

# Resisting Putin's Federal Reforms on the Legal Front

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**P**resident Vladimir Putin's first term in office has been marked by a quest for the legal unification of the Russian Federation. On assuming office, first as acting president and then as president-elect in early 2000, Putin inherited from his predecessor a situation of significant disparities between the constitutional and legislative frameworks of the federal government and its subnational components, as well as between the eighty-nine administrative regions and ethnic republics. To some extent, the fragmentation within the Russian legal system could be traced back to perestroika-era political reforms of the late 1980s that had given rise to the so-called war of laws, both within the USSR and its largest union republic, the Russian Federation.<sup>1</sup>

The fissures in the Russian legal sphere greatly widened during the first post-Soviet Russian Republic as President Boris Yeltsin and his parliamentary opponents strove to outbid each other in concessions to the federation subjects to gain their political support.<sup>2</sup> With the emergence of the second Russian Republic in early 1994, the fragmentation of legal space worsened as Yeltsin continued his policy of ad hoc giveaways to demanding republic presidents and regional governors, now for the purpose of securing political stability after the violent end of the first republic.<sup>3</sup> The most salient aspect of Yeltsin's concessionary policy was several dozen bilateral, power-sharing treaties negotiated with various constituent governments, the first ones with the Republics of Tatarstan and Bashkortostan.<sup>4</sup>

By the time Putin arrived on the political scene, the idea of the Russian Federation as a unified legal entity increasingly had become a fiction. A majority of the twenty-one republic constitutions, along with a number of the regional charters, were in conflict with the post-Soviet Russian Constitution of 1993. Additionally, tens of thousands of local legislative acts and executive decrees were at variance with, and even contradicted, prevailing federal law. Putin, a lawyer, diagnosed the problem as the progressive disintegration of the federation as a result of the weakened authority of the central state and the federal legal system. He

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prescribed a strong dose of recentralization by recapturing from the provinces federal powers unwisely delegated from above, or unlawfully appropriated from below. His intention was to rebalance center-periphery relations into a viable federal system.

Shortly after his election in March 2000, President Putin signed an executive decree that administratively divided Russia into seven large areas called federal districts, each to be led by an appointed presidential representative or envoy. The envoys were assigned various tasks, but their initial, primary mission was to restore legal order in the wayward provinces. That was considered essential if the country was to realize the rule of law, which to Putin meant bringing predictability, stability, and transparency to Russia's political system through law. For the new envoys, their mission entailed leading a federal campaign in their districts to harmonize power-sharing treaties, constitutions, and charters with the federal constitution and to standardize local laws consistent with federal legislation on issues where federal law enjoyed constitutionally mandated exclusive authority and supremacy.<sup>5</sup>

Although Putin's diagnosis and prescription for the malady of legal disorder were sound, getting the many constituent parts of the Russian Federation to take the medicine or, in effect, comply with the president's policy was another matter. As the presidential envoys soon learned, doing so would not be without difficulty as their efforts engendered pockets of persistent resistance on the peripheries of the Russian system.

### **Putin's Campaign on the Legal Front**

By early fall 2000, the envoys and their staffs were in place, and the new federal districts were functioning. To assist the envoys' dual harmonization and standardization campaign, the procurator-general appointed seven deputy procurator-generals to direct and coordinate the work of republic and regional procurators within each of the federal districts. The federal Ministry of Justice also assigned senior executives to the federal districts in support of the campaign. In the effort to realign conflicting constitutions, charters, and treaties, as well as errant local legislation with federal standards, the envoys personally served as the president's political pointmen, parleying with the governors and presidents within their jurisdictions to enlist voluntary compliance with Moscow's legal unification policy.

When cooperation was not forthcoming, the envoys, as the campaign's commanders-in-chief, turned to the district offices of the Procuracy and Ministry of Justice, as well as to the local federal courts, bringing the administrative and judicial weight of the state to bear on governors, presidents, and provincial parliaments resisting the federal mandate. In effect, the envoys were fully empowered to deploy the law enforcement establishment to identify deviant legislation, file procuratorial protests, and issue judicial rulings to bring about compliance. In addition, the higher courts, the Supreme Court and the Constitutional Court of the Russian Federation, also added their authoritative voices through several decisions that gave impetus to the harmonization project in particular. Occasionally, when an envoy ran up against an especially powerful and recalcitrant president

or governor, he would call on Moscow for support in the form of a ministerial visit, a phone call from the president, or even, in a few instances, a direct presidential parley with the holdout.

