

ON MODIFICATIONS TO THE CONSTITUTION OF THE RUSSIAN FEDERATION IN 2020

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The present study investigates the amendments to the Constitution of the Russian Federation announced by the President of the Russian Federation Vladimir Putin during his annual speech addressed to the Federal Assembly on 15 January 2020. The research examines how the amendments may affect the social guarantees of the people of the Russian Federation, what role is dedicated to the bodies in the separation of powers, and why it is important to change the conditions for electing a candidate for Presidency. The approach is interdisciplinary and links Russian legal norms, applicable rules and human behavior. The main methods used in the research are analysis, comparative-legal, historical-legal and formal-legal methods. The study provides a legal and political picture of the context of modifications to the Constitution of the Russian Federation in 2020.

Keywords: Russian Federation; Constitutional amendments; Federal Assembly; Russian legal norms.

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Introduction

The President of the Russian Federation Vladimir Putin during his annual speech addressed the Federal Assembly on 15 January 2020 and announced the need to amend the Constitution of the Russian Federation. On 20 January 2020, the draft law “On Improving the Regulation of Certain Issues of the Organization of Public Authority” was submitted to the State Duma. On 23 January 2020, the State Duma of the Russian Federation already adopted the draft law. It was voted unanimously by all 432 deputies present in the State Duma. There was no one who voted “against” or “abstain.” Further amendments may be submitted within the limited term of 15 days. A working group on amending the Constitution, consisting of 75 people, will propose a procedure for holding “AllRussia voting” by this time.

Later the Council of the State Duma prolongation the term for submission of the amendments to the Presidential draft law up to 14 February 2020. The relevant committee decided to consider the incoming amendments in blocks. On 5 February 2020 the State Duma Committee on Legislation of the State Duma has considered the amendment to Chapter Seven of the Basic Law – “Judicial Branch and the Prosecutor’s Office.” Another issue to discuss shall be the lifetime appointment of the members of the Federation Council – senators.

The head of the state has traditionally been proclaimed to be the subject of the right to implement legislative initiatives all over the world with a few exceptions.¹ At the same time, e.g. in the USA, the constitutional right of the legislative initiative

¹ Richard C. Nzerem, *Prioritising Legislative Proposals in the Legislative Process*, 36(1) Commonwealth Law Bulletin 67 (2010).



of the president is not provided. However, the U.S. president used the right to a legislative idea while addressing the Congress in his annual speech. Russia decided to give the President both powers.²

Such prompt adoption of the submitted draft law (3 calendar days) is a common practice when speaking about the Presidential initiatives. Strictly speaking, a speech by the President of the Russian Federation addressed to the Federal Assembly is not a legal, but a political instrument. Its legal status is vague. However, with a President as strong as Vladimir Putin, such an instrument is immediately realized by legal means. The present case is not the only one, e.g. after the Presidential speech before the Federal Assembly on 3 December 2015, the deputy B. Balashov submitted a draft law on 16 December 2015.³

The announced amendments to the Constitution of the Russian Federation are discussed nationwide and academics cannot stay aside from it. Current text of the amendments is in line with the previous ones but it comes from all the context that this constitutional changes are far more important. The underlying political essence is alleged to be the starting point of the transition of powers following the Kazakh scenario.

Research Questions

Research Question 1: How may the amendments affect social guarantees and the basic rights of the people of the Russian Federation?

Research Question 2: What role is dedicated to the bodies of power in the view of the 2020 Amendments to the Constitution of the Russian Federation?

Research Question 3: What is the role of the Constitutional Court in view of the 2020 Amendments to the Constitution of the Russian Federation?

Research Question 4: Are the current amendments subject to eternity clauses of the Russian Constitution and is a special procedure required to introduce them?

Hypotheses

Along with the research questions presented, the present study tests two hypotheses on the basis of the conducted analysis of the proposed amendments to the Constitution of the Russian Federation. These hypotheses shed light on the study's underlying arguments. The issues, which shall be in the focus of the research.

The research assesses the text of amendments from the theoretical positions and analyzes the essence of the proposed changes. The authors shall think over

² Paul Chaisty, *Presidential Dynamics and Legislative Velocity in Russia, 1994–2007*, 30(4) *East European Politics* 588 (2014).

³ Фомичева О.А. Формы реализации законодательной инициативы Президента Российской Федерации // Конституционное и муниципальное право. 2018. № 4. С. 49–52 [Olga A. Fomicheva, *Forms of Implementation of the Legislation Initiative of the President of the Russian Federation*, 4 *Constitutional and Municipal Law* 49 (2018)].



the development of constitutionalism in Russia after the incorporation of these amendments to the body of the Russian Constitution.

Hypothesis 1: The Russian Constitution is one of the post-socialist constitutions which is according to the theory of constitutional law a special category of constitutionalism. The authors argue that the amendments will not change these characteristics.

Hypothesis 2: The text of the amendments to the Constitution of the Russian Federation contains both the instrumental provisions related to the organization of the power and provisions related to the social rights. This equilibrium maintains the general balance of the Constitution if the amendments are adopted in the initial version.

1. Socio-Political Environment of the Constitutional Changes

The last few decades in Russia were marked by different reforms and changes. The constant reorganizations did not leave time for academic reflections and conceptualizations. Even the necessary minimum of methodological systematization of the changes sometimes was not thought over in the social sciences.

Not much is done to identify the nature of the current constitutional processes in Russia. Some academics, newsmakers, representatives of civil society and others participating the discussion speak about the amendments to the Constitution of Russia, others speak about the structural changes and there are those who started to discuss the constitutional reform. We are involved not in the post-factum forensic research, but in a study of the changes in process. Therefore, it is to capture the main features and assessments of the process. There are two different exterior lines: how the substance of the constitutional modifications is considered in social and political medias and how it looks like through the purely legal lenses.

