DIRITTI COMPARATI
Comparare i diritti fondamentali in Europa

PUTIN'S CEASELESS CAREER: AMENDING THE RUSSIAN CONSTITUTION TO STAY UNTIL 2036

Posted on 6 Aprile 2020 by ***Arina Lopukhina***

It all began on January 15, 2020, when President Putin held an annual meeting with the Russian government, expressing the urgent need for changing the Constitution. At first glance, his proposal did not sound so detrimental: the primary objective were shifting the balance of political powers from a president's hands into a prime-minister's, restricting the number of presidential terms to two (a friendly reminder: Putin is currently serving his fourth term), reducing the number of judges in the Constitutional Court, and supposedly making the parliament more influential. Yet, as days went by, more and more novelties resurfaced; to add insult to injury, Putin insisted on incorporating moral ideological aspects into the new constitution, namely highlighting the role of God and undermining non-heterosexual relationships, as well as suggested to give more prerogatives to the federal constituent entities, while prohibiting their secession from the Russian Federation. Additionally, as Henry Reznik, a notable Russian legal expert pointed out, one of the most disturbing amendment is concerned with the restructuring the Constitutional Court and establishing the supremacy of Russian domestic law over international regulations, which could potentially aggravate the already existing conflicts in Russia's foreign affairs.

Now, two months later, it is safe to say that the initial proposal looks nothing like the final draft. Most of the original ideas regarding diminishing presidential prerogatives were dismissed, and the events of March 11 perfectly explain why: senator Tereshkova (also the first woman in space) called for a new amendment to zero out Putin's previous terms and potentially exclude any terms restrictions from the Constitution. In response, Putin himself appeared at the Duma Hall an hour later with a pre-written speech and gladly accepted the first part of Tereshkova's amendment, shyly stating that life-long presidential term would seem "too undemocratic". While at the beginning there was still hope for a moderate development of Putin's grand plan for remastering the Constitution, the recent turbulent political events, continuous downfall of the ruble, increase in oppositionist protests, spiced up with the coronavirus pandemic led to harsher and prompter actions for securing Putin's reign up until the year of 2036.

The Amending Procedure

Although it might be hard to believe given the contemporary circumstances, the Russian Constitution of 1993 proclaims Russia as a secular democratic state with a semi-presidential form of government, which aims at protecting individual rights and freedoms. The 1993 Constitution is a rigid one, yet, the mechanism for amending the document is perplexing and ambiguous. As chapters 1,2 and 9, which deal with general provisions, rights of citizens and amending procedures respectively, can only be altered with the approval of the Constitutional Assembly or a public referendum, the other chapters are relatively easy to modify through administrative procedures (as the 2014 amendments show). However, only the President and legislative bodies are entitled to propose reforms to the Constitution, and, in the contemporary event, the call for amendments was raised by Putin himself, so he is the only one submitting potential alterations which are supposed to be approved in the national referendum scheduled for April 22.

However, with the exponential decline in Putin's approval ratings (now, only roughly 35% express trust in the Leader) and a general worsening of

both Russia's domestic and international political environment, it has been decided not to wait for such a long time and speed up the procedure. Instead of acting out a coherent process of passing the amendments for approval through the parliament and then waiting for the outcome of the referendum, as outlined in the Constitution, the order has been completely disrupted. By March, the bill swiftly passed the State Duma with an absolute majority, but then Tereshkova's announcement (an interesting PR move) happened and turned the rules of the game upside down. Initially, Putin claimed to be ready to sign the list of amendments on the symbolic date of March 18, the anniversary of Annexation of Crimea, yet, for an unknown reason, the plan shifted. Together with Tereshkova's proposal, the amendments were unanimously approved by representatives of all the 85 federal constituent entities in the upper chamber and on Saturday, March 14, Putin signed the bill and called for assembling the Constitutional Court in order to "verify the lawfulness of amendments". So, instead of creating the Constitutional Assembly as instructed in the Constitution of 1993 (although there are no clear references to whom it shall be composed of), it has been ordered to perform the review of amendments to the closest relevant institution – the Constitutional Court of Russia. After the weekend-long court sitting, which occurred behind closed doors, it was ruled that the amendments did not contradict Russia's legal order. In this chain of events, a lot of aspects seem dubious and questionable but not enabling the public to monitor the Court's work is one of the most blatant examples of opaque domestic affairs, which deprive Russian citizens of the information on the ground-breaking constitutional regulations, causing a backlash among hundreds of Russia's activists, scholars, and journalists. Thus, the attempts to lure people into believing that the amendments are merely an expression of the nation's will pale next to the blunt misconduct of various governmental organs.

Lastly, a month before the referendum, the deal is practically done, and there is hardly any sense in holding the public vote. Even though the Constitution requires at least 50% of the population to vote in favor of the amendments, it seems like most of them will be passed regardless of the

referendum's outcome. The official Kremlin's web source clarifies that only amendments for chapters 3 to 8 require the referendum to enter into force; thus, the rest could be considered as valid after the bill passes the Constitutional Court and without any public approval. Although the referendum is now the only obstacle on the way of the new Constitution, yet a weak one, as Russia has a long history of fabricating election results when needed. So, now all is required is to wait until April 22 without letting anyone or anything to sabotage the current setting. Luckily, COVID-19 came into play, which allowed passing an emergency law prohibiting public gatherings of more than 5,000 people due to the virus. One does not need to be a doctor to see how the limit would not practically help prevent the spread of the virus, while on the other hand would allow the officials to conveniently avoid mass protests against the nearly-adopted reforms.

