavropol, Khabarov.

⁸ *Oblastei* – singular *oblast’*: Amur, Arkhangelsk, Astrakhan, Belgorod, Briansk, Vladimir, Volgograd, Vologda, Voronezh, Ivanovo, Irkutsk, Kaliningrad, Kaluga, Kemerovo, Kirov, Kostroma, Kurgan, Kursk, Leningrad, Lipetsk, Magadan, Moscow, Murmansk, Nizhegorod, Novgorod, Novosibirsk, Omsk, Orenburg, Orlovsk, Penza, Pskov, Rostov, Riazan, Samara, Saratov, Sakhalin, Sverdlovsk, Smolensk Region, Tambov, Tver, Tomsk, Tula, Tiumen, Ulianovsk, Cheliabinsk, Yaroslavl.

⁹ *Goroda federal’nogo znachenii*: Moscow, St. Petersburg, Sevastopol.

¹⁰ Butler 2018, at 422.

¹¹ Art 66(2). Butler 2018, at 436.

¹² Most of them are available at Конституции и Уставы субъектов Российской Федерации [Constitutions and Charters of the Subjects of the Russian Federation] (Feb. 23, 2021), available at <http://constitution.garant.ru/region/>.

¹³ Butler 2018, at 425.

However, in 1990 Yeltsin famously told the Federation subjects to “take as much autonomy as you can swallow”¹⁴ so it is unsurprising that they did, with the result that during the 1990s there were some noteworthy examples of republican constitutions contradicting the federal Constitution. A rather extreme example, in line with the separatist movement at the time, was the Constitution of the Chechen Republic which was adopted on 12 March 1992 but not replaced until March 2003.¹⁵ It specified in its Article 4 that “in the Chechen Republic, Islam is the state religion”¹⁶ despite the then federal Constitution giving in Article 50 the right “to profess any religion or not to profess any religion,” and in the second paragraph that “Religious associations in the RSFSR are separated from the state. The state education system is secular.”¹⁷ As another example, the Constitution of the Marii El Republic of 24 June 1995 before its amendment by a law of 21 December 2000 forbade in Article 11 private ownership of land, clearly allowed under 1993 Constitution RF Article 9(2).¹⁸

In the early 2000s this policy of tolerating inconsistencies with the federal Constitution was reversed. During his first Presidency Putin instituted a drive to ensure conformity of the law of Federation subjects with the federal Constitution and federal laws – the so-called *vertikal’* of law (*zakon*).¹⁹ As a result many republics within Russia changed their constitutions to bring them in line. Almost all just amended their existing constitution, but in 2001 the Republic of Tyva completely replaced its 1993 Constitution with a new one. Karelia did likewise, although interestingly that republic still claimed to have been using its Soviet-era “Constitution of the

¹⁴ Cited in Jeffrey Kahn, *Federalism, Democratization, and the Rule of Law in Russia* 148 (2002). Kahn quotes Yeltsin reasserting this on 11 May 1994; *Id.* at 142 & 156.

¹⁵ The timing means that this Chechen Constitution was adopted 19 days before the Russian Treaty of the Federation, “Treaty on Delimiting Subjects of Jurisdiction and Powers between Federal Agencies of State Power of the Russian Federation and Agencies of Power of the Sovereign Republics within the Russian Federation,” which the then Republic of Chechnia-Ingushetia, as well as Tatarstan, famously did not sign. English translation of the Treaty in William E. Butler, *Russian Public Law* 686 (3rd ed. 2013).

¹⁶ Admittedly adopted at a time when Chechnia was trying to become independent from Russia. Text in Russian available at <https://chechen-government.com/%D0%BA%D0%BE%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D0%B8%D1%8F-%D1%87%D0%B5%D1%87%D0%B5%D0%BD%D1%81%D0%BA%D0%BE%D0%B9-%D1%80%D0%B5%D1%81%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B8-%D0%B8%D1%87/>. An unofficial English translation of the 1992 Constitution is available at <https://www.refworld.org/docid/3ae6b5fb8.html>. The Preamble opens with the words, “By the will of the Almighty.”

¹⁷ 1978 RSFSR Constitution as amended to 1 November 1991 (Feb. 23, 2021), available at http://constitution.garant.ru/history/ussr-rsfsr/1978/red_1978/5478729/.

¹⁸ Butler 2018, at 424. For Marii El see http://parliament.mari.ru/title/const.html#_ftn11.

¹⁹ See, e.g., comments by Рыбакова С.С. Особенности формирования региональных парламентов в субъектах РФ // Среднерусский вестник общественных наук. 2016. № 11(3). С. 73 [Svetlana S. Rybakova, *Features of the Formation of Regional Parliaments in the Subjects of the Russian Federation*, 11(3) Central Russian Bulletin of Social Sciences 69, 73 (2016)] (Feb. 23, 2021), also available at <https://cyberleninka.ru/article/n/osobennosti-formirovaniya-regionalnyh-parlamentov-v-subektah-rf>.



Autonomous Soviet Socialist Republic of Karelia” of 30 May 1978, with updates, until its complete replacement on 7 February 2001.

It is these updated republican constitutions, and charters of the other Federation subjects, which are the object of study in this chapter. The author has not looked at agencies of local self-government.²⁰

2. Limitations of the Research

There are three limitations to this current research to be borne in mind. Firstly, most of the time the author only had access to the current constitutions and charters. There are electronic documents with the original constitution of some republics available at the Presidential Library in St. Petersburg (located in the historical Synod building; the Presidential Library opened on 27 May 2009), but very few; unfortunately in this respect the collection is not complete, and indeed some of those in the collection are not the originally adopted version.

Secondly, while the author can fairly easily find the current texts of the relevant constituent documents,²¹ she does not have access to any preparatory documents, debates of the appropriate legislative agencies and so on. She is therefore limited to textual analysis and legal reasoning.

Finally, the author has been forced to acknowledge that close scrutiny of all aspects of the constitutive documents of all 85 subjects of the Russian Federation was unfeasible practically, so has been selective, as is explained below.

3. The Importance of Words

There are vast bodies of work on legal semiotics and law and literature, which will not be explored here. However, it is appropriate to flag up some features of the importance of the words used in legislation in Russia.

We will note two aspects.

Firstly, Russia as a codified legal system, with in general a positivist approach to law, that is, legislation is regarded as the preeminent source of law. This obviously places stress on the written legal text, and carries an implication that vocabulary should be chosen with care and law-making should be done in an orderly, principled and coherent manner.²² This also creates an expectation that the order of treatment of particular topics in any piece of legislation is significant, with the most important

²⁰ Local Self-Government has a separate chapter in the Constitution RF, Ch. 8.

²¹ See *supra* text to note 12.

²² For an example of the consideration of high principle in the process of Russian codification, see Viktor A. Dozortsev, *One Code or Two?*, 2(1) Parker Sch. J. E. Eur. L. 27 (1995).



matters being presented near the beginning.²³ As Professor Naumov stated in relation to Russian criminal law:

The [1960] Criminal Code of the RSFSR [Russian Soviet Federated Socialist Republic], as well as of other Soviet republics, proceeded from the principle of protection of state interests first, public interests next, and only afterward the interests of the individual; in contrast, in the criminal codes of developed democratic countries, these priorities are generally reversed.