Recently the mass media in Russia provided analysis of the Presidents speeches on the matter of constitutional changes or constitutional reforms. Before 2000 there was no expressed opinion on the changes of the Russian Constitution. First speech rejecting the possibility to change the Constitution was in 2001 and till 2007 the opinion was extremely negative. Only in 2007 the reluctance to change the Constitution somewhat relaxed and the trend has changed.⁴

The newspapers published the information about the social polls concerning the amendments of the Constitution 2020. Foundation of Public Opinion⁵ released the

⁴ «Ни при каких обстоятельствах менять Конституцию я не намерен»: Как менялось отношение Владимира Путина к поправкам в Конституцию – и что после этого с ней происходило // Meduza. 16 января 2020 г. [“I Do Not Intend to Change the Constitution Under Any Circumstances”: How Vladimir Putin’s Attitude to Amendments to the Constitution Changed – and What Happened to It After That, Meduza, 16 January 2020] (Feb. 10, 2020), available at <https://meduza.io/feature/2020/01/16/ni-pri-kakih-obstoyatelstvah-menyat-konstitutsiyu-ya-ne-nameren>.

⁵ Фонд Общественное Мнение [Foundation of Public Opinion] (Feb. 10, 2020), available at Fom.ru.



results of the surveys on the attitude of Russians to the changes of the Constitution. The respondents were asked whether the Constitution should be revised or amended on the day of the survey. In 2013 44% of Russians said that the Constitution should be amended. From 2014 to 2017, no surveys were conducted and in 2018 already 66% of respondents supported constitutional changes. In 2019 the level of those who support the constitutional changes reached 68%.

The same social surveys gave the following results and it is important for the complete picture. The number of those who agree with the opinion that the Constitution does not define the life of the country and is a purely formal document was 47% against 43% with the opposite view. And in 2018 46% considered the Constitution a formal document, while still 43% believed that the Constitution defines the life of Russian society.

The respondents were also asked if the Constitution helps or not to protect the rights of ordinary citizens: 43% responded positively – it helps, 47% negatively – does not help. Finally, the question whether the respondents know the main provisions of the Constitution was asked. Only 46% citizens said that they know, and 51% – do not know. On the question whether they have read the text of the fundamental law 59% of the respondents said they did and 40% said they did not.⁶

The Russian Public Opinion Research Center⁷ conducted a survey regarding the importance of the constitutional changes. The respondents were asked whether the possible changes in the Constitution are more important or less important for them personally. 79% of the respondents said that changes are important for them, 16% of the respondents answered that the modifications are not important and 5% of the respondents found it difficult to answer.⁸

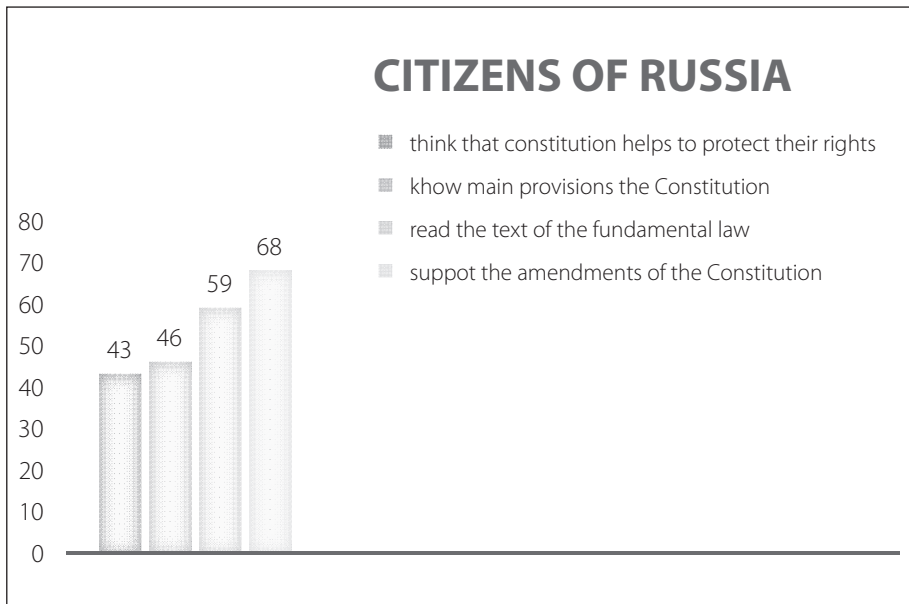
⁶ Число желающих изменить Конституцию россиян выросло в полтора раза: Большинство предложенных гражданами поправок касается социальных проблем // РБК. 9 декабря 2019 г. [The Number of Russians Wishing to Amend the Constitution Has Grown One and a Half Times: Most of the Amendments Proposed by Citizens Concern Social Issues, RBC, 9 December 2019] (Feb. 10, 2020), available at <https://www.rbc.ru/society/09/12/2019/5ded4f539a7947e2e6713172>.

⁷ Всероссийский центр изучения общественного мнения [Russian Public Opinion Research Center] (Feb. 10, 2020), available at wciom.ru.

⁸ Самые популярные из поправок в Конституцию поддержали более 90% россиян // РБК. 3 февраля 2020 г. [The Most Popular of the Amendments to the Constitution Were Supported by More Than 90% of Russians, RBC, 3 February 2020] (Feb. 10, 2020), available at <https://www.rbc.ru/politics/03/02/2020/5e3700759a79473195081676?from=newsfeed>.



Graph 1: The results of social surveys in Russia 2018–2019



It follows from the official sources that there is a social consensus between the government and the society on the need to change the Russian Constitution. Taking in the consideration the above one can resume that the public opinion surveys demonstrate the positive social and political environment for the constitutional changes. At the same time the statistics show somewhat controversial and not so clear whether the respondents in fact support the changes to the Constitution of the Russian Federation. It seems to be an informed decision and more an emotional than a rational act of the public.

The constitutional Amendment did not leave anybody silent. Political analytics, academics in social sciences and some representatives of civil society decided to speak commenting the Amendment 2020 to the Constitution of the Russian Federation. They are expressing the opinion that the underlying political substance of the modification of the Russian Constitution is alleged to be the transition of power. The Russian transition of power is constantly compared to the Kazakh scenario. Once one looks closer one shall have to admit that there are many similarities. And the information to reflect follows from open sources. The former Kazakh President Nursultan Nazarbayev addressed to the nation on 25 January 2017 announcing a number of changes to the Constitution of the Republic of Kazakhstan. The text of the amendments was already drafted by a special working group. However, one should note that Kazakh Constitution was amended before: in 1998, 2007 and 2011. Amendments of the year 1998 concerned the term at presidency and functions of



the President and deputies of the Parliament. The upper age limit for civil servants which had been provided earlier was abolished. The amendments stipulated that 10 deputies of the Majilis – the lower chamber of the Kazakh Parliament – shall be elected based on the party lists under the system of proportional representation.