The Proposal of Amendments

Although now the true goal of the constitutional reforms is painfully clear, at the beginning of the process, there was still an attempt to create the impression of checks and balances by establishing the Citizens' Commission for the preparation and review of amendments. The main concern was, however, that this organ predominantly consisted of social activists and notable citizens who were quite distant from legal studies. The list included movie directors (K. Shakhnozarov), doctors (L. Roshal), former athletes (E. Isinbayeva, who, as turned out, had not previously read the Constitution in her life), businessmen (E. Kaspersky), and a few parliament members. Frankly, the efficiency and, most importantly, accountability of proposals and comments issued by such a focus group is quite questionable.

So, the responsibility for drafting new amendments merely rests on the shoulders of the above-mentioned commission and the current president. Yet, it is hard to identify whether any proposals have come from the Commission, as the Russian news reports on the perspective amendments indicate only Putin's personal involvement in the drafting process. The final bill of amendments implies that dozens of articles are to

be altered or abolished, imposing the following:

- the State Duma's approval of the Prime Minister's, Deputy Prime Ministers', and Federal Ministers' candidacies proposed by the President is no longer deemed necessary, thus eliminating the motion of confidence;
- the number of the Federation Council (the upper house of Parliament) members proposed by the President is extended from 17 people to 30;
- heads of law enforcement bodies shall be appointed by the President;
- a presidential candidate must reside in the RF for over 25 years (now 10 years);
- a former President possesses full immunity from prosecution;

also, an ex-President can become a life-long senator, if they wish;

- increasing the role of the State Council (now it only possesses advisory functions and is not included in the Constitution);
- removing the "in a row" clause, thus limiting the maximum number of presidential terms to two.

yet, Tereshkova's proposal was gladly included, allowing a candidate to run for the presidency "regardless of the number of terms which that person held at the time when the amendment came into force.";

- a President can suspend judges from both the Constitutional and Supreme Courts in case of defamation;

also, the Federation Council now has to go through a more meticulous process for rejecting the presidential nominees to the Constitutional Court;

the number of Constitutional Court judges reduced from 19 to 11;

- the Russian laws should take precedence over international law;
- allowing the Constitutional Court to check the constitutionality of laws adopted by the Federal Assembly, if the President deems so

necessary before signing;
- President, Ministers, judges, heads of federal constituent entities are prohibited from possessing foreign citizenships or residence permits;
- the minimum wage cannot be lower than the subsistence minimum;
- regular indexation of pensions;
- additionally, the above-mentioned amendment proposals regarding God (still unclear which one they had in mind while writing that), heterosexual marriages, the claim that "Russia has emerged from the USSR and has to respect the Soviet history and values", as well as some other obscure elements of modern-day Russian propaganda have been implemented into Chapter 1 of the new Constitution.

If two months ago Putin reassured the nation that he would not attempt to extend presidential powers, the opposite occurred. Instead of expanding parliamentary influence over state legislation, as promised, Putin has gifted himself even more extensive control over the composition of the governmental apparatus, turning the Federation Council into more of a pro-presidential-puppet than ever before. As for the lower chamber, Russia has a multi-party system, however, since the beginning of Putin's reign, *United Russia* has steadily had over 70% of seats in the State Duma which merely liquidated competitiveness in the Parliament. However, after the amendments, neither the loyalty of the party nor the composition of the Duma will play such an important role, as the President will no longer need the motion of no-confidence for dismissal of the Prime Minister or other members of the Cabinet. Elena Lykyanova, a law professor at the HSE, suspects that the reforms will conveniently allow to avoid re-electing the entire Cabinet in case the PM leaves, as the President could simply appoint a different candidate for replacement -- again, without the Parliament's confidence vote. Therefore, the new Constitution will allow Putin to worry less about potential unrest in the main legislative body of Russia, although history shows that it has already been tamed for the most part.

With regard to the supremacy of legal sources, the most thought-provoking change is concerned with the role of domestic laws in relation

to the international law. Given the recent turbulent history with the annexation of Crimea and following economic sanctions, as well as the infamous Yukos case and the MH17 plane crash investigation, it would be convenient for Russia to officially disregard the internationally-binding legislation and international courts' rulings to avoid repercussions. Furthermore, oftentimes the International Court of Human Rights becomes the last resort for Russian political prisoners to seek justice, so confirming the supremacy of Russian legislation would make it easier to jail protestors and critics of the regime. The amended Constitution would vest authority to define the legal relevance of international laws and treaties with respect to the Russian law on the Constitutional Court. Therefore, if the Court finds a foreign norm inconsistent with the Russian Constitution this would mean that Russia abstains. Together with the fact that there will be less Constitutional Court judges, yet they are still nominated by the President (and dismissed for vague reasons only by him), it would translate into excessive presidential influence on one of the key judicial bodies in the country.

Overall, after two months since Putin's announcement, it appears that what seemed at first an attempt to liberalize and improve the governmental apparatus is, in reality, no more than just a thoroughly-planned maneuver to prolong his time in the office. The ambiguous plan for amending the Constitution also showcases the general reluctance for following the rigid procedures (especially for organizing the public referendum) and complete disregard of fundamental constitutional principles formed in 1993. Just like the first Russian Constitution was written in a way for Yeltsin to have the means for holding onto power and not allowing the Communist Party to return, the newly-amended Constitution would also be primarily accommodating one single person's needs. Yet, this time around, this is not done for preventing the return of the Soviet regime but rather for reversing Russia into the USSR-inspired state.