The new [1996 Russian Criminal] code refused to adhere to the old, indigenous tradition and established a new hierarchy of values protected by criminal law – the person, the public, the state.²⁴

In both Codes these priorities are explicit in the order in which the relevant chapters appear. We can thus generalise that both the words used, and the context in which they are used, carry significance.

We can see in this respect that the correct use of language is a matter of pressing concern in Russia. In February 2019 it was reported that the Ministry of Justice would take active steps to improve the standard of law-making, including the examination of errors and inconsistencies.²⁵ Earlier, two leading Russian academics put forward a proposal that measures should be taken to rectify defects in the use of Russian in Russian legislation.²⁶

The second aspect to note is that in Russia there is a cultural belief that, in theory at least, a good law should be sufficiently well drafted to cover all eventualities, so that nothing need be left to discretion.²⁷ This approach again stresses the importance of using appropriate vocabulary. In reality of course this principle can break down. Further, close observation has shown that interpretation of specific terms in legislation can be used deliberately to achieve a particular result, even where that appears to be against the plain and ordinary meaning of the legislative text.²⁸

²³ See discussion of the ordering of the 1996 Criminal Code of the Russian Federation in Anatoly V. Naumov, *The New Russian Criminal Code as a Reflection of Ongoing Reforms*, 8(2) *Crim. L. Forum* 191 (1997).

²⁴ *Id.* 201–202.

²⁵ Трифонова Е. Минюст не возражает против введения правил законотворчества // Независимая газета. 17 февраля 2019 г. [Ekaterina Trifonova, *Ministry of Justice Does Not Object to the Introduction of Rules of Law-Making*, *Nezavisimaia gazeta*, 2 February 2019] (Feb. 23, 2021), available at http://www.ng.ru/politics/2019-02-17/3_7510_minjust.html.

²⁶ Белов С.А., Крощев Н.М. Что нужно, чтобы русский язык стал государственным? // Закон. 2016. № 10. С. 100–112 [Sergey A. Belov & Nikolai M. Kropachev, *What Is Needed for the Russian Language to Become the State Language?*, 10 *Law* 100 (2016)].

²⁷ Marina Kurkchiyan, *The Impact of the Transition on the Role of Law in Russia*, 28(3) *Recht der Werkelijkheid*, Special Issue on Explorations in Legal Cultures 75 (2007).

²⁸ See, e.g., Anita Soboleva, *Use and Misuse of Language in Judicial Decision-Making: Russian Experience*, 26(3) *Int'l J. Semiot. L.* 673 (2013); Anita Soboleva, *Legal Terminology from the Rhetorical Perspective: Legal Genres Approach*, 3 *Pravo. Zhurnal Vysshey shkoly ekonomiki* 168 (2015).

Nevertheless, as noted at the outset, words matter and the choice of which particular words are used in legislation, as well as the order of presentation of topics, should be a primary concern of a legislature at any level within Russia's federal hierarchy.

4. Legacies of the Soviet Past?

We now turn to the research the author conducted on the texts in the constitutions and charters of Russia's Federation subjects, looking for possible legacies of the Soviet past.

4.1. *Theory of Dependent Rights v. Human Rights*

The author was initially inspired to undertake this enquiry about Soviet legacies in the constituent documents of Federation subjects as a result of something she encountered in previous research, examining the comparative treatment of human rights in constitutional and charter courts,²⁹ where such courts existed (unfortunately in only a small minority of Russia's Federation subjects).³⁰ Whilst checking what rights are specified for citizens under their own federal subject's constitution or charter, the author surveyed the relevant chapters in each.

In the course of this the author was intrigued to find that, whilst most of the constitutive documents entitle their section on rights as "Rights and Freedoms of Man and Citizen" (exactly as the title of Chapter 2 of the current federal Constitution), some republican constitutions – specifically, those of Buriatiia, Ingushetia, Komi, Tatarstan, Tyva and Khakasiia – have reference instead in their relevant chapter title to the "Rights, Freedoms and Duties of Man and Citizen" [*Prava, svobody i obiazannosti cheloveka i grazhdanina*; Права, свободы и обязанности человека и гражданина]. They are thus using the same wording as that which headed Chapter 6 of 1978 RSFSR Constitution in its original form³¹ (and Chapter 7 of the more readily available 1977 USSR Constitution³²). This seemed to the author to be a clear legacy of the

²⁹ Presentation at the 2016 International Society of Public Law Conference (ICON-S) in Berlin, 17–19 June, on a panel chaired by Lauri Mälksoo on "Constitutionalism in Russia: Comparative Perspectives."

³⁰ See Jane Henderson & Marina L. Belykh, *Regional Constitutional Justice in the Context of Russia's Aspiration to Be a Rule of Law State*, 43(4) Rev. of Central and East Eur. L. 351 (2018) where it is noted at 357 that only 16 out of 85 Federation subjects have an operative court. After that the constitutional court in the Republic of Tyva was abolished, and changes adopted following the 2020 reforms to Article 125(3) of the federal Constitution have eliminated the possibility of subject level constitutional and charter courts after 1 January 2013.

³¹ *Glava 6. Osnovnye prava, svobody i obiazannosti grazhdan RSFSR* [Chapter 6. Fundamental Rights, Freedoms and Duties of Citizens of the RSFSR] prior to amendment in April 1992 which brought a new title and almost all of the contents of the RSFSR Declaration of the Rights of Man and Citizen of November 1991. English translation of original version in William B. Simons, *Constitution (Fundamental Law) of the Russian Soviet Federative Socialist Republic*, 4(3) Rev. Soc. L. 259 (1978).

³² *Glava 7. Osnovnye prava, svobody i obiazannosti grazhdan SSSR* [Chapter 7. Fundamental Rights, Freedoms and Duties of Citizens of the USSR].



past and warranted further investigation. It suggested that the basis of rights in those particular republics was that of Soviet “dependent rights,” where citizens were given rights in return for the duties they performed to the state. In the 1977 USSR Constitution this principle was made absolutely explicit in the first paragraph of Article 59: “The realization of rights and freedoms shall be inseparable from the execution by a citizen of his duties.”³³ The same wording appeared in the first paragraph of Article 57 of the 1978 RSFSR Constitution.³⁴ Such an approach to rights effectively denies “human rights.” Citizens are not given rights because they are human, but because of the social contract between them and the State, of concrete privileges in return for duties fulfilled.³⁵

In the USSR, a dramatic change in approach to rights was marked by the USSR Declaration of the Rights of Man, adopted on 5 September 1991.³⁶ This was the last legislative act of the USSR Congress of People’s Deputies (CPD) before it dissolved itself in the aftermath of the abortive putsch against USSR President Mikhail Gorbachev on 19 August 1991.³⁷ This worthy document³⁸ was proposed by Academician Vladimir Kudriavtsev, at the time a deputy in the USSR CPD as well as being a member of the Central Committee of the Communist Party of the Soviet Union (CPSU). Kudriavtsev was described by Academician William E. Butler as “the most senior Russian jurist during his lifetime.”³⁹ Kudriavtsev urged the USSR CPD to adopt the Declaration to set a standard during those uncertain times. The Declaration championed “human rights,” specifying in its Article 1 that:

³³ English translation by William E. Butler in William E. Butler, *Basic Documents on the Soviet Legal System* 14 (1983).