The amendments of the year 2007 regulated the following:

- 1) The transition to proportional electoral system;
- 2) The strengthening the status of the Parliament
 - by introducing rules on the approval of the Prime Minister by the parliamentary majority and
 - by introducing the consultation procedure of the President and party fractions when appointing the Head of the Government;
- 3) The Assembly of the People of Kazakhstan received a constitutional status and the established quota right to delegate its representatives to the Majilis and the Senate of the Parliament.

The most important amendments of the year 2007 concerned the status of the President. The Constitution established a rule that one and the same person shall not be admitted to hold the post of the President for more than two consecutive terms. The term of the office of the President was reduced from seven to five years. In comparison to the Russian scenario such rule is not corresponding the amendments to the Russian Constitution as of 2014: the term of the President of the Russian Federation at power was increased from four to six years. The essence of the amendment to the Constitution of Kazakhstan that the President needs to reside permanently in Kazakhstan for the last 15 years was further used in the Amendment 2020 to the Russian Constitution. The Amendment provides that Article 81, point 2 of the Russian Constitution shall contain the following requirements to the President of the Russian Federation: the President of the Russian Federation shall be a citizen of the Russian Federation who has reached the age of 35 and is constantly residing in the Russian Federation for at least 25 years, not having and not previously having the citizenship of a foreign state or species residence permit or other document confirming the right for permanent residence of a citizen of the Russian Federation in the territory of a foreign state. The Russian Federation extended the period of constantly residing in the Russian Federation for minimum 25 years from former 10 years. The Kazakh Constitution before 2007 did not determine the time of residence in Kazakhstan.

Another 2007 amendment to the Constitution of the Republic of Kazakhstan concerns the determining of a special status of Nursultan Nazarbayev as the first President of Kazakhstan. Nursultan Nazarbayev personally is not limited to the term of Presidency stated above and his status shall be determined by a separate Constitutional Law of 20 July 2000 No. 83-II “On the First President of the Republic of Kazakhstan.” Notwithstanding the constitutional allowance to stay at power for the rest of his life Nursultan Nazarbayev resigned from Presidency on 19 February 2019, though retaining role of the head of the state. Nursultan Nazarbaev seems to



be the idea man not only for the concept of Eurasia and Eurasian integration⁹ but also for the successful algorithms of political longevity.

More untouchable powers were given to the Yelbasy – the Head of the State – in February 2011. Nursultan Nazarbayev until the end of his life shall. Retain the authority independent of the authority of the President. He and his family members shall be completely exempt from criminal liability. Those who have something against the Nazarbayev family shall incur criminal liability: draft laws were submitted providing for criminal liability for damage to the images of the first President of Kazakhstan, public insults and distortions of the facts of his biography. The Kazakh Constitution was amended as well to establish the constitutional foundations of the appointment and to conduct of early elections of the President of the country.

In March 2017 Nursultan Nazarbayev announced a constitutional reform whose main objective was the transfer of certain powers of the President of the Republic to the Parliament and the government. The Security Council has become the main constitutional body of Kazakhstan. Its tasks include consideration of the main directions of the state policy in the field of national security, the country's defense, as well as coordination of the activities of state bodies and organization in these areas. The parallel line to the State Council of the 2020 Amendment in the Russian Federation arises. In 2018 the Constitutional Council of Kazakhstan recognized Nazarbayev's right to chair the Security Council of the Republic of Kazakhstan as constitutional for life.

Returning to the amendments to the Constitution of Kazakhstan of the year 2017 one shall note that the working group had been already working on the amendments for a couple of months. Nationwide discussion was held during one month after the announcement of amendments and than the joint session of the representative power approved it in two readings and the law "On the Amendments and Changes to the Constitution of Kazakhstan" was signed by the President and came into force. However, the changes in Kazakhstan are characterized as constitutional reform: the shift from one constitutional order to another. In the publications on Kazakh scenario "we can find the mentioning about rewriting the Kazakh constitution."¹⁰ The Kazakh scenario gets its evaluation in details only post-factum and it is not time yet to assess the substance in Russia.

The algorithm "announcement of modifications in the address to the Federal Assembly and after a few months submission of the modifications" appeared in Russian political and legal practice in 2008.

In 2008 the Russian President Dmitry Medvedev addressed the Federal Assembly observing that in the face of the long-term development plans and the global tasks

⁹ Sergey Shokhin & Ekaterina Kudryashova, *Macroeconomic Coordination in the Eurasian Economic Union: Strategic Aspects*, 7(3) Russian Law Journal 38 (2019).

¹⁰ Carna Pistan, *2017 Constitutional Reform in Kazakhstan: Increasing Democracy Without Political Pluralism?*, ConstitutionNet, 28 March 2017 (Feb. 10, 2020), available at <http://constitutionnet.org/news/2017-constitutional-reform-kazakhstan-increasing-democracy-without-political-pluralism>.



the credibility of the Federal Assembly and the President should be enhanced by means of their term of office extension. It should be reminded here that it was on the one hand the peak of the economic crisis and on the other hand the period of the active strategies drafting in Russia including the Concept of long-term social-economic development till 2020, the National Security Strategy. Certain optimism on the strategic development of the country may be traced.¹¹

The President Dmitry Medvedev in his speech before the Parliament in 2008 stressed that he was not speaking about constitutional reform, but only about correcting the Constitution of the Russian Federation. The amendments were not to affect the political and legal nature of existing institutions:

So the “reformist itch” about the Basic Law is completely irrelevant.¹²

It was stressed that the Russian Constitution is well established and should remain unchangeable. It should be mentioned here that in the algorithm of 2008 there was also a special meeting with the judges of the Constitutional Court of the Russian Federation. The relationship between the Constitutional Court and other state powers will be discussed further in the present article.

Taking in consideration the above the present research identifies the social-political context and the political scenario which appears for today and smoothly have approached the legal implications of the constitutional changes 2020.

