

Institutional Transformation of the Russian Federal System: Do Informal Rules Matter?

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Introduction

One of the most widespread ways to analyze contemporary Russian federalism is to make it through the opposition of the Yeltsin's period of 1990th and the Putin's governance of the next decade. At a first glance such approach has a strong foundation. Generally the Yeltsin's presidency is connected with decentralizing tendencies to be dominated in federal relations whereas the Putin's years are firmly associated with the centralized policy. However, in some cases such a view tends to overlook the very logic of federalism development at the institutional level.

Federal system transformation is provided not only with the changes in political elite and new leader appearances but also with that rules the latter used to follow. Evidently, these rules are not always fixed by legal norms and settings. Many of them – and quite often the most stable – have deeply informal character being rooted in social practices. In Russian politics the role of informal rules can be hardly overestimated. They emerge, develop, change and “shape formal institutional outcomes” in different areas (Helmke, Levitsky 2004, 726). Federalism is not an exception. In many aspects the factor of informal practices is critical for explaining trajectory of Russian federal system since the Soviet past until present day. And it is just that point where the both periods of Russian federalism development – “decentralization of 1990s” and “centralization of 2000s” – look much more similar than it can be viewed from any other perspective.

In such a way, the main aim of this paper is to examine Russian federal system transformation through the development of its informal institutions.

But what exactly are informal institutions? Generally we can rely here on the definition suggested by Helmke and Levitsky. According to the scholars informal institutions represent “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels” (Helmke, Levitsky 2006, 5).

At the same time it's important to notice that informal institutions are usually analyzed from the two main angles of approach. First, they can be examined as a derivative from the activity of political elite or, in other words, as a sort of a “by-product” from political interactions. In this case informal institutions are considered to be a kind of temporary phenomena, functioning in a definite period of time while being required as a regulator in political actors' relations. Second, informal rules can be viewed as predominantly static interaction practices

rooted in social norms and values. In this context they can be defined as “the heritage of the past” being employed by different versions of “path dependency” theories (Gelman 2003, 7).

In the present work we’ll rely on the both visions of the informal institutions, stressing thereby their twofold character which is reflected in Guy Peters’ approach to institutions defined as simultaneously “independent and dependent variable” (Pierre, Peters, Stoker, 2008, 15). Besides, we’ll make a special emphasis on the problem of interaction between formal and informal institutions being marked by the scholars as one of the most important in institutional analysis nowadays (Pejovich 1999).

1. Establishment of the new federation in Russia: a refusal from the “past”

1.1 Institutional uncertainty and the “old” rules

Generally, the establishing of the Russian federal system covered the period approximately for four years from 1990 to 1993 when all of the most essential institutional settings were fixed by the basic state-legal documents – by the Declaration of State Sovereignty of the RSFSR (Russian Soviet Federative Socialist Republic) in 1990, by the Federative Agreements of 1992 and, finally, by the Constitution of 1993. From the perspective of institutional approach this period can be characterized as a period of “the import of institutions” signified by new “rules of the game” borrowed from the experience of the foreign federal states. These rules were tended to give the main political actors – first of all, the Center and the Regions – new patterns of behaviour at the conditions of uncertainty. The whole political system of Russia was under the process of transformation and that was why the federal relations along with the other areas of social life required new institutions to regulate political interaction.

But it’s important to emphasise that to become actually a regulator of social relationships an every legal norm or formal institution should be necessarily adopted in real political practice. In Russian case that meant the new federalism institutions had to be accustomed to the long-standing norms and constraints of Russian political life – that is, to take into account informal regulators of the Center–regions interactions that proved to be stable in the Soviet period.

The trajectory of the Russian federal system development in the 1990s was significantly determined by the practices of “the heritage of the past”. Along with the new formal institutions they turned to be “restrictions of the frame character” (Gelman 2006, 97). The influence of such practices was found in different areas of Russian federalism. Thus, the role of informal rules was practically crucial for concentration of the overwhelming majority of administrative, communicatory, transportational and informational networks in Moscow (Solnick 1995, 101-102). The influence of the informal rules can also be hardly overestimated in the sphere of interbudget relations that continued organizing in the 1990s on the basis of deeply informal interactions including individual approach to every region and the system of favours (Kuznetsova 2005, 68). To a great extent, informal practices of the “past” aided the process by means of which former Soviet *nomenklatura* was managed to maintain the power on new conditions still keeping the control over the most important political and economical resources both on the federal and regional levels (Ross 1999, 18). At least, it is the only

institutional inheritance of the Soviet past that can explain extremely complex and mixed character of federal subjects' ethnoterritorial structure resulted in "multistage" centralism (Petrov 2000, 8).