In most instances, after initial reluctance and grouching, provincial executives and their legislative assemblies fell into line, renouncing their bilateral treaties, amending their constitutions or charters, and undertaking the job of correcting conflicting legislation. Even in those cases, however, overseeing the amending of local fundamental law often required considerable political sensitivity, patience, and persistence on the part of presidential envoys. Conversely, whereas revising local laws did not usually arouse ethnic national passions or regional chauvinism, it was the more complex and time-consuming undertaking. Each law that was revised to conform to federal norms required simultaneously amending numerous cognate legal acts, in effect causing a ripple through a region's or republic's body of law. Both harmonization and standardization had to be carried out by democratically elected, deliberative bodies containing various political crosscurrents and riven by the divisions of an open legislative process. Thus, the process of annulling a treaty or extensively amending fundamental law was frequently fraught with internal conflicts, while the more detailed work of revising ordinary laws sometimes moved very slowly, trying the patience of envoys and district procurators who were feeling pressure from Moscow to produce results.

In their periodic reports to the president, the envoys as political appointees tended to give more upbeat accounts of their progress than was sometimes warranted. As Yuri Chaika, minister of justice, recently reported, 80 percent of the time compliance had been achieved without intervention of a procurator or court.<sup>6</sup> As the envoys well knew, however, it was the remaining 20 percent that often involved entrenched resistance, entailing inordinate amounts of administrative effort and political energy. Most notable in this respect were the cases of the Tatar and Bashkir republics in the Volga Federal District, the Sverdlovsk Region of the Ural District, and the Sakha Republic in the Far East District, the most proactive centers of local resistance to Putin's federal reforms in general and to his legal campaign in particular.

### **Resistance to Federal Pressure**

Not long after the envoys launched the harmonization and standardization campaign in late 2000, pockets of resistance began to appear among republic presidents and regional governors trying to protect privileges and patronage garnered during the Yeltsin years. Rarely confrontational, most of the initial acts of resistance took the form of pin-prick attacks against the demands of the growing army of federal officials newly deployed to the provinces. New federal cadres arrived either as members of the envoys' district staffs, or with the burgeoning number of district offices created by federal ministries and agencies such as the tax police, the Ministry of Internal Affairs, the federal audit agency, and the ministry charged with overseeing federal property.

Early resistance to the legal campaign took several forms: the use of bilateral treaties as a line of defense, die-hard stands on discredited sovereignty declara-

tions, and determined insistence that local laws were more progressive than federal norms. By the end of the year 2000, no “unconditional surrender to a victorious center” was in sight.<sup>7</sup>

As federal pressures for compliance mounted, resistance from below increased apace. While Putin’s campaign for the unification of legal space marched on, the many skirmishes led by provincial chieftains slowed its progress. That was especially apparent when the envoys opened a new offensive in the harmonization campaign, to wit, the center’s attack on the forty-two bilateral treaties signed under Yeltsin.<sup>8</sup> Backing up the envoys was Putin’s overall field commander on this sector of the legal front, Dmitry Kozak, deputy chief of the Presidential Administration. In his opening sally, Kozak declared the treaties superfluous, relegated their status to the bottom of the hierarchy of laws, and marked them for cancellation. He set a deadline for federation subjects to voluntarily abrogate their treaties or face judicial action, or even the unilateral federal annulment of a treaty. Needless to say, a number of governors and presidents were angered at this new assault from the center and began to dig in for a fight.

It was not long before the Kaliningrad and Sverdlovsk regions, the federal cities of Moscow and St. Petersburg, and the Republics of Tatarstan and Bashkortostan declared their opposition to the new offensive, and their intention to hold firm in defense of their power-sharing treaties. In other instances, even more open defiance of the center was signaled, or giving up the treaty was coupled with political bargaining. In a case resembling the symbolic political games played in the American South in defense of segregated schools, the Chelyabinsk governor trumpeted his determination to defend the region’s treaty “to the very end” and then a week later caved in, stepping out of the way of the federal juggernaut.<sup>9</sup> In contrast, the Irkutsk governor took a more conciliatory approach from the outset, striking a bargaining posture with the center. He agreed to renounce the treaty, but conditioned renunciation on Irkutsk retaining its stake in the regional power utility.

