



**From the Russian Constitution to  
Putin's Constitution:  
Legal and Political Implications of the 2020  
Constitutional Reform**

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## Introduction

Following a nationwide plebiscite, the Russian Constitution was amended on 1 July 2020. Between January and March 2020 there had been three modifications to the constitutional amendment bill. The first was a set of amendments concerned mostly with the separation of powers, while the second was on family law and relations, religion and patriotism. The final set of amendments contained the so-called reset of President Putin's presidential term, which allows him to remain in power until 2036. The various amendments concerned very different issues but were constructed as a single reform, giving voters a choice to support either all or none of them.

A plebiscite was not constitutionally necessary and its implementation involved extensive procedural violations. The result is likely to have a significant effect on Russian legislation and the life of ordinary Russians. Some of the amendments could presumably have a positive impact on the democratic process, such as the provision that prevents the same person from serving a third term as president or the amendments strengthening economic and cultural rights and the rights of people with disabilities. However, there are two major downsides to the updated Constitution: a transformation of the previous system of checks and balances in favour of the president, including the reset of Putin's presidential term; and the ideologization of the Russian Constitution. In addition to the constitutional reform, 2020 has also been characterized by extensive amendments to Russia's electoral law, which can only be understood in the context of the concurrent constitutional transformation. This brief describes the most significant amendments and analyses the consequences they are likely to have for future political developments.

Section 1 describes changes to the system of checks and balances resulting from the constitutional reform. Section 2 examines the ideological innovations in the new version of the Constitution and the laws that followed from these. Section 3 discusses the most recent changes to the electoral law and section 4 draws wider conclusions from this survey.

## Changes to the system of checks and balances

Before the plebiscite, various state representatives argued that the aim of the constitutional reform was to achieve a more balanced separation of powers by strengthening the role of parliament. At first glance, the amendments to the Constitution do to some extent re-distribute various competences of the president to the legislature and the government. For instance, the State Duma (the lower chamber of the Russian Parliament) now has the right to approve the candidate for prime minister and his/her deputies. This is merely a change of wording, however, as the pre-reform text also provided for the right of the Duma to "endorse" the future prime minister. If a candidate for prime minister is rejected, however, the Constitution now states only that the president *may* dissolve the State Duma. He/she is no longer *obliged* to do so. That said, whereas before the president was entitled to appoint all ministers, the prime minister now has the authority to nominate some ministers for approval by the State Duma.

At the same time, however, other amendments clearly strengthen the president's powers. First, the president now has the right to appoint all of the main "siloviki" (literally: "people of force"), meaning all the officials in charge of the military, police, security services and other



governmental bodies entitled to use force. Second, the president now has the power to dismiss the judges of the Constitutional Court and the Supreme Court – a prerogative that threatens their independence. The number of judges on the Constitutional Court has been reduced from 19 to 11, reducing turnover while encouraging homogeneity of opinion. Finally, the new Constitution awards the Constitutional Court the right to *judicial preview*, meaning the ability to examine bills before they are passed. Tamara Morshchakova, a former judge on the Constitutional Court, considers this measure to be a de facto extension of the presidential power of veto vis-à-vis acts of parliament. While the president cannot veto bills that have been adopted in parliament by a qualified majority, or supermajority, it will now be possible for him to forward a bill to the Constitutional Court, which can declare it unconstitutional. Finally, the Constitution now mentions the State Council, which had previously been a consultative body of the President, the work of which had been regulated by presidential decree. Many observers had seen the State Council as Putin's possible next career move after his current term of office ends in 2024. The reset of his presidential term introduced in the new Constitution, however, has made the purpose of the State Council less clear.

The reform of the system of checks and balances in the new Constitution subsequently resulted in several bills that amend ordinary legislation. As the new version of the Constitution has already been adopted, there is no doubt that these bills implementing the constitutional provisions in legislation will also be passed soon.

Whereas most of these bills simply incorporate constitutional provisions into ordinary laws, some of them elaborate on them further. According to the law professor, Elena Lukyanova, for example, a bill on the Constitutional Court seeks to reduce the number of complaints to the Court and to make the Court less accessible to individual litigants.

Contrary to the expectations of many pundits, the bill on the State Council does not cast more light on its role in Russia's new "post-constitutional" political reality