Obviously, there is no need to overstate the factor of "the heritage of the past" as the main explanation of the Russian federal system transformation. Otherwise, informal practices rooted in the social norms could be viewed as a kind of structural dominant that determines the social and political processes. But, at doing so, federalism would be characterized by a highly inert development.

Actually, the institutional establishing of the Russian federal system was defined by the complex mix of the "static" informal practices, new legal norms and informal rules spontaneously emerged in the process of political interaction of the Center and federal subjects in the period of 1990-1993. It's important that the very adoption of any document classified with a state-legal significance was provided at that time by a variety of secret meetings and informal agreements. Thus, the process of the formal federal structure formation turned out to be a sort of political bargaining.

1.2 The new formal rules and constitutional compromise

Declaration of State Sovereignty of the RSFSR (1990) became the first document of constitutional significance to formalise general principles of federalism development in the country. At the same time it caused the beginning of so-called sovereignization process with the following struggle of the Center and the regions for powers and resources. Particularly, Stoner-Weiss notes: "While Moscow sought to impose a highly centralized federal system – that is, a system imposed from above, with the central government being the clear leading power – the provinces advocated a more contractual federal system, where each subnational unit would agree to enter the federation on a negotiated, contractual basis and where the central government's power would be deemphasized relative to that of the federation's constituent parts" (Stoner-Weiss 2004, 307-308). Relying on their own strategies and striving their own aims both the Center and the regions operated in the conditions of uncertainty and predominance of desintegrational tendencies. Most of the agreements accepted by them in that period were of informal nature. Such situation required the emergence of the clear rules of the game able to regulate the relationships between two levels of power.

In this context the signing of the March Federative Agreements in 1992 proved to be a compromise achieved by political elites of central and regional governments. On the one hand, this document was of high political significance as long as it provided formalization of general principles of the political interaction between Federation and its constituent parts (actually, that was a first attempt to divide state power between the Center and the regions on the basis of cooperation and mutual agreements).

On the other hand, Federative Agreements nothing but reinforced the most serious contradiction in the Russian federalism – that is, its highly asymmetrical character. As a matter of fact, Federative Agreements included three documents signed with each type of the constituent parts of Federation – republics, *oblasts* and *krais* with autonomies. In the texts of

these documents the republics were declared “the subjects of federation” while the *oblasts* and *krais* were marked as simple “territorial administrative units”. The status of the “subject” gave the republics large powers in different spheres of governance including opportunity to establish the own institution of presidency (instead of centrally appointed political figures in the *oblasts* and *krais*). As a result, highly complicated and contradicted structure of the Russian federalism was aggravated by the serious split between ethnically based regions and the rest. Taking into account the fact that Federal Agreement wasn’t signed by Tatarstan and Chechnia the consequences of this document seem to be extremely ambiguous. Stoner-Weiss marks in this connection: “In sum, far from solving the most pressing problems of center-periphery relations, these agreements exacerbated tensions that already existed between center and peripheries, but also among some ethnically Russian and non-Russian regions” (Stoner-Weiss 2004, 311).

In such conditions the Constitution of 1993 became the final compromise that governments of the both levels managed to achieve. One can say it was a document to have laid institutional basis of the Russian federalism. In many aspects it is really so. Federal system of Russia was given strong features of the completed model. But at the same time, it is just the Constitution of 1993 that ultimately revealed significant gaps in institutional setting of the Russian federal system. Its adoption meant that the new legal norms, stable social practices of “the past” and new spontaneously emerged informal mechanisms have to function as a united set of rules. In this sense, the process of the federal institutions formation in Russia was just beginning.

2. A period of the 1990s : the influence of the “past”

2.1 Bilateral treaties and intergovernmental agreements

The most significant consequence caused by the the institutions’ import in Russia was a gap found between the new formal regulators and the set of stable informal rules deeply rooted in the Russian political practice. New legal norms required a definite time to get accustomed to the “old” institutions of federal interaction. In such situation federal system of Russia was at a high risk to get into conflict between its institutional “layers”. Thus, it needed additional regulator able to provide compatibility of different rules by means of mitigating contradictions in the institutional setting. The role of this regulator was played by the bilateral treaties and agreements started to be signed from 1994.

Institutional and juridical status of these treaties is still under scholars discussions. On the one hand, they had constitutional basis that is fixed in Article 11, Part 3, Constitution of Russian Federation. On the other hand, their real effect ran outside the constitutional frames.

In any case, the role of the bilateral treaties as regulator of federal relations can’t be explained only by juridical content. The signing of the document had mainly a declarative character. Actually, the treaties simply reflected in the formal norms all that practices of interaction between governments which had been already built by informal channels of negotiating. In this sense they were a kind of the top of the iceberg. That can be seen on the example of the Russia-Tatarstan treaty of 1994 which according to Jeffrey Kahn “set the standard for bilateral treaties that followed” (Kahn 2002, 150).

