

# ON MODIFICATIONS TO THE CONSTITUTION OF THE RUSSIAN FEDERATION IN 2020 FOR THE DEVELOPMENT OF ENTREPRENEURIAL ACTIVITY

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## ABSTRACT

*Aim of the study:* 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 15th January 2020.

*Methodology:* The experience of recent years shows that in a changing economic environment, the network of business processes changes qualitatively and acquires a new economic content. At the same time, the system of economic activity has a systematic character and is characterized by a set of standard economic processes.

*Conclusion:* 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:** Entrepreneurship, Logistics, Market, Development, Innovation.

## INTRODUCTION

The President of the Russian Federation Vladimir Putin during his annual speech addressed the Federal Assembly on 15th January 2020 and announced the need to amend the Constitution of the Russian Federation. On 20th 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 23rd 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 “*All Russia voting*” by this time.

The head of state has traditionally been proclaimed to be the subject of the right to implement legislative initiatives all over the world with a few exceptions (Nzerem, 2010). At the same time, e.g., in the USA, the constitutional right of the legislative initiative of the president is not provided. However, the US president used the right to a legislative idea while addressing the Congress in his annual speech. Russia decided to give the President both powers (Chaisty, 2014).

Such prompt adoption of the submitted draft law (3 calendar days) is a common practice when speaking about the Presidential initiatives (Medushevskiy, 2019). Strictly speaking, a speech by the President of the Russian Federation addressed to the Federal Assembly is not a legal, but a political instrument (Nikiforov, 2019). Its legal status is vague (Evdokimov & Ushakov, 2019). However, with a President as strong as Vladimir Putin, such an instrument is immediately realised by legal means, e.g., after the Presidential speech before the Federal Assembly on 3rd December 2015, the deputy Balashov B.K. submitted a draft law on 16th December 2015 (Fomicheva, 2018).

## METHODOLOGY

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: Why is it important to change the conditions for electing a candidate for the Presidency now?

Along with the research questions presented, this study tests three 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.

Hypothesis 1: The proposed amendments will affect the rights of the people of the Russian Federation in different ways.

Hypothesis 2: The Parliament and the Head of the Government will de facto lose the power after the Amendments to the Constitution of the Russian Federation are enforced.

Hypothesis 3: The President of the Russian Federation will probably resign from the Presidency before the term.

## RESULTS AND DISCUSSION

The President of the Russian Federation in his draft law No. 885214-7 "*The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation*", dated 20 January 2020, 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 (Shashkova, 2018). 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*” (Al Ali et al., 2019).

As the law does not give the procedure for conducting “*AllRussia voting*”, the procedure can be freely interpreted by any interested persons (Rose-Ackerman & Palifka 2016).

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 No. 1-FKZ “*On the Constitutional Court of the Russian Federation*”, dated 21 July 1994, and the Federal Constitutional Law No. 2-FKZ “*On the Government of the Russian Federation*”, dated 17 December 1997, and 28 Federal Laws. All 34 important federal and federal constitutional laws are to be modified in yet an unknown way.

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

### **Bases of the Constitutional Order in the Russian Federation and People’s Rights**

From a strictly legal point of view, no changes were proposed to Chapter 1 “*The Fundamentals of the Constitutional System*” or Chapter 2 “*Rights and Freedoms of Man and Citizen*”. Though, a number 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 is the Constitution itself: Chapters 1, 2 and 9 of the Constitution of the Russian Federation are not subject to modification by the Federal Assembly (Article 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 labour 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 (Tanzi, 1999).

The second point of Article 7 of the Constitution of the Russian Federation instead is dedicated to minimum wages: “*In the Russian Federation, the labour 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 Federations 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*”.

## **Formation and Powers of the State Bodies of the Russian Federation**

### **Civil Service**

Another 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.

### **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 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 Government alone, without the Government. The provision does not answer the principle of collective responsibility of the Government. Thus, the Head of 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.

The Constitutional Court of the Russian Federation. Other Courts the Prosecution Service  
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.

### **Local self-government bodies (Municipalities)**

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.

### **The State Council**

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.”*

## **CONCLUSION**

The present study has come to the following conclusions:

1. Strange and erroneous legal technics used in implementing amendments to the sovereignty of the Russian Federation and People’s rights is an issue of political will (Bussell, 2010). Analysing 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 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 (Goldman, 2005).
2. 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.
3. 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.

4. 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 labour 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.
5. 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.
6. 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.

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