By March 2002, two months before the deadline, Kozak had managed to engineer annulment of ten treaties with another ten pending, but other federation components still fought on to retain their treaties. Some resisters were successful, since by the end of the treaty battle only thirty of the forty-two had been abrogated, leaving in place a dozen treaties not deemed offensive to the federal constitution. However, as one specialist pointed out, in many instances yielding up the treaty was probably a kind of “soft” abrogation with the “mentality behind” the power-sharing arrangements living on in the still many unresolved issues of Russian federal politics.<sup>10</sup>

A far more difficult battle on the harmonization front of the legal campaign involved the presidential envoys’ struggle to reconcile the republic constitutions to the federal standard. As a Russian scholar observed, “the growth of nationalism and separatism in the republics . . . inevitably found its expression in legislation [and], most of all, in the republic constitutions.”<sup>11</sup>

In their opening chapters, most of the constitutions proclaimed the republic’s sovereignty in direct collision with the federal charter and its implied doctrine of the indivisible sovereignty of the Russian Federation. For the republics, however,

their self-proclaimed sovereignty was a matter of great symbolic import, particularly to the titular nationality—although often a minority—that ran the republic. In this spirit, even remote Buryatia, a republic almost wholly dependent on federal subsidies, held out for nearly two years, finally repealing its declaration of sovereignty only in the face of its chief executive's threat to dissolve parliament.

The Sakha Republic even more defiantly resisted revision of the controversial clauses of its constitution, such as the frivolous notion of English as a co-equal state language with Yakut and Russian. On the far more essential issue of control over diamond mining, the republic aggressively added a new amendment to the offending constitution, asserting its exclusive ownership of the diamonds, a position in contravention of federal policy and law on natural resources. Even as the Sakha parliament began bringing its constitution into compliance, defiant legislators managed to slip in additional amendments creating new conflicts with the Russian Constitution.

The Komi Republic was another example of subconstitutional resistance to harmo-

nization. En route to eventual compliance, Komi still strongly resisted and tried to avoid constitutional revision. The republic procurator ordered a number of constitutional violations revised, but the government disagreed and went to court. When the Komi Supreme Court supported the procurator's position, the Komi leadership, undeterred, pursued the matter up to the Russian Supreme Court where the Komi Supreme Court decision was affirmed, the procurator upheld, and the republic legislature given six months to comply or face disbandment.

The federal campaign to standardize local laws consistent with superior federal norms also encountered various kinds of resistance, including stalling, foot-dragging, and in some instances open defiance of federal legal authority. Barely six months into the campaign, the Northwest Federal District procurator complained that his demands for rectification of errant local legislation were being ignored by responsible officials in St. Petersburg, the Pskov Region, and the Republic of Komi. A half year later, in 2001, the Siberian District procurator ran into similar resistance to legislative standardization and threatened legal proceedings against the recalcitrant leaders involved.

In the Ural Federal District, the Sverdlovsk Region under its powerful governor, Eduard Rossel—who had enjoyed considerable autonomy in Yeltsin's time—was a particular thorn in the side of presidential envoy Petr Latyshev. Although Latyshev managed to get the regional assembly to begin revising conflicting laws by threatening to ask the president to dissolve the body under his newly acquired powers, the region continued to defy him by delaying and dragging out the district-wide implementation of new federal legislation on justice

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of the peace courts.<sup>12</sup> Finally, in the Far East District, of the 1,500 legislative acts found to contradict federal law, less than half had been revised by late 2002, suggesting the persistence of significant resistance throughout the district.