³⁴ Simons 1978, at 268. The translation differs slightly.

³⁵ On the Soviet approach to rights, see Jane Henderson, *The Constitution of the Russian Federation: A Contextual Analysis* 42 (2011).

³⁶ Закон СССР от 5 сентября 1991 г. № 2393-1 «Декларация прав и свобод человека» [Law of the USSR No. 2393-I of 5 September 1991. Declaration of Human Rights and Freedoms] (Feb. 23, 2021), available at http://euro-ombudsman.org/reference/laws_and_other_documents/deklaratsiya-sssr-prav-i-svobod-cheloveka.

³⁷ Henderson 2011, at 229.

³⁸ Although of questionable enforceability, as conflicting with the Constitution then in force; see Gerard P. van den Berg, *Human Rights in the Legislation and the Draft Constitution of the Russian Federation*, 18(3) *Rev. of Central and East Eur. L.* 197, 202, fn. 15 (1992).

³⁹ Jane Henderson, *Talking Across the Fence: Cold War Academic Cooperation in the Legal Sphere in The Legal Dimension in Cold War Interactions: Some Notes from the Field* 171, 177 (Tatiana Borisova & William B. Simons eds., 2012), citing personal information from William E. Butler (2 February 2009). Kudriavtsev became director of the Institute of State and Law of the USSR Academy of Sciences in 1973, and in 1974 was elected a corresponding member of the USSR Academy of Sciences, being confirmed as a full member in 1984. He served as Vice-President of the USSR [subsequently Russian] Academy of Sciences from 1988–2001. In recognition of his academic esteem, Kudriavtsev was awarded the prestigious Demidov Prize in 2002. He was the only ever recipient from the legal field during the Prize’s existence, from 1832–65 and again from 1993 to the present day. He also became a member of the Central Committee of the Communist Party of the Soviet Union.



Each person possesses natural inalienable and inviolable rights and freedoms. They are sealed in laws that must correspond to the Universal Declaration of human Rights, international covenants on human rights and other international norms and present declaration.⁴⁰

Eleven weeks later, on 22 November 1991, the Russian Supreme Soviet adopted the RSFSR Declaration of the Rights of Man and Citizen.⁴¹ This followed the lead of the USSR Declaration in introducing inherent rights. On 21 April 1992 the RSFSR Declaration was incorporated into the 1978 RSFSR Constitution.⁴² This put “human rights” into a Russian Constitution for the first time. The change was marked by a new title to Chapter 5, “Rights and Freedoms of Man and Citizen [*Prava i svobody cheloveka i grazhdanina*; Права и свободы человека и гражданина]”. This heading is the same as that of Chapter 2 of the 1993 Constitution RF, in which Kudriavtsev had a hand in drafting. He was head of the Constitutional Arbitration Commission which compiled proposals from the Constituent Assembly’s five working groups, to form the draft approved by the Assembly on 26 June. This in turn informed the final draft presented to the public for the national plebiscite on 12 December 1993 to adopt a new Constitution.

In the light of this major change in approach to rights in Russia, it seemed to the author surprising that six republican constitutions should retain the old Soviet chapter heading.

Further investigation revealed that the actual substantive content of the chapters of the six specific republics in general matches the content of rights set out in the federal Constitution. This is unsurprising given that the constitutions and charters of subjects of the Russian Federation should be consistent with the federal Constitution according to the Constitution’s Article 15(1).⁴³ However, it did raise the (unfortunately as yet unanswered) question as to why those republican legislatures accepted the change in substantive approach to incorporate human rights whilst keeping a chapter title symbolic of Soviet dependent rights.

⁴⁰ Henderson 2011, at 229.

⁴¹ Постановление Верховного Совета РСФСР от 22 ноября 1991 г. № 1920-1 «О Декларации прав и свобод человека и гражданина» // СПС «КонсультантПлюс» [Resolution of the Supreme Council of the RSFSR No. 1920-1 of 22 November 1991. On the Declaration of the Rights and Freedoms of Man and Citizen, SPS “ConsultantPlus”] (Feb. 23, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_3788/.

⁴² Закон РФ от 21 апреля 1992 г. № 2708-1 «Об изменениях и дополнениях Конституции (Основного Закона) Российской Советской Федеративной Социалистической Республики» // СПС «КонсультантПлюс» [Law of the Russian Federation No. 2708-1 of 21 April 1992. On Amendments and Additions to the Constitution (Basic Law) of the Russian Soviet Federative Socialist Republic, SPS “ConsultantPlus”] (Feb. 23, 2021), available at <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=EXP&n=214032#06244099010396718>.

⁴³ See also Constitution of the Russian Federation, Arts. 76(4), (5) & (6).



Added to this, the versions of the republican constitutions to which the author had ready access for her research are those which are current, and, as already noted, in the first few years of this century there was a very strong drive to make sure that the legislation of each federal subject – and perhaps most especially its constitution or charter – was consistent with federal legislation; this is one strong manifestation of the *vertikal'* of law noted above.⁴⁴

Having examined the republics' constitutions in relation to rights, the author turned to the chapters on rights in the charters of the other subjects of the Federation (which the author had readily to hand as a result of her earlier research), to see if the titles of any of those documents also included a reference to duties.

The author thus discovered that Chapter 4 of the Charter for Khabarov territory references "Rights, Freedoms and Obligations of Man and Citizen" although in the substantive articles there is direct reference the rights set out in the federal Constitution.

Amongst the regions, Kurgan specifically mentions "Rights, Freedoms and Obligations" in its chapter title.

Interestingly, the charters of a few Federation subjects did not seem to say anything directly on rights at all – Novgorod, Ryazan, Saratov and the city of Moscow. Lipetsk region does not have a rights chapter; instead Article 6 simply declares,

On the territory of the region, the observance of the rights to citizenship of the Russian Federation enshrined in the Constitution of the Russian Federation and the exercise in connection with this by each citizen of the Russian Federation of their *rights, freedoms and obligations* is guaranteed.
[emphasis added]

So overall the author's investigations revealed a small and somewhat disparate group of Federation subjects where the chapter title at least apparently retains the view that there are citizens' rights, awarded in return for obligations performed, rather than human rights – that is, "rights and freedoms of man and citizen" which are inherent and inalienable. Strangely, this "dependent rights" language pertains even where the substantive rights listed seem clearly to be in accord with the federal Constitution and, one might say, the general international approach to human rights. (Some charters indeed made direct reference to the application of international law on rights: Belgorod, Kostroma, Smolensk region, Tula, and the Jewish autonomous region.)