The signing of bilateral treaty between Moscow and Tatarstan in 1994 brought the republic a number of serious preferences in different spheres of social and economical development that provided the special status in federation. The division of powers in this case was realized through series of individual agreements on the basis which was far from any common rules. That gave Tatarstan's elite strong and favorable platform in negotiating process. Stoner-Weiss remarks: "This effectively established Tatarstan's association with Russia as distinctive from other regions in that it reserved for the republic a special set of rights that other regions did not share – in particular, control over key social and educational programs that enabled the preservation of Tatar ethnicity" (Stoner-Weiss 2004, 303). Moreover, the treaty allowed the republic to gain "increased jurisdictional control over the mineral resources located in its territory" (Ibid).

Actually the character of such agreements evidently proved that the most of the key decisions in the field of power division were built up much earlier than the document was signed. The treaty with Tatarstan turned out to be a kind of compromise achieved by the central and regional elites as the result of a long-standing bargain which was still underway even after documents' adoption. Thus, according to Raviot: "Russia-Tatarstan treaty showed that the relations between Moscow and Kazan were characterised not only by intention but also by the permanent and constructive backdoor dialogue taking place from the very beginning of the Post-Soviet era" (Federalism 1998, 273). Along with the solving out the problems the treaty at the same time revealed new contradictions also needed to be resolved. In particular, Moukhariamov suggests that the treaty didn't have the direct juridical force and didn't abolish constitutional collisions between the Russian Federation and the Republic of Tatarstan (see Moukhariamov 1997).

In this context Russia-Tatarstan treaty (in point of fact, along with the other treaties followed as it stipulated "the Tatarstan model" (Kahn 2002, 150)) should be viewed as a complicated institutional setting which combines the legal norms, informal rules and even discourse practices. To a great extent its political significance was determined by the public resonance the treaty had after signing. And the effect of that resonance was even stronger than the treaty's conclusion. For instance, the expression "the Tatarstan model" itself was widespread after being mentioned in a number of official speeches. In such a way, the adviser of President Yeltsin for the relations with the subjects of Federation Nikolay Medvedev declared: "The treaty signed with Tatarstan is a model for construction of federalism in our country" (Nezavisimaia gazeta, 1994). The rhetoric of such kind also meant regulative function of the treaty in a strict way.

2.2 Federal bargain and political deals

The treaty between the Center and Tatarstan gave serious impulse for the other regions to act in the same way – that is, to build up a dialogue with Moscow on the individual basis with the signing of agreement as a declarative measure. "Yeltsin's treaty launched a parade of similar treaties throughout Russia, just as his speech in that republic's capital three and a half years earlier began a parade of sovereignties", – Kahn notes (Kahn 2002, 157).

Indeed, the notion “treaty” in accordance to Russian federalism should be used as a kind of political metaphor. In real practice the “treaty” looked like elites’ “deal”. Its signing was usually stipulated by the logic of the concrete situation and had a character of temporary compromise. Circumstances of the adoption of the treaties in the most of republics were similar used in Tatarstan. Thus, for example, regional elite of the Republic of Komi capably used in their interests “political blunders of the Center and violent struggle for the power on the federal Olympus” (Kovalev 2004, 206).

Bilateral relations of Moscow with non-republic regions had some distinctions. Only agreements signed with Sverdlovsk and Kaliningrad regions in 1996 turned out to be a result of real political bargain. All the rest agreements followed in the next years were drawn up on the basis of the single sample. In so doing, their political significance gave in previous ones.

Nevertheless, the system of bilateral treaties promoted the functioning of federation in Russia basically using the huge set of informal rules. To that extent the central and regional elites relied on the legal norms to the same extent they relied on the “shadow” mechanisms of negotiations, backdoor decisions, secret meetings and so on. Partially such situation was stipulated by the spontaneously emergence of the new regulators in federal relations and partially by influence of the stable interaction practices of the “past”.

This system got different definitions from the scholars. Some of the specialists used the term “foralistic federalism” (from the sp. “fuero”, the term was originally suggested by D. Elazar) underlining Center’s strategy on the conduction of the individual bargain with every region through the given preferences (Solnick 1995, 99). Polischuk suggested to employ the term “negotiating federalism” (Polischuk 2000). Zaharov came to the conclusion that Russia adopted its own model of the “executive federalism” (Zaharov 2001, 128). Koniyhova found in the Russian federalism the features of cooperative model (Koniyhova 2004, 275).