After two years of vigorous federal campaigning to harmonize constitutions and standardize legislation, many regional leaders still chose to “remain in the trenches” trying to protect their turf.<sup>13</sup> There was even an escalation in the rhetoric of local resistance mainly from criticizing federal officials over treaties, constitutional clauses, and individual statutes, to questioning the president himself on the wisdom of creating federal districts as a new administrative structure over the heads of the regions and republics. Most outspoken was Governor Mikhail Prusak of Novgorod who in a national newspaper interview posed the question directly: “Is a presidential envoy really necessary for the normal execution of laws?”<sup>14</sup>

### **Successful Resistance on the Legal Front: Tatarstan and Bashkortostan**

Hypothetically, President Putin might have replied to the governor’s rhetorical question by citing Tatarstan and Bashkortostan, the two most consistent resisters of Russian authority. Both republics were included in the Volga Federal District, which may be why Putin appointed his most politically sophisticated presidential envoy, Sergei Kirienko, to serve there. However, in Presidents Mintimer Shaimiev of Tatarstan and Murtaza Rakhimov of Bashkortostan, Kirienko was pitted against two of the wildest and most experienced politicians in the Russian Federation. From the outset, some observers felt it was an uneven match. Apropos, one wrote that President Shaimiev “treated [Kirienko] politely, as he might a waiter: ‘First, he listens attentively, then he orders his favorite dish.’”<sup>15</sup>

Savvy republic leaders aside, Bashkortostan and Tatarstan, as donor regions to the federal treasury, have a certain leverage with the center because they are the top two contributors in the Volga District. Given such political insulation to withstand more federal pressure than other areas, the two republics for the past three years have persisted in employing delaying tactics in defense of their realms. While other federation subjects were relentlessly badgered to annul their power-sharing treaties, Shaimiev and Rakhimov held their ground, artfully dodging and weaving while yielding only small concessions. In the end, they managed to retain their treaties with Moscow, subject only to minor revisions. When the question of Tatarstan’s 1994 treaty arose, the otherwise hard charging Kozak beat a retreat, saying when he initially launched his broadside against the bilateral treaties that he “wasn’t referring to Tatarstan.”<sup>16</sup> Similarly, Bashkortostan’s and Tatarstan’s constitutions serve as paradigmatic cases of what Jeffrey Kahn aptly called “constitutional palimpsests” or “documents that have been written, imperfectly erased and written over again, with the result that the original work often remains visible underneath more recent revisions.”<sup>17</sup>

Bizarrely, under the circumstances, Kirienko triumphantly declared victory for federal authority in his domain, while the minister for nationalities policy even more brashly proclaimed the defeat of “legal separatism” throughout the Russian Federation.<sup>18</sup> Meanwhile, Shaimiev and Rakhimov, despite Moscow’s political spin, continue to harry Kirienko not only on the legal front but in other areas of

district policy as well. Apparently, the Volga presidential envoy has been unable to dissuade Bashkir-owned enterprises from withholding tax revenue owed to the federal treasury, acts that are in open violation of the Russian Federation Tax Code. Similarly, in Tatarstan, Kirienko has stood by helplessly as the politically shrewd Shaimiev plays the "Islamic card," further enhancing his bargaining power with Moscow at a time of Russian concern over the dangers of Muslim fundamentalism.<sup>19</sup>

### Resistance and the Rule of Law

In this discussion of regional resistance to legal unification within the Russian Federation, one should bear in mind that, however frustrating for the federal officials involved, the net result has been positive for Russia's future development. Virtually all challenges to Putin's reforms have been expressed in civilized political forms not entirely unfamiliar to the rough and tumble of democratic politics in an emerging federal system. On the legal front of Putin's federal project, the work of the envoys and procurators, as well as the actions of the resisters, have both in their way contributed to the development of the rule of law in Russia.

Resistant governors, presidents, and regional assemblies, like the federal officials trying to bring them into line, have also resorted to the courts to make their cases, seeking relief in regional courts, republic supreme courts, the federal Supreme Court, and the Constitutional Court of the Russian Federation.

Two republics even challenged Putin's new controversial legal authority to dismiss governors and disband legislatures that repeatedly violate federal law, by asking the Constitutional Court to declare the statute in contravention of the constitution. That the court eventually found the law to be constitutional did not diminish the fact that a contentious political dispute was peacefully resolved through reasoned juridical discourse.<sup>20</sup>

Finally, with an eye to Russia's rule of law development, President Putin in a recent speech laid out a new course for legal relations between center and periphery. He emphasized the need to synchronize all future federal and local legislation to avoid repeating

[m]istakes of the past, when normative acts were adopted in the center that did not take into account the regional specifics, or the practice of adopting laws in regions which ran contrary to the fundamental principles of the Constitution.<sup>21</sup>

### NOTES

1. Robert Sharlet, *Soviet Constitutional Crisis* (Armonk, NY: M.E. Sharpe, 1992), 89. See also Iu. Kalmykov, "Piat' prichin 'voiny zakonov,'" *Izvestiya*, 4 April 1991, 4.