The fact that the author had found what seemed to be clear examples of "Soviet era" wording in some Federation subjects' constitutive documents inspired her to investigate further what other legacies may remain within these important documents.

⁴⁴ See *supra* text to note 19.



4.2. *The Sovereignty Issue*

One point the author was unable to explore to its full extent, but which arguably flows directly from the Soviet approach to constitutionalism, is the claim to sovereignty which many of the republics within Russia made in their constitutions before the reforms in the early years of this century to harmonise Federation subjects' legislation with federal law, noted earlier.

Looking back in time, the 1977 USSR Constitution famously declared in Article 76 that, "A Union Republic is a sovereign Soviet socialist state that has united with other Soviet Republics in the Union of Soviet Socialist Republics."

This ascription of each union republic being a "sovereign state" raised a question about the meaning of these words within that context. Soviet sovereignty and statehood clearly signified something different to the general understanding of those concepts within the international law of the non-socialist world. A thorough analysis by Henn-Jüri Uibopuu published in 1979 explored these differences.⁴⁵

In the very late stage of the USSR's existence the autonomous republics within union republics also began to claim sovereignty. Jeffrey Kahn noted in his detailed study of developments of federalism in Russia during that period,

In a span of thirty-two months [from late 1988], forty former units of the Soviet Union declared themselves to be sovereign states, an average of one declaration every 23 days.⁴⁶

Kahn also noted that only 16 republics actually aspired to independence beyond sovereignty.⁴⁷ The difference between sovereignty and independence is significant. The RSFSR Declaration of State Sovereignty adopted by the new RSFSR CPD on 12 June 1990⁴⁸ did not assert Russia's independence from the USSR, merely that RSFSR was sovereign so had full state power except for those aspects which it had voluntarily transferred to the USSR. Also, importantly, it asserted that RSFSR law was supreme on its territory; in case of inconsistency, USSR legislation would be suspended there. Thus the state sovereignty of the RSFSR was proclaimed whilst the existence of the USSR (or at least a "renewed USSR") was not denied (*Pervyi S'ezd narodnykh deputatov RSFSR ... torzhestvenno provozglashaet gosudarstvennosti*

⁴⁵ Henn-Jüri Uibopuu, *Soviet Federalism Under the New Soviet Constitution*, 5(1) Rev. of Socialist L. 171 (1979).

⁴⁶ Kahn 2002, at 102.

⁴⁷ *Id.*

⁴⁸ Декларация о государственном суверенитете Российской Советской Федеративной Социалистической Республики от 12 июня 1990 г. // СПС «КонсультантПлюс» [Declaration on State Sovereignty of the Russian Soviet Federative Socialist Republic of 12 June 1990, SPS "Consultant-Plus"] (Feb. 23, 2021), available at https://www.consultant.ru/law/podborki/deklaraciya_o_gosudarstvennom_suverenitete_rossijskoj_sovetskoj_federativnoj_socialisticheskoy_respubliki_ot_12_iyunya_1990_g/. English translation in Butler 2013, at 1.

suverenitet Rossiiskoi Sovetskoi Federativnoi Sotsialisticheskoi Respubliki na vseĭ ee territorii i zaĭavliaet o reshimosti sozdat' demokraticheskoe pravovoe gosudarstvo v sostave obnovlennogo Soiuza SSR; Первый Съезд народных депутатов РСФСР ... торжественно провозглашает государственный суверенитет Российской Советской Федеративной Социалистической Республики на всей ее территории и заявляет о решимости создать демократическое правовое государство в составе обновленного Союза ССР.)⁴⁹

The claim, in a number of early republican constitutions adopted in independent Russia, that the particular republic was sovereign, fits with this Soviet approach to the meaning of the word – of having some autonomy but within the constraints of a federalised state. This indeed fits with the meaning used in Russia's own 1990 Declaration of State Sovereignty.⁵⁰

However, it seems apparent that by the beginning of the 21st century, the word sovereignty had begun to acquire at least in some Russian contexts⁵¹ the more universal meaning, which provoked President Putin to insist that the republics within Russia eliminated that claim from their then constitutions.

Nevertheless, a shadow of the original claim by republics within Russia to state sovereignty is retained in some cases in the name of their legislature. As discussed below, half of the 22 republics have the word "State" (*Gosudarstvennyi*; Государственный) in that name. A move in 2010 to ban the use of that word in that context was not carried through.⁵²

4.3. Name of the Legislative Body

One area which presented itself as fruitful to explore in relation to possible remnants of the Soviet past is the name given by Federation subjects to their legislature, that is, their "legislative and representative agency."⁵³


⁴⁹ Declaration on State Sovereignty of the Russian Soviet Federative Socialist Republic, *supra* note 48.

⁵⁰ See, e.g., the Udmurt Constitution of 7 December 1994 (Feb. 23, 2021), available at <http://www.prilib.ru/item/420942>; note particularly Article 1.

⁵¹ See further discussion in Ruth Deyermund, *The Uses of Sovereignty in the Twenty-First Century Russian Foreign Policy*, 68(6) Eur.-Asia Stud. 6 (2016); William Bowring, *What's in a Word: "Sovereignty" in the Constitutional Court of the Russian Federation*, 7(3) Russ. J. Commun. 328 (2015); Mikhail V. Antonov, *Conservatism in Russia and Sovereignty in Human Rights*, 39(1) Rev. of Central and East Eur. L. 1 (2014); Mikhail V. Antonov, *The Legal Conceptions of Hans Kelsen and Eugen Ehrlich: Weighting Human Rights and Sovereignty*, 20(20) Revista Direitos Fundamentais & Democracia 39 (2016).

⁵² Холмогорова В. Региональным парламентам запретят использовать слово «государственный» // Ведомости. 20 января 2010 г. [Vera Kholmogorova, *Regional Parliaments Will Be Prohibited from Using the Word "State,"* Vedomosti, 20 January 2010] (Feb. 23, 2021), available at <https://www.vedomosti.ru/politics/articles/2010/01/20/regionalnym-parlamentam-zapretyat-ispolzovat-slovo-gosudarstvennyi>.

⁵³ The author is grateful to Sergei Belov for suggesting this line of enquiry.