2. Legal Analysis of the Constitutional Amendment/s

It is easier and more complicated at the same time to analyze the nature of the processes in the Russian Federation by legal means. The research turns to the literal interpretation of the Constitutional provisions and the surrounding legal context. Meticulous legal approach will show that the Russian Constitution was not intact since the year 1993. The Constitution of the Russian Federation is not so sacrosanct as it is sometimes presented. During the research quite a few laws were discovered which already intruded into the text of the Constitution (amendments related to the renaming of the Subjects of the Russian Federation are omitted):

1) The Law of the Russian Federation on the Amendment of the Constitution of the Russian Federation of 21 July 2014 No. 11-FKZ “On the Federation Council of the Federal Assembly of the Russian Federation”;

¹¹ Ekaterina Kudryashova, *State Planning and Budgeting in the Russian Federation in Development in Strategic and Public Management: Studies in the US and Europe* 149 (Basingstoke: Palgrave Macmillan, 2014).

¹² Послание Федеральному Собранию Российской Федерации [The Address of the President Medvedev to the Federal Assembly] (Feb. 10, 2020), available at <http://www.kremlin.ru/events/president/transcripts/1968>.



2) The Law of the Russian Federation on the Amendment of the Constitution of the Russian Federation of 5 February 2014 No. 2-FKZ “On the Supreme Court of the Russian Federation and on the Public Prosecutor of the Russian Federation”;

3) The Law of the Russian Federation on the Amendment of the Constitution of the Russian Federation of 30 December 2008 No 7-FKZ “On the Control Powers of the State Duma Regarding the Government of the Russian Federation”;

4) The Law of the Russian Federation on the Amendment of the Constitution of the Russian Federation of 30 December 2008 No 7-FKZ “On the Change of the Terms of Office and the State Duma.”

All these amendments were covered by Article 136 of the Constitution of the Russian Federation. It provides, that amendments to the provisions of Chapters 3–8 of the Constitution of the Russian Federation shall be adopted according to the rules fixed for adoption of federal constitutional laws and come into force after they are approved by the bodies of legislative power of not less than two thirds of the subjects of the Russian Federation.

This rule of the Constitution is developed further in the Federal Law of 4 March 1998 No. 33-FZ “On the Procedure for the Adoption and the Enforcement of Amendments to the Constitution of the Russian Federation.”

The legitimacy of amendments to the Russian Constitution by special federal laws in the procedure of amending the Constitution was challenged in the Constitutional Court of Russia and its legitimacy was confirmed in the Ruling of the Constitutional Court of the Russian Federation of 31 October 1995 No. 12-P “On Construction of Article 136 of the Constitution of the Russian Federation.”

The Constitutional Court generally plays an important role in considering application of legal norms in many countries of the world, including the Russian Federation.¹³

The Constitutional Court of Russia also expressed the opinion that the law on amending the Constitution legally ceases to exist once it comes into force and the amendments are integrated into the body of the Constitution. Therefore the law on amending of the Constitution cannot be reviewed within the Constitutional Court’s procedures except those provisions which would have never been incorporated in the text of the Constitution.

In general this decision is in line with the common constitutional practice approved by the Venice Commission. Only in a few countries the Constitutional Court plays certain role in the constitutional amendment procedures. The posterior judicial review of the amendments in many countries is rejected as well. Once the constitutional legislator is sovereign the amendments cannot be subject to review by other bodies, which come to the existence on the basis of constitutional provisions. Constitutional control over amendments to the constitution is neither required by the rule of law nor it is a general practice in the World.

¹³ Olga Balakina et al., *Bank Secrecy in Offshore Centres and Capital Flows: Does Blacklisting Matter?*, 32(1) *Review of Financial Economics* 30 (2017).



From the list of laws on the amendment of the Russian Constitution, perhaps, only the law on the amendment of the presidential term in 2008 was widely discussed nationwide in Russia or even in the mass media, among academics and social society.

The title of the current amendments 2020 sounds literally as following “The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation ‘On the Improvement of the Regulation of Certain Issues of Public Authority.’” The President of the Russian Federation in the draft law of 20 January 2020 No. 885214-7, proposed changes to the Constitution of the Russian Federation. Note, that that draft law is named “on the Amendment...”, i.e. the singular form is used in the name of the act. In reality amendments to 22 Articles of the Constitution of the Russian Federation were proposed (the Constitution itself is not a vast act, comprising 137 Articles in all).

That means that the voting on “the Amendment” shall be unified, with no possibility of changing any particular point in “the Amendment” (which in reality refers to multiple amendments to the Constitution).

There are other issues in legal techniques used: the name of the act is “the Law.” It should be stressed that the structure of the statute law in the Russian is the following: the Constitution of the Russian Federation, Constitutions and Charters of the Subjects of the Russian Federation, Federal Constitutional Laws of the Russian Federation, Federal Laws of the Russian Federation, Laws of the Subjects of the Russian Federation, Laws of the former USSR and RSFSR.¹⁴ No “Laws” are provided on federal level.

The timeframe for adoption of the amendment is very short (taking into consideration the importance of the act – amendments to the highest act on the Russian territory). “AllRussia voting” proposed in the Explanatory Note to the draft law “The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation” is not provided by the existing Constitution of the Russian Federation. Article 3, point 3, Article 32, point 2, Article 84, point c, Article 92, point 3 and Article 130, point 2 of the Constitution of the Russian Federation refer to “the referendum,” and not to “AllRussia voting.”

As the law does not give the procedure for conducting “AllRussia voting,” the procedure can be freely interpreted by any interested persons.

The importance of the initiative follows from the number of laws to be modified or abolished: 6 Federal Constitutional Laws, including the Federal Constitutional Law of 21 July 1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation,” and the Federal Constitutional Law of 17 December 1997 No. 2-FKZ “On the Government of the Russian Federation,” and 28 Federal Laws. All 34 important federal and federal constitutional laws are to be modified in yet an unknown way.

¹⁴ Anna V. Shashkova, *Corporations and the State: Emerging of the Problem of Corporate Liability*, 14(34) *Opción* 432 (2018).



The amendments to the constitution may be summarized to the following groups:

1) Bases on the Constitutional Order in the Russian Federation and People's Rights and

2) Formation and Powers of the State Bodies of the Russian Federation.