Of course, the bilateral treaties are considered to be very ambiguous phenomena. But in any case, it is just these agreements that stabilized the system of federal relations in Russia in its most difficult period of development. The treaties institutionalized negotiating process between the Center and the regions and, as a result, prevented the “clash” of the new formal institutions with the stable practices of the “Soviet past heritage”. Federal system avoided institutional divergence and maintained relatively stable condition.

At the same time federation can hardly functioning during long period as an integral organism being regulated mainly by the informal rules. Having filled up the void in the set of institutions the informal practices had to be dissolved in others institutional “layers”.

3. A new stage of the development: the “past” to come back?

The general idea of Putin’s federalism as one which is based on the “dictatorship of law” and avoiding influence of the informal interaction is actually far from the real practice.

The federal reform conducted from 2000 was called for realizing the principles of “the vertical state power structure”. It included a number of political steps the most important of which were creation of seven new federal super-districts, a reform of Federation Council,

providing the President with new powers to dismiss regional governors and bringing regional legislations into correspondence with the Russian Constitution.

In the whole, all these changes proved to be a logical continuation of the federal system institutional development of the previous decade. The power had to concretize and to clarify the formal rules which were in many aspects characterized by the ambiguity. Besides, the system of legislation was highly complicated and was full of inside contradictions. Vilchek notes: “By 2001 the number of normative legal acts adopted by the regions and republics exceeded 300 000, and among them just under a quarter (70 000) contradicted the federal constitution and federal laws” (Vilchek 2001, 20).

The highest point in promotion of centralization was achieved in the autumn of 2004 when direct elections of the regions’ governors were abolished. This reform can be considered as a last political step of the Center that finally affirmed institutional configuration of the Russian federal system. Thus, political actors were suggested to develop completed model of the rules of the game.

Meantime, new formal rules contained their own defects. Many of the new legal norms were characterized by the juridical incorrectness. A number of provisions were full of “gaps” that gave a grateful soil for the informal institutions development. As noted by the authors of *Russian Federalism. Economical and Law Problems*: “Many provisions of the laws adopted were badly worked out and didn’t take into account the peculiarities of the subjects of Federation” (Valentey 2008, 68).

For instance, serious difficulties were caused by the ambiguous status of presidential representatives in the federal super-districts (*polpredov*). In particular, Ross marks: “The relationship between governors, presidential representatives, and federal bureaucrats is still unclear and will undoubtedly vary from district to district... It is also becoming apparent that such power relations will be worked out on the ground and cannot be planned and mapped out by Putin at the center” (Ross 2003, 38).

In the same way applicable grounds for the informal mechanisms emergence were provided by the norms sanctioned the new system of the regional governors recruitment (that is – their appointment). These norms are still full of unclear provisions. According to Chirikova, “The procedure of the assignment of the heads of federal subjects caused the growth of informal relations... Today it is not so important to realize effectively socio-economical projects of the cultural or legal character. Today the most important is to close a bargain with the Center, to be in favour at a proper time in a right place”(Chirikova 2007, 186).

It is important to note that as a matter of fact the Center didn’t change the general strategy concerning relations with the regions. At the beginning of Putin’s governance the bilateral treaties were declared to be cancelled. But that cancellation didn’t signify disappearance of that interaction practices which were institutionalized by those agreements. The Center continued to rely on the individual approach to every region using informal mechanisms. In this sense, the practice of bilateral relations went on to exist but in concealed form. In so

doing, “dialogue” with the regions turned out to be more closed but the Center found new opportunities for manoeuvring.

Thus, in particular, the system of announced treaties was mainly changed into the system of political elites’ secret “pacts”. Under new conditions the Center tried independently to find out the future regional “partners”. In one case the Center relied on the formed elite groups, in the other – on the “strong clan”. The latter can be viewed on the example of Tambovsk region (Tambovskaja oblast) which managed to transform from the one of the most “red” (communists-oriented) regions into the one of the most Putin-oriented. According to Panov, it was just the “system of personified exchanges” that allowed the Center for breaking the tendency to decentralization (Panov 2006).

As a result, in the new conditions the informal practices of “bilateral approach” proved to become even more stronger than in previous decade. Notably that in this context the informal rules caused federal system to be highly centralized. That fact only confirmed their stability.

Conclusion

The informal institutions appeared to be one of the key factors in the Russian federal system development. They performed both as predominantly static practices (invariant) in structural development of federal system and also as dependent variables (spontaneously emerged regulators) in political actors interaction.

The evidence of informal institutions stability is that their role was simultaneously essential in the period of Yeltsin’s decentralization as well as in the period of Putin’s centralized governing. Certainly, predominance of the informal institutions in the federal system not only brings negative consequences. As it was mentioned above, they can provide the system with stabilization. But in the case of Russia where the role of informal interaction is steadily growing up the informal institutions can be considered to be a dangerous symptom in the context of democracy development.

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