This has to be approached with some caution, as the Russian word “Soviet” literally means Council, so that, for example, the upper chamber of the current Russian bicameral legislature, the Federal Assembly (*Federal’noe Sobranie*; Федеральное Собрание) is called the *Sovet Federatsii* (Совет Федерации). This is variously translated into English as the Soviet of the Federation,⁵⁴ the Council of the Federation, or the Federation Council.⁵⁵ The first of these might be thought to have “Soviet” connotations, but this is a construct of the translation choice.⁵⁶

It is also important to note that since 2010 the Federal Law “On General Principles of Organisation of Legislative (Representative) and Executive Agencies of State Power of Subjects of the Russian Federation”⁵⁷ has restricted the choice of name of Federation subjects’ legislative agencies. Following an undertaking given in his November 2009 annual Address to the Federal Assembly, President Medvedev introduced amendments to that federal law, the main purpose of which was to regulate the number of deputies in Federation subjects’ legislatures. Under the revised law this would be proportionate to the population of the particular federal subject. However, at the same time, Article 4(2) of the federal law was amended to include the text here italicised:

The name of the legislative (or representative) agency of state power of the subject of the Russian Federation and the structure thereof shall be established by the constitution (or charter) of the subject of the Russian Federation, taking into account the historical, nationality, and other traditions of the subject of the Russian Federation. *In doing so the name of the said agency may not contain word combinations comprising the foundation of the names of federal agencies of State power.*⁵⁸ [*Naimenovanie zakonodatel’nogo (predstavitel’nogo) organa gosudastvennoi vlasti sub’ekta Rossiiskoi Federatsii, ego struktura ustanavlivaiutsia konstitutsiei (ustavom) sub’ekta Rossiiskoi Federatsii s uchetom istoricheskikh, natsional’nykh i inykh traditsii sub’ekta Rossiiskoi Federatsii. Pri etom naimenovanie ukazannogo organa ne mozhет soderzhat’ slovosochetanii, sostavliaiushchikh osnovu naimenovanii federal’nykh organov gosudastvennoi*

⁵⁴ As for instance Butler 2018, at 447.

⁵⁵ As for instance in Peter B. Maggs et al., *Law and Legal System in the Russian Federation* 1016 (7th ed. 2020).

⁵⁶ See discussion of translation issues in Ch. 2 of Butler 2018, at 27 ff.

⁵⁷ Федеральный закон от 6 октября 1999 г. № 184-ФЗ «Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации» // СПС «КонсультантПлюс» [Federal Law No. 184-FZ of 6 October 1999. On General Principles of Organisation of Legislative (Representative) and Executive Agencies of State Power of Subjects of the Russian Federation, SPS “ConsultantPlus”] (Feb. 23, 2021), available at http://www.consultant.ru/document/cons_doc_LAW_14058/. English translation by William E. Butler with amendments up to 2013 in Butler 2013, at 714.

⁵⁸ By Federal Law of 23 December 2010 No. 376-FZ. Translation of Article 4(2) as amended *Id.* 717–718.



vlasti; Наименование законодательного (представительного) органа государственной власти субъекта Российской Федерации, его структура устанавливаются конституцией (уставом) субъекта Российской Федерации с учетом исторических, национальных и иных традиций субъекта Российской Федерации. *При этом наименование указанного органа не может содержать словосочетаний, составляющих основу наименований федеральных органов государственной власти.*]⁵⁹ [emphasis added]

Thus, whilst not explicitly disallowing the use of, for example, the word “State,” this prohibits a federal subject from calling its legislative agency “State Duma,” as this would be the same as the elected chamber of the Federal Assembly.

The author does not have data on whether the names of any republican and regional legislatures changed as a result of the 2010 amendment. However its provisions on deputies’ numbers led to the demise of the two bicameral legislatures which had existed, the Great Khural (*Velikii Khural*; Великий Хурал) of the Republic of Tyva and the Legislative Assembly of the Sverdlovsk Region, to be replaced respectively by a unicameral Supreme Khural (Parliament) (*Verkhovnyi Khural (parlament)*; Верховный Хурал (парламент)) in Tyva and unicameral Legislative Assembly (*Zakonodatel’noe Sobranie Sverdlovskoi oblasti*; Законодательное Собрание Свердловской области) in Sverdlovsk.⁶⁰

Even bearing in mind the restriction imposed by Article 4(2) of the “General Principles of Organisation of Legislative (Representative) and Executive Agencies of State Power of Subjects of the Russian Federation,” examination of the terminology used in the republican constitutions and regional charters threw up some interesting results.

Of the 22 republics, not one of them followed the federal lead and adopted the name *Duma* for its legislative and representative body. This stands in contrast to 2 out of the 9 territories, 23 out of the 46 regions, one city (Moscow) and two autonomous areas (Khanty-Mansiiskii-lurga and Chukotskii), all of which have Dumas.

Contrariwise, 7 of the 22 republics use the word Council (*Sovet*; *Covem*), all but one in the form of a State Council (*Gosudastvennyi Sovet*; Государственный совет). Khakasiia is the exception with a Supreme Soviet (*Verkhovnyi Sovet*; Верховный Совет), as in Soviet times. By contrast, not one single territory has a Soviet and only one region has a Soviet: the Lipetsk Regional Soviet (*Oblastnoi Sovet*; Областной Совет), whilst one region, Orlovsk,⁶¹ has a Soviet of People’s Deputies (*Sovet narodnykh*

⁵⁹ Russian version is available on Garant (Feb. 23, 2021), available at <http://base.garant.ru/12117177/1b93c134b90c6071b4dc3f495464b753/#ixzz5iWBtvqlr>.

⁶⁰ For Tyva see История парламентаризма в Республике Тыва [History of Parliamentarism in the Republic of Tyva] (Feb. 23, 2021), available at <http://www.khural.org/info/history/>. The Sverdlovsk Legislative Assembly website is at <http://zssso.ru>.

⁶¹ The Keremovo Region Legislative Assembly, until 2019 called *Sovet narodnykh deputatov* is in Soviet Square, with its address as 58 Soviet Prospect. The address of the Orlovsk Soviet of People’s Deputies is 1 Lenin Square.

deputatov; Совет народных депутатов) (as did Kemerovo until 2019),⁶² which, after the 1977 USSR Constitution, was the formal name of Soviets below the level of the Supreme Soviet.

By *perestroika* reforms in 1988, in line with the Resolution on Democratisation adopted at the 19th Party Conference in June 1988, the USSR Supreme Soviet was replaced by the USSR Congress of People's Deputies (*S'ezd Narodnykh Deputatov*; Съезд народных депутатов СССР), and a smaller indirectly elected but more permanently sitting Supreme Soviet. The RSFSR Congress of People's Deputies and its indirectly elected RSFSR Supreme Soviet were instituted in the RSFSR following a constitutional amendment of 27 October 1989.⁶³ However, not one of the current Federation subjects have called their legislature a "Congress."

Republics which do not have a Soviet, with 10 exceptions, call their legislative agency an Assembly (*Sobranie*; Собрание); 5 of these are a "State Assembly" (*Gosudastvennoe Sobranie*; Государственное Собрание), and 3 a "People's Assembly" (*Narodnoe Sobranie*; Народное Собрание). There is a Legislative Assembly (*Zakonodatel'noe Sobranie*; Законодательное Собрание) in 7 territories (the other two have Dumas) and in 18 of the regions, along with one Assembly of Deputies (*Sobranie deputatov*; Собрание депутатов) and one Regional Assembly (*Oblastnoe Sobranie*; Областное Собрание). Two of the cities of federal significance also have a Legislative Assembly (*Zakonodatel'noe Sobranie*; Законодательное Собрание) (Saint Petersburg and Sevastopol), as does the one (Jewish) autonomous region, and one of the four autonomous areas (Iamalo-Nenetskii; likewise the Nenetskii autonomous area until 2019 when it was changed to *Sobranie deputatov*; Собрание депутатов).