Notwithstanding the above and taking in consideration prior constitutional practice of the Russian Federation the draft law proposed by the President is apparently in line with all the other amendments to the Constitution of Russia. If one would just revise the list of the laws modifying the Constitution of Russia one would not have highlighted this one among the others.

Therefore on the current stage it is about dealing with one of the federal laws on the amendment/s of the Constitution of the Russian Federation which will undergo a normal procedure. Once the text of the amendments will be the same – no specific procedure is required. Like other federal laws on amending the Constitution the above law will cease its existence as a legal unit once the text is incorporate into the Constitution of the Russian Federation. Thus, like others it shall not be subject to the Constitutional Court review.

The present meticulous study poses the question: what makes these “amendments” (or Amendment) so different that it deserves the nationwide discussion and that it is generally accepted that the Constitution of Russia is being opened for changes only now, in 2020?

Certain theoretical findings will give a clue. “The law” or “the constitution” are not only what someone intended to draft but also what the branches of powers interpret it to be later in time.¹⁵ It is true for the amendments of the Constitution. The special meaning to the current changes to the Constitution of Russia is to certain extent imported by the executive power. The success for any constitution is a success in communication with society – communication between the rulers and the ruled.¹⁶ The communicational aspects and the meaning attributed to the changes proposed in 2020 by the society plays crucial role in making them so important and discussed.

3. Current Instrumental Changes to the Formation and Powers of the State Bodies of the Russian Federation

The constitutional law sometimes divides the provisions of the constitutions into instrumental and social. The instrumental provisions refer to the organization of powers and protection of basis rights and freedoms. The first constitutions

¹⁵ Stefan Voigt, *Implicit Constitutional Change – Changing the Meaning of the Constitution Without Changing the Text of the Document*, 7 *European Journal of Law and Economics* 197 (1999).

¹⁶ Aydin Atilgan, *Meaning of Contemporary Constitution* in Aydin Atilgan, *Global Constitutionalism: A Socio-Legal Perspective* 121 (Berlin: Springer, 2017).



were mostly of the instrumental nature. The social provisions appeared in the constitutional practice later. Social provisions are related to the social warranties for citizens. Nowadays most of the constitutions around the world are both instrumental and social. The instrumental and social parts are usually balanced.

Turning to the essence of the instrumental part of the Amendment of 2020 one may classify as following.

3.1. Civil Service

Amendment to Chapter 3 “Federal System of the Russian Federation” concerns restrictions in access to the civil service. Those who have citizenship of some other country or permanent residence thereof shall not be admitted to the civil service. More severe restrictions concern higher public service positions.

Most amendments hereof are a package of restrictive measures for candidates to the civil service. It is more logical to amend corresponding federal laws, but not in the Constitution of the Russian Federation.

These restrictions for the civil services are justified in the explanation note for the draft by the principle of the unity of civil service as the same restrictions are applicable to the President of the Russian Federation.

3.2. The President of the Russian Federation

Higher requirements are applied to the President of the Russian Federation. Now, the President of the Russian Federation must not ever have citizenship of some other country or permanent residence thereof. The term of permanent living in the country shall be more than 25 years.

Article 81, point 3 of the Constitution of the Russian Federation removes the word “in a row”:

One and the same person may not be elected President of the Russian Federation for more than two terms.

Strictly speaking, it is the only amendment that requires changing the highest act in the Russian Federation. The rest of the amendments are trivial and shall be included in ordinary legislation of the country.

The President of the Russian Federation has a stronger influence on the Government of the Russian Federation. At the same time, the Head of the Government becomes weaker. In fact, the President of the Russian Federation may appoint and dismiss members of the Government liberally, with approval of the week parliament. Article 81, point b1 of the Constitution gives the President the power to dismiss the Head of the Government alone, without the Government. The provision does not answer the principle of collective responsibility of the Government. Thus, the Head of the Government becomes the personal subordinate of the President of the Russian Federation.



The President of the Russian Federation by approval of the subordinate Federation Council may nominate all judges of the Supreme Court and the Constitutional Court of the Russian Federation, all prosecutors of the country. De facto the President becomes the head of the judicial power.

Article 102, point 1 is amended with point m giving the Federation Council the authority to terminate, upon the proposal of the Russian President, the powers of judges of the Constitutional Court of the Russian Federation, judges of the Supreme Court of the Russian Federation, judges of the cassation instance and courts of appeal in case they commit an act defaming honor and dignity of a judge. That means giving the power to the President to use the subjective ground “loss of confidence” to dismiss a judge.

Article 107, point 3 extends the veto rights of the President. De facto the President receives “the second veto right.” In case the President of the Russian Federation vetoes federal law within fourteen days from the moment of receipt, the State Duma and the Federation Council shall consider the law again. In case the federal law is approved in the original version by a majority of at least two-thirds votes of the total number of members of the Federation Council and deputies of the State Duma, the federal law shall be signed by the President of the Russian Federation within seven days. However, the President may appeal to the Constitutional Court of the Russian Federation with a request on the verification of the constitutionality of the federal law. The seven-days term shall be suspended in such case of application to the Constitutional Court of the Russian Federation. The President of the Russian Federation receives veto rights to federal constitutional laws as well. The same procedure of application to the Constitutional Court shall be used.

This shows that the President does not trust the Parliament. With resources in the Constitutional Court, the President can influence the legislative process.

3.3. Legal Status of the Other Bodies of Power

First, it is necessary to stress changes in the position of the Russian Constitutional Court. The number of judges of the Constitutional Court of the Russian Federation has diminished from 19 to 11. But what is more important is the diminishing role and independence of the Constitutional Court and other federal courts as well.

The President of the Russian Federation receives the power to nominate Presidents and Deputy Presidents of federal courts. That means that the President directly influences all courts and minor justices of the peace.

Similar powers concern the Prosecutor Service. The General Prosecutor is eliminated from the process of nominating prosecutors of the subjects of the Russian Federation. Prosecutors of the subjects of the Russian Federation are appointed after consultations with the Federation Council by the President of the Russian Federation. They are dismissed by the President of the Russian Federation. The General Prosecutor retains minor powers of appointing only city and district prosecutors.