2. Robert Sharlet, "Russia's 'Ethnic Republics' and Constitutional Politics," *Eurasian Reports* 3, no. 2 (Winter 1993): especially 41–42.

3. See Eugene Huskey, *Presidential Power in Russia* (Armonk, NY: M.E. Sharpe, 1999), ch. 7.

4. See Robert Sharlet, "The Making of a President Russian-Style," *Post-Soviet Prospects* 4, no. 9 (September 1996). For the 1994 bilateral treaty between the Russian Federation and the Republic of Bashkortostan, see Iu. L. Shul'zhenko, compiler, *Khrestomatiia po konstitutsionnomu pravu Rossiiskoi Federatsii* (Moscow: Iurist', 1997), 372–77.

5. See Robert Sharlet, "Putin and the Politics of Law in Russia," *Post-Soviet Affairs* 17, no. 3 (July-September 2001), 195–234.

6. "Russia: Creation of a Unified Legal Space Chief Aim for Justice Ministry," *ITAR-TASS*, 18 February 2003.

7. *Nezavisimaya gazeta*, 5 November 2000, 2.

8. The total of forty-two treaties is from Kozak. See *RFE/RL Russian Federation Report* 3, no. 26 (September 24, 2001).

9. Quoted in *RFE/RL Newslines* 5, no. 157, Part I, 20 August 2000.

10. Jeffrey Kahn, "Canaries in the Coal Mines: Early Warning Signals for Putin's Presidential Representatives," *RFE/RL Russian Federation Report* 4, no. 5, 13 February 2002.

11. A. A. Zhulchenko, *Sootnoshenie Konstitutsii Respublik v Sostave Rossiiskoi Federatsii s Konstitutsiei Rossii* (Moscow: Aviaizdat, 2001), 84.

12. For a study of this new institution, see Peter H. Solomon, Jr., "The New Justices of the Peace in the Russian Federation: A Cornerstone of Judicial Reform?" in this issue of *Demokratizatsiya*.

13. Regina Smyth, "Putin's Tightrope: Maintaining Support in the Face of Domestic and International Policy Demands," *PONARS Policy Memo*, no. 242, 25 January 2002, 1.

14. Quoted in *RFE/RL Russian Federation Report* 4, no. 12, 3 April 2002.

15. Quoted from *Argumenty i Fakty* in Ilya Malyakin, "Putin Against the Regions, Round 2," *Russia and Eurasia Review*, 18 June 2002, 5.

16. Quoted in *RFE/RL Russian Federation Report* 4, no. 15, 24 April 2002.

17. Jeffrey Kahn, *Federalism, Democratization and the Rule of Law in Russia* (Oxford, UK: Oxford University Press, 2002), 268.

18. Quoted in *RFE/RL Newslines* 7, no. 4, Part I (January 8, 2003).

19. See Alexander Nudelman, "The Presidential Envoys: Limited Success and a Limited Future," *RFE/RL Russian Political Weekly* 3, no. 7, February 13, 2003.

20. See "Postanovlenie po delu o proverke konstitutsionnosti otdel'nykh polozhenii Federal'nogo zakona 'Ob obshchikh printsipakh organizatsii zakonodatel'nykh (predstavitel'nykh) i ispolnitel'nykh organov gosudarstvennoi vlasti sub'ektov Rossiiskoi Federatsii' v svyazi s zaprosami Gosudarstvenno Sobraniia . . . Respubliki Sakha (Iakutiia) i Soveta Respubliki Gosudarstvennogo Soveta . . . Respubliki Adygeia," *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*, no. 5 (2002), 3–37. The court's decision was issued on 4 April 2002.

21. *ITAR-TASS* (18 February 2003). The president was addressing the newly created State Council of Regional Legislators.