The 10 republics which have neither a Soviet nor an Assembly have a mix of names, including traditional names for gatherings. Three – Buriatiia, Kalmykiia and Tyva – have a *Khural* (Хурал); Altai has the State Assembly – *El Kurultai* of the Republic of Altai (*Gosudastvennoe Sobranie – El Kurultai Respubliki Altai*; Государственное Собрание – Эл Курултай Республики Алтай); Adygeia the State Council – *Khase* of the Republic of Adygeia (*Gosudastvennyi Sovet – Khase Respubliki Adygeia*; Государственный Совет – Хасэ Республики Адыгея); and Bashkortostan the State Assembly – *Kurultai* of the Republic of Bashkortostan (*Gosudastvennoe Sobranie Kurultai Respubliki Bashkortostan*; Государственное Собрание – Курултай Республики Башкортостан).

Three republics – Kabardino-Balkariia, Northern Osetia-Alaniia, and Chechnia – have a Parliament (*Parlament*; Парламент). Kalmykiia also includes Parliament in parentheses with its *Khural* name, as does Karachaevo-Cherkesskaia for its People's Assembly (*Narodnoe Sobranie*; Народное Собрание).

⁶² See Закон Кемеровской области – Кузбасса от 30 октября 2019 г. «О внесении поправок в Устав Кемеровской области – Кузбасса» [Law of the Kemerovo Region – Kuzbass of 30 October 2019. On Amendments to the Charter of the Kemerovo Region – Kuzbass] (Feb. 23, 2021), available at <https://ako.ru/upload/medialibrary/bf4/117-03%202019.pdf>.

⁶³ That version in Russian is available at http://constitution.garant.ru/history/ussr-rsfsr/1978/red_1978/5478722/.



Adding to this variety, we notice that the Samara region's legislature is called the *Samarskaia Gubernskaia Duma* (Самарская Губернская Дума), using the name for a territorial subdivision, *gubernia*, which dates back to Peter the Great and was eliminated in the Soviet Union by 1929 at the end of the New Economic Policy.

What conclusions can we draw from our survey of the terminology used by Federation subjects for their legislatures? We have seen that the 1999 federal law "On General Principles of Organisation of Legislative (Representative) and Executive Agencies of State Power of Subjects of the Russian Federation," even with its 2010 amendment, leaves the choice of name to individual Federation subjects, provided there is no exact overlap with the name of any federal agency.

There is specific allowance for "taking into account the historical, nationality, and other traditions of the subject of the Russian Federation"⁶⁴ and seven of the republics have used or included a traditional name within their legislatures' titles.

After the fall of the USSR there was no lustration of officials in post-Soviet Russia, and neither was there a grand campaign to remove all traces of Soviet terminology. Although over time a number of names of places have returned to their pre-Soviet version, this has been done on a case-by-case basis depending on the wishes of the locality. This has led to interesting anomalies such as the former Leningrad returning to being St. Petersburg whilst surrounded by Leningrad region, and former Sverdlovsk re-assuming the name of Yekaterinburg but still within Sverdlovsk region.

Overall, however, bearing in mind the possible ambiguity of use of the word *Soviet*,⁶⁵ we see that almost all Federation subjects have moved away from what appears to be Soviet heritage terminology. This leaves in focus the few who seem to have retained a name which sounds unequivocally like the language of the socialist past. Khakasiia's "Supreme Soviet" (*Verkhovnyi Sovet*; Верховный Совет), Lipetsk's Regional Soviet (*Oblastnoi Sovet*; Областной Совет) and Orlovsk's "Soviet of People's Deputies" (*Sovet narodnykh deputatov*; Совет народных депутатов) stand out as appearing to be deliberately evocative of the Soviet Russian regime.

Whether we can say the same for the other seven Federation subjects which have included the word "Soviet" in their legislatures' titles is more debatable, although it is striking that all seven are republics and all but one have a "State Soviet." However, as noted in the previous section on sovereignty, the significance here may be the retention by these republics of the word *State*, rather than the word *Soviet*.

4.4. Order of Presentation

Collecting the names of the legislative and representative agencies in Federation subjects allowed consideration of the order in which the agencies of state power are presented in the different constitutions and charters. As noted earlier (Section 4), as

⁶⁴ See *supra* text to note 58.

⁶⁵ See the start of this section.



a codified legal system Russia follows the general principle that topics are dealt with in an order which signifies their importance. Thus the positioning in the 1993 Constitution RF of the “Rights and Freedoms of Man and Citizen” immediately following the opening chapter of the “Foundations of the Constitutional System” is taken to indicate the contemporary importance of human rights (as indeed is made explicit in Article 2 of the Constitution).⁶⁶ Also the placing of the chapter on the President (Chapter 4) ahead of those on the Federal Assembly (Chapter 5), the Government (Chapter 6) and Judicial Power and the Procuracy (Chapter 7 in its current redaction) emphasises the strength and importance of the President’s role as Head of State.

It was not always like this. When a presidency was introduced in the USSR in 1990,⁶⁷ and in the RSFSR in 1991,⁶⁸ a new chapter was inserted into the relevant Constitution after the chapter on the legislative agencies (in both cases at that time the Congress of People’s Deputies and Supreme Soviet), although before the chapter on the government (Council of Ministers). In the USSR and the RSFSR, before the constitutional amendments to introduce a President, the structure of state had emphasised the supremacy of the legislative and representative agencies in the form of the Soviets. When adopting legislation to create the new presidential post, those legislative and representative agencies did not cede their pre-eminence.

We can now compare the order of presentation in the current constitutions and charters of subjects of the Russian Federation. If the thesis about the significance of ordering is correct, we might see a marked emphasis on the legislatures. In 15 of the 22 republics, the chapter on the legislature comes before that of the executive and/or republic Head.⁶⁹ In 6 republics, the legislature is listed after the republic Head but before the government (similar to the federal Constitution).⁷⁰ In only one, Kalmykia, does the legislature come after both the republic Head and the government. All 9

⁶⁶ “Man, his rights and freedoms are the highest value.” English translation in Butler 2018, at 422.

⁶⁷ By USSR law of 14 March 1990 No. 1360-I “Об учреждении поста Президента СССР и внесении изменений и дополнений в Конституцию (Основной Закон) СССР” (Feb. 23, 2021), available at constitution.garant.ru/history/ussr-rsfsr/1977/zakony/185465/chapter/49599213504d6956cf5503c571d6cc11/#block_200. The revised version of the USSR Constitution is available in Russian at http://constitution.garant.ru/history/ussr-rsfsr/1977/red_1977/5478736/. See also Henderson, *supra* note 35, at 53.