Next, local self-government bodies come. In contradiction to the European Charter of Local Self-Government (Strasbourg, 15 October 1985), Article 132, point 3 of the Constitution of the Russian Federation states that local self-government bodies and state authorities shall comprise a part of a unified system of public authority in the Russian Federation and shall interact for the most effective problem-solving in the interests of the population living on the corresponding territory.

Finally, a new body of power appears. Under the draft law “The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation,” the President of the Russian Federation forms the State Council of the Russian Federation in order to ensure coordinated functioning and the interaction of public authorities, determining the main areas of domestic and foreign policy of the Russian Federation and priority areas of socio-economic development. Further acts to develop constitutional amendments and determine the status of the State Council of the Russian Federation shall be the federal law “On the State Council of the Russian Federation.” The powers of this state body are vague. The State Council should “have independent significance” and be effectively integrated into the state mechanism, but “at the same time, it should not repeat the role of the Federation Council,” noted the group working on the preparation of amendments to the Constitution.

Which branch of separation of powers government does the State Council belong to? Executive? Legislative? What means has the body established “in order to ensure the coordinated functioning and interaction of state authorities, determine the main directions of the domestic and foreign policy of the Russian Federation and the priority directions of the socio-economic development of the state”? What place will the State Council occupy in the system of power? What are the formal mechanisms of the State Council to influence politics? The answers are to be continued:

The status of the State Council of the Russian Federation is determined by the federal law.

The Amendment of 2020 to the Russian Constitution on the formation and powers of the state bodies can be attributed to instrumental provisions. Considering the whole bunch of the amendments submitted to the Federal Assembly one could say that there is a balance between the instrumental and social part. Social changes on minimum wages guaranteed proposed in the Constitution may result as a social change itself. May be it could be even said that this instrumental part is balanced by the social promises which were discussed above. Even if there is an instrumental vector in the current amendments it does not come straightforward.



4. Eternity Clauses and the Current Amendments to the Constitution

Before coming to the implications of the legal technic for submission and adoption of the proposed changes 2020 it is important to make a few general remarks on the durability of constitutions and the eternity clauses which are alleged to serve for them.

In the academic researches the clauses in the constitutions which provide the stability of the text are called “eternity clauses.” These clauses detach the basic law of the country from the other laws in a special category. This special category usually consists only of the one law (there may be a pull of laws) and stands apart from ordinary rule-making process. The fundamental law has become more sophisticated for changes. Eternity clauses add more meaning to the highest position of the constitution in the hierarchy of the laws.

The eternity clauses explicit or implicit are inherent to most constitutions except those constitutions which are intentionally deprived of eternity clauses – temporary constitutions. These documents are aimed to be in force only for a short period of time and they are intentionally adopted as temporary. Egypt, Iraq, Yemen, Thailand and South Africa Constitution were supposed to be temporary constitutions. They were proclaimed by the military or revolutionary councils or the heads of executive power. There are exceptions. The German Fundamental Law was supposed to be a temporary document. Though in case of the Federal Republic of Germany the old proverb that “there is nothing more permanent than temporary” resulted correct.

Once the constitution is not temporary some implicit or explicit eternity clause is supposed to serve its durability. Though the legal science has elaborated a concept, which is called “paradox of self-amendment.”¹⁷ The constraints for changes of any constitution amount only to the promise and its credibility depends on the citizens faith or lack thereof – so it deserves someone to be bound and it is not always clear who is bound by the eternity clause.

There are different classifications of eternity clauses.¹⁸ Among other classifications there are procedural eternity clauses. Articles 16 and 64 of the Constitution of the Russian Federation can be categorized as procedural as there should be a special quorum and special procedures for modifying the Constitution. Articles 16 and 64 of the Russian Constitution present the provision that the relevant Chapter “may not be changed” otherwise than according to the rules established by the Constitution.

¹⁷ Yaniv Roznai, *Unamendability and the Genetic Code of the Constitution*, 27(2) *European Review of Public Law* 775 (2015).

¹⁸ Konstantinos Pilpilidis, *A Constitution for Eternity: An Economic Theory of Explicit Unamendability in An Unamendable Constitution?: Unamendability in Constitutional Democracies* 63, 68 (R. Albert et al. (eds.), Cham: Springer, 2018).



Besides the procedural constraints there may be substantial eternity clauses. Substantial restrictions are those that formulate the preferences of the society which the society is extremely unwilling to change. Substantial clauses may be explicit or implicit.

One can find the explicit substantial eternity clause in the Constitution of the Republic of Kazakhstan. Article 91, point 2 thereof states:

The independence of the state established by the Constitution, the unitarity and territorial integrity of the Republic, the form of the Republic's government as well as the fundamental principles of the Republic which were laid down by the Founder of independent Kazakhstan, the First President of the Republic of Kazakhstan – Yelbasy and its status are unchangeable.¹⁹

There are no explicit substantial eternity clauses in the Russian Constitution, however, we can find implicit ones like Article 3, point 1:

The bearer of sovereignty and the only source of power in the Russian Federation shall be its multinational people.

Thus, the authors come to the conclusion that the proposed amendments of 2020 need to overcome only procedural constraints for changing the Constitution. They do not touch any implicit factual constraints. However, some of the amendments themselves can amount to an implicit material restriction. For example, the amendment on the heroism of the multinational people of the Russian Federation in the Second World War.²⁰ The very low willingness of amending this provision can be expected in Russia in the future. Right now this kind of social values is not in the main text submitted to the State Duma by the President Vladimir Putin. Those additional suggestions coming from the Working Group and people are widely discussed now and may be introduced to the Preamble of the Russian Constitution later on. If some kind of amendments to the Preamble will be recommended and drafted than far more complicated procedure will be needed.

It is relevant to make an important remark on the eternity clause regarding the particular case of the post-socialist constitution. All the constitutions in the post-socialist space were adopted when the social consensus was fragile and immature if it was reached at all. This type of constitution sometimes even called “transitional

¹⁹ The Constitution of the Republic of Kazakhstan (Feb. 10, 2020), available at http://www.akorda.kz/en/official_documents/constitution.

²⁰ Рожкова Е., Галанина А., Винокуров А., Макутина М., Павловский П. В Конституции ищут место Богу и подвигу // Коммерсантъ. 3 февраля 2020 г. [Elena Rozhkova et al., *The Place for God and Heroism Is Searched in the Constitution*, Kommersant, 3 February 2020] (Feb. 10, 2020), available at <https://www.kommersant.ru/doc/4241547>.



constitutions” although the term is more applicable only to the environment of their adoption. Transitional constitutions are supposed to accommodate the controversies and meet the demands of time rather than fix the final resolution of social disagreements.

All the constitutions of the post-socialist states were adopted in the period of transition and clashes of the old and new ideologies, social paradigms, economic basics. The post-socialist constitutions reflect the features of the transition period. The new values coexist with the old elements. There are provisions on private property, freedom of entrepreneurship and at the same time the low role of civil society is retained. Post-socialist constitutions create a special phenomenon. The main feature which can be considered flaws or a matters of the constitutionalism’s development are primarily the combination of different forms of legal regulation. For example, usually the post socialist constitutions support the centralization trends. The post-socialist constitutions represent a transitional incomplete hybrid of a constitutional model that combines new emerging forms and the passing, anachronistic ones. Therefore, from the point of view of criteria of time, post-socialist constitutions can be considered as a new experience in the constitutional development and a special model. While this transition probably will not be completed soon if ever.²¹

All the post-socialist constitutions, and Russia is not the exception, have the provisions precluding from any changes of the social balance in the society. Therefore there are the provisions to keep the constitutions intact even in the time of social instability. It is socially and psychologically justified that those social forces that managed to change the model of social life fix their achievements in the constitution. The basic law was drafted as if it was adopted forever.

Despite the illusion of their unchangeable nature the stability of such transitional constitutions is not feasible. During the transition period the social models are not approved in the society. The Constitution adopted in the transition conditions is simply doomed to be not-durable due to the instability of the social situation and changing relations in society.

The academic research warns that once the eternity clause is too cumbersome the risk of unconstitutional changes appears. So there is a paradox that the possibility to overcome the eternity clause is one of the prerequisites for the resilience of any constitution. The flexibility of the constitution allows the social controversies stay within the constitutional framework rather than cross the borders of the social stability.

The Venice Commission expressed its concern about very frequent changes of the constitutions. The ground is that the fundamental law of a country has to balance the political life. Thus, the constitution cannot be amended with every change in

²¹ *Хабриева Т.Я. Конституционная реформа в современном мире: монография [Talia Ya. Khabrieva, Constitutional Reform in Today's Context: Monograph] (Moscow: Nauka, 2016).*



the political situation. However, the Venice Commission is not less preoccupied with expressively rigid procedures for modification of the constitution. Political, social and economic stability is the only yardstick for the constitutional amendments. Constitutional reform should be aimed at effective stability, independence and efficiency of state institutions, division of competences and effective checks and balances, improvement of the parliamentary control over executive branch or efficient judiciary.²²

The variety of the eternity clauses of the Russian Constitution includes provisions which are strict enough, but not extremely cumbersome. The previous experience of the constitutional changes presents its sustainability and one can expect the same outcome in respect of the changes proposed to the Constitution of the Russian Federation in 2020.

Based on the previous experience it can be expected that all the eternity clauses in the Russian Constitution shall be overcome and the Constitution will be amended whatever scenario is developed. At the same time the real possibility to overcome all the constraints means that the situation in the Russian Federation will stay within the constitutional framework without social turbulence.

The next question which should be posed is if the proposed in 2020 Amendment/s aim at the social and political stability and if they will lead to the more efficient functioning of the state institutions. That is the question which can be answered only partially on this stage.

5. Particularities in the Legal Techniques while Submission of the Amendment/s to the Constitution

The combination of the old and the new has a strong impact on certain institutions of constitutional law which gets peculiar forms. One of the features of all post-socialist constitutions is the insufficient development of parliamentarism that is evident from the weak parliamentary control over the executive power, the formation of government is often dominated by strong presidential power. In this respect some of the previous amendments and the current amendments are the steps to develop the transitional model of the constitution. However, it is not clear if the amendments lead to more mature constitutionalism or the transitional model becomes more responsive to the demands of the time.

In terms of legal technics the 2020 Amendment/s proposed no changes to Chapter 1 "The Fundamentals of the Constitutional System" or Chapter 2 "Rights and Freedoms of Man and Citizen" from a strictly legal point of view. Though, a number

²² European Commission for Democracy through Law (Venice Commission), *Compilation of Venice Commission Opinions Concerning Constitutional Provisions for Amending the Constitution*, CDL-PI(2015)023, 22 December 2015 (Feb. 10, 2020), available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)023-e).



of amendments to other Chapters of the Constitution in practice concern bases of the Constitutional Order in the Russian Federation and People's rights.

The reason for such a strange legal technique lays in the provisions of the Constitution itself: Chapters 1, 2 and 9 of the Constitution of the Russian Federation are not subject to modification by the Federal Assembly (Art. 135 of the Constitution of the Russian Federation). Article 135, point 2 of the Constitution of the Russian Federation states that if the proposal to revise the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation is supported by three-fifths of the total number of members of the Federation Council and deputies of the State Duma, then in accordance with a federal constitutional law, the Constitutional Assembly shall be convened. Currently, the legal space of the Russian Federation provides for no Constitutional Assembly. Thus, to speed the process, it is easier to formally avoid any amendments to Chapters 1, 2 and 9 of the Constitution of the Russian Federation.

The Explanatory Note to the draft law "The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation" states that in order to protect social rights of citizens of the Russian Federation and ensure their equal opportunities throughout the country, Article 75 of the Constitution of the Russian Federation shall be amended by provisions establishing a minimum monthly wage not lower than the living wage of the population with labor capacity in the whole territory of the Russian Federation, guaranteeing compulsory indexation of pensions, social benefits and the basic principles of universal pension coverage. Herewith, the Explanatory Note to the draft law "The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation" refers to point 2 of the draft law "The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation."

Referring to the original text of the Constitution of the Russian Federation, one shall stress that Article 75 is allocated in Chapter 3 "Federal System of the Russian Federation." Article 75 of the Constitution of the Russian Federation concerns monetary emission and not the social rights of the people of the Russian Federation.