⁶⁸ By Закон РСФСР от 24 мая 1991 г. «Об изменениях и дополнениях Конституции (Основного Закона) РСФСР» // СПС «КонсультантПлюс» [Law of the RSFSR of 24 May 1991. On Amendments and Additions to the Constitution (Basic Law) of the RSFSR, SPS “ConsultantPlus”] (Feb. 23, 2021), available at <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ESU&n=4940#03384702843197087>. The revised version of the RSFSR Constitution is available in Russian at http://constitution.garant.ru/history/ussr-rsfsr/1978/red_1978/5478728/. See also Henderson 2011, at 63.

⁶⁹ Before executive (including head and government combined): Adygeia, Altai, Bashkortostan, Karelia, Komi, Tyva, Khakasiia; before Head: Dagestan, Crimea, Marii El, Sakha (Iakutiia), Northern Osetia-Alaniia, Tatarstan, Udmurt, Chechnia.

⁷⁰ Buriatiia, Ingushetiia, Kabardino-Balkariia, Kalmykiia, Karachaevo-Cherkessiia, Mordoviia and Chuvashiia.

territories put the legislature first.⁷¹ 7 regions put the legislature after the chapter on the Head but before the chapter on the executive (government).⁷² 22 regions put the legislature before the executive,⁷³ and 17 put it ahead of the regional Head and his administration.⁷⁴ All three of the cities of national significance do likewise,⁷⁵ as does the Jewish autonomous region and all four of the autonomous areas.⁷⁶

Thus, in their current constitution or charter, 71 out of the 85 subjects of the Federation – that is, 83.5 per cent – keep the order which was represented in the USSR and RSFSR Constitutions when the institution of a President was first created, rather than following the order of the 1993 Constitution RF, to which only 13 Federation subjects conform.

4.5. Other Remnants of the Soviet Past?

In her attempt see what other Soviet legacies the author might find, she decided to take a different perspective to her topic. Having failed to unearth dramatic differences in the chapters on rights in the six republican constitutions with apparently anachronistic chapter headings that were her initial focus of research, and then having checked out the very few anomalous chapter titles in charters of the other Federation subjects, the author decided to approach her subject in a different way. She would assess the possibility of Soviet legacies in the constitutions and charters of the subject of the Russian Federation by first establishing what factors she judged to be characteristic of Soviet constitutions, so that she could then better explore whether any of those were present in the constitutions of the republics within Russia. Depending on the results, she might extend her search to the charters of the other Federation subjects.

4.5.1. Characteristics of a Soviet Constitution

The author decided to identify characteristics of a Soviet Constitution by looking at the major changes which were evident in the post-Soviet 1993 Constitution of the Russian Federation, as compared to the 1978 RSFSR Constitution and/or the 1977 USSR Constitution.

⁷¹ Before executive: Altai, Kamchat, Krasnodar, Khabarov; before Head: Zabaikal, Krasnodar, Perm, Primorskii, Stavropol.

⁷² Belgorod, Vologda, Ivanovo, Leningrad, Nizhegorod, Novosibirsk and Samara.

⁷³ Amur, Astrakhan, Vladimir, Volgograd, Kaluga, Kemerovo, Kirov, Kursk, Lipetsk, Novgorod, Orenburg, Penza, Pskov, Rostov, Saratov, Sakhalin, Smolensk, Tambov, Tver, Tomsk, Tula, Cheliabinsk.

⁷⁴ Arkhangelsk, Briansk, Voronezh, Irkutsk, Kaliningrad, Kostroma, Kurgan, Magadan, Moscow region, Murmansk, Omsk, Orlovsk, Riazan, Sverdlovsk, Tiumen, Ulianovsk, Yaroslavl.

⁷⁵ Moscow and St. Petersburg put it before the executive, Sevastopol before the city Head and government.

⁷⁶ Nenets, Chukotskii, Jamalo-Nenetskii put it before the executive; Khanty-Mansiiskii–Iurga before the *okrug* Head.



One hugely significant feature of the 1993 Constitution RF is that it declares in Article 15 that the Constitution has direct effect (*priamoe deistvie*; прямое действие). Soviet constitutions were not regarded as being directly applicable, with the result that mechanisms proposed in a constitution, such as the right of citizens to appeal to a court unlawful actions of officials (as set out in 1977 USSR Constitution Article 58) could not be brought into operation until and unless there was subsidiary legislation setting out the process.⁷⁷ (This fitted with the principle of the time that everything not allowed was forbidden.)

Another novel and significant characteristic of the 1993 Constitution RF is that it enshrines in Article 10 the principle of separation of legislative, executive and judicial power – *na osnove razdeleniia na zakonodatel'nuu, ispolnitel'nuu i sudebnuu*: на основе разделения на законодательную, исполнительную и судебную – with the associated principle that agencies of these powers should be autonomous.⁷⁸

The author therefore decided to see whether direct effect, separation of powers and autonomy were explicitly specified in republican constitutions.

4.5.2. Direct Effect

All the current versions of constitutions of the republics within Russia claim that their constitution has direct effect.

4.5.3. Separation of Powers

All the current versions of constitutions of the republics within Russia claim in their constitution that there is separation of powers, between the legislative, executive and judicial branches of state power. However, neither Ingushetiia nor Sakha (Iakutiia) say specifically, as do the other republics, that the branches of state power are autonomous. Even more surprising, the Republics of Ingushetiia (in Article 6) and Chuvashiia (in Article 3) simultaneously claim that there is unified state power (*edinoi gosudarstvennoi vlasti*; единой государственной власти), which was a Soviet principle.

Although the author found in relation to the names of the legislatures that there was a significant difference between republics and some of the non-republic Federation subjects – in that no republics had Dumas whereas 28 of the other

⁷⁷ Initially by Закон СССР от 30 июня 1987 г. № 7287-XI «О порядке обжалования в суд неправомерных действий должностных лиц, ущемляющих права граждан» // СПС «КонсультантПлюс» [Law of the USSR No. 7287-XI of 30 June 1987. On the Procedure for Appealing to a Court Unlawful Actions of Officials Which Impinge upon the Rights of Citizens, SPS “ConsultantPlus”] (Feb. 23, 2021), available at <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ESU&n=44902#02525391758189075>. English translation in Donald D. Barry, *Administrative Justice: the Role of Soviet Courts in Controlling Administrative Acts in Soviet Administrative Law: Theory and Practice* 80 (George Ginsburgs et al. eds., 1989).

⁷⁸ “Статья 10: Государственная власть в Российской Федерации осуществляется на основе разделения на законодательную, исполнительную и судебную. Органы законодательной, исполнительной и судебной власти самостоятельны. [Article 10: State power in the Russian Federation shall be effectuated on the basis of separation into legislative, executive, and judicial. Agencies of legislative, executive, and judicial power shall be autonomous.]” English translation in Butler 2018, at 424.