Article 7, point 2 of the Constitution of the Russian Federation instead is dedicated to minimum wages:

In the Russian Federation, the labor and health of people shall be protected, a guaranteed minimum wages and salaries shall be established, state support ensured to the family, maternity, paternity and childhood, to disabled persons and the elderly, the system of social services developed, state pensions, allowances and other social security guarantees shall be established.

However, Article 7 is allocated in Chapter 1 "The Fundamentals of the Constitutional System," which is not subject to modification by the Federal Assembly.

The issue concerning sovereignty of the Russian Federation and its independence from acts of international bodies and international treaties of the Russian is, in fact, an amendment to Article 79 of the Constitution of the Russian Federations:



The Russian Federation may participate in interstate associations and transfer to them part of their powers in accordance with international treaties of the Russian Federation if this does not entail the limitations of human and civil rights and freedoms and does not contradict the foundations of the constitutional system of the Russian Federation. Decisions of interstate bodies adopted based on the provisions of international treaties of the Russian Federation in their interpretation, contrary to the Constitution of the Russian Federation are not enforceable in the Russian Federation.

Though Article 3 of the Constitution of the Russian Federation is dedicated to the sovereignty of the Russian Federation, amendments concerning the sovereignty are introduced to Article 79 of the Constitution of the Russian Federation. Article 79 of the Constitution of the Russian Federation instead is dedicated to the right of the Russian Federation to participate in international associations. The logic is the same. Article 79 of the Constitution of the Russian Federation is again in Chapter 3 "Federal System of the Russian Federation."

The transitional model of constitutionalism was not overcome until now. Through Russia is not an exception here. The President of the Constitutional Court of the Russian Federation²³ in his interview in 2018 noted that the flaws of the Russian Constitution included the lack of a proper balance in the system of checks and balances, a bias in favor of the executive branch of government, insufficient clarity in the distribution of powers between the President and the government, in determining the status of the presidential administration and the powers of the Prosecutor's office. Construction of Article 12 of the Constitution gives rise to opposition of local self-government bodies to state authorities (including representative bodies of state power), while local self-government bodies by their nature are only the lower, local link of public power in the Russian Federation. There are also shortcomings in the division of responsibilities and powers between the Federation and its subjects.

Conclusion and Discussion

It is quite obvious that if there was no a special accent on these modifications to the Constitution of Russia one could have not even noticed them. Literally from the legal point of view the form of the draft text proposed by the President is the same as the previous five laws amending the Constitution of the Russian Federation.

From another point of view, certain conclusions appear. Strange and erroneous legal technics used in implementing amendments to the sovereignty of the Russian

²³ Буква и дух Конституции: Валерий Зорькин – о тревожных призывах к кардинальным конституционным реформам // Российская газета. 9 октября 2018 г. [The Letter and Spirit of the Constitution: Valery Zorkin on Alarming Calls for Radical Constitutional Reforms, Rossiyskaya Gazeta, 9 October 2018] (Feb. 10, 2020), available at <https://rg.ru/2018/10/09/zorkin-nedostatki-v-konstitucii-mozhno-ustranit-tochechnymi-izmeneniyami.html>.



Federation and People's rights is an issue of political will.²⁴ Analyzing the violation of the legal construction of the Constitution of the Russian Federation, one shall assume that People's rights and the fundamentals of the Constitutional System of the Russian Federation which cannot be changed by the Federal Assembly may be changed by a will of one person. This will affect the rights of the People of the Russian Federation in the future: by free construction of legal norms by courts and law machinery bodies.²⁵

It is quite dangerous to create a habit of multiple amendments to the Constitution on trivial matters. This leads to the impression of mediocrity in the nature of such changes, the Constitution loses the character of inviolability when amendments are adopted unless in exceptional, fundamental cases.

Overloading the Constitution with prohibitions shifts its essence from establishing rights, freedoms and state guarantees to restriction of rights and freedoms. Thus, the mission of the Constitution is ignored.

Article 75 of the Constitution of the Russian Federation with its social amendment establishing a minimum monthly wage not lower than the living wage of the population with labor capacity in the whole territory of the Russian Federation is a "carrot" for the Russian population to vote "for" the Amendment to the Constitution of the Russian Federation.

The powers of the President become stronger while the powers of other state bodies including the State Duma and the Head of the Government become weaker. The Federation Council – a body directly or indirectly nominated by the President of the Russian Federation – receives additional actual and consultative powers, e.g. in the nomination of the highest judges. As a result, the whole system of separation of powers depends on only one person.

A newly appeared body, the State Council of the Russian Federation, formed by the President of the Russian Federation is a "dark horse" of the political reality. Probably, the structure of the State Council may become a political base for Vladimir Putin, if he leaves the post of the President someday.

The current amendments (Amendment) to the Russian Constitutions as they are submitted the Federal Assembly can be adopted without involvement of special procedures envisaged by the eternity clauses of the Russian Constitution. Once the text of the amendments will encompass amendments offered during the nationwide discussion or within the working group research, the eternity provisions will be involved – the explicit procedural eternity clause. Based on the previous practice and the nature of the eternity clause the procedure can be completed in strict conformity with the constitution itself. The theory and the empirical researches on constitutional

²⁴ Jennifer L. Bussell, *Why Get Technical? Corruption and the Politics of Public Service Reform in the Indian States*, 43(10) Comparative Political Studies 1230 (2010).

²⁵ Marshall Goldman, *Political Graft: The Russian Way*, 104(684) Current History 313 (2005).



law and practice show that the possibility to overcome the eternity clause ensure the social stability and that the situation will stay in the constitutional framework.

On the basis of the amendments' text the present research may predict that the Russian Constitution after the current amendments will still pertain to the post-socialist constitutions of a transitional model. There the old and the new values still will coexist, with predominance of centralizations of powers, with dominating role of executive power.

The current text of the amendments to the Russian Constitution does not touch the eternity provisions of the Russian Constitution, however the new initiatives appearing in the nationwide discussion may change the essence of the amendments. If it is the case a complicated procedure will be needed in order to incorporate the changes in the Constitution. The authors allege that even in this case the eternity provisions will be overcome. And it is a positive fact, because such possibility itself ensures the social stability and the constitutional framework for new initiatives.

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