Federation subjects did – she did not explore further whether direct effect and separation of powers were specifically mentioned in charters, because it seemed that, in this respect, the lead set in the 1993 Constitution RF was clearly being followed, as is appropriate given the provisions in its Article 15(1).⁷⁹

4.6. Soviet Style – Lack of a Constitutional/Charter Court?

Despite the protestations in all republican constitutions that they have direct effect and that there is separation of powers (even if a very small number still claim unity of state power), in practice it is hard to see how these characteristics can be said to pertain in republics that did not have a working republican constitutional court – that is, Kalmykiia, Karachaevo-Cherkesskaia, Crimea, Mordoviia, Udmurt Republic, Khakasiia, Chechnia (theoretically set up, but not active), Chuvashiia and, since January 2019, Tyva.

In each of these, there has been no judicial body which can deal with separation of powers issues, that is, give a ruling on whether republican legislation, and/or the activities of the republican executive, are in breach of the republican constitution. This puts these particular republics in a very similar position to the USSR before the establishment in the spring of 1990 of the USSR Constitutional Supervision Committee, or the RSFSR before the establishment of the RSFSR Constitutional Court in 1991, of effectively having a so-called “Basic Law” which in fact was unenforceable. There has thus been a strong practical legacy of the Soviet past in the lack of judicial protection for inhabitants within this particular group of republics of their republican constitutional rights.

The situation has been even worse in relation to the other 63 Federation subjects. There were active charter courts, enforcing the Federation subject’s charter, in only three of these: Kaliningrad and Sverdlovsk regions, and the federal city of Saint Petersburg.

This suggests that even though the constitutions and charters say they uphold the principles of separation of powers and rule of law, for 70 of the 85 Federation subjects this has only been meaningless lip service, as there has been no effective judicial mechanism to check compliance with the Federation subject’s constitution or charter. This is a matter about which the author has written elsewhere, often in collaboration with Dr Marina Belykh of the Department of Constitutional Law of the Ural State Law University, as being a matter of serious concern.⁸⁰

Unfortunately, in the view of the author, this situation has now got worse. One of the changes brought about by the 2020 amendments to the 1993 federal Constitution is a rewording of Article 118(3).⁸¹ The original version of this paragraph merely said that,

⁷⁹ See *supra* text to note 13.

⁸⁰ Most recently in Henderson & Belykh 2018.

⁸¹ See for a summary Elizabeth Teague, *Russia’s Constitutional Reforms of 2020*, 5(3) Russian Pol. 301 (2020).



The judicial system of the Russian Federation shall be established by the Constitution of the Russian Federation and by a federal constitutional law. The creation of extraordinary courts shall not be permitted.⁸²

The amended version now specifically lists the bodies which comprise the judicial system of the Russian Federation:

the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, Federal courts of general jurisdictions, arbitrazh courts and justice-of-the-peace courts of subjects of the Russian Federation.⁸³

The author's initial fears that this is a closed list were confirmed by details of the consequential amendments to the Federal Constitutional Law on the Judicial System.⁸⁴ As *Kommersant* reported,

The amendments provide for the liquidation of these courts before 1 January 2023, prohibit them, from the date of entry into force of the law, from accepting new cases for proceedings, but retain the guarantees for their judges. [*Popravki predusmatrivaiut likvidatsiiu etikh sudov do 1 ianvaria 2023 goda, zapreshchaiut im so dnia vstupleniia zakona v silu prinimat' novye dela k proizvodstvu, no sokhraniaiut za ikh sud'iami polozhennye po zakonu garantii*; Поправки предусматривают ликвидацию этих судов до 1 января 2023 года, запрещают им со дня вступления закона в силу принимать новые дела к производству, но сохраняют за их судьями положенные по закону гарантии].

Instead of courts, what the new amendments offer is the creation of "constitutional councils" under the legislative agencies of the subjects of the Federation.

It may be argued that such councils, whilst welcome if they come to exist in all subjects of the Federation, cannot be as independent as courts. They will presumably not have the protection of federal Constitution Article 10, which mandates separation of powers. Returning to the theme of this paper, the author opines that, in her view, this retrograde step, to non-judicial consideration of what might otherwise be regarded as legal matters, is reminiscent of the Soviet period, when there was no forum for judicial examination of constitutional issues. Such lack of separation of powers seems to be a direct legacy of the approach taken during the Soviet socialist

⁸² Butler 2018, at 456.

⁸³ Maggs et al. 2020, at 1033.

⁸⁴ Веретенникова К., Макутина М., Рожкова Е. Судебная система пошла на сокращение. Госдума приняла поправку об упразднении конституционных и уставных судов регионов // Коммерсантъ. 17 ноября 2020 г. [Ksenia Veretennikova et al., *The Judicial System Has Gone Down. The State Duma Adopted an Amendment to Abolish the Constitutional and Charter Courts of the Regions*, Коммерсантъ, 17 November 2020] (Feb. 23, 2021), available at <https://www.kommersant.ru/doc/4575259>.



era, when, for example, “only the legislator could give an authoritative interpretation of legislation.”⁸⁵

Conclusion

Summing up the results of her investigations, the author’s current and somewhat tentative conclusion is that, ironically, her original concern that, on the basis of chapter headings in a few constitutions and charters, there might lurk within current Russia a Soviet approach to rights, proved to be unfounded; the substance of all those chapters was thoroughly modern.

However, there do still appear to be some legacies of the Soviet past. A minority of Federation subjects – 10 out of 85 – may have been nostalgic in retaining a “Soviet” as their legislative and representative body, although they may have just been using the Russian word for Council. A rather stronger case might be made against Khakasiia for its Supreme Soviet (*Verkhovnyi Sovet*; Верховный Совет) and Orlovsk (and Kemerovo until 2019) with its Soviet of People’s Deputies (*Sovet narodnykh deputatov*; Совет народных депутатов), as these names are more obviously evocative of the Soviet past.

There might also be a strong argument that the Soviet practice of giving precedence to the legislative and representative agency has been retained in an overwhelming majority of Federation subjects, if the order of exposition in their constituent document is to be taken as indicative.

However, perhaps the feature most redolent of the Soviet past is the fact that the opportunities for the realisation of rights, and protection against abuse of legal power by the Federation subjects’ legislatures and executives, have been severely limited in most of Russia’s Federation subjects, and, after the end of 2022, will be limited in all of them. There is what could well be characterised as a Soviet-era approach to judicial accountability – that is, a distinct absence of it. This is the case because of the woeful absence in the vast majority of Federation subjects of a constitutional or charter court which could rule on such issues. Moreover, as noted, this situation has been made worse since the 2020 reforms to the federal Constitution, which have mandated the elimination of such courts.

The author is thus led to postulate that there is an apparent legacy of the Soviet past in the constitutions and charters of the subjects of the Russian Federation. However, it is not, as she had first surmised, mainly in relation to the wording of those foundational laws. The author was initially looking at the vocabulary used, that is, the form of the constitutions and charters. She should rather have been considering their function, that is, their application and enforceability, and seeing shadows of the Soviet past in the problematic issue, going forward, of apparent lack of any opportunity to use those constitutions or charters as the basis for an action in court.

⁸⁵ Marina L. Lomovtseva & Jane Henderson, *Constitutional Justice in Russia*, 34(1) Rev. of Central and East Eur. L. 37, 60 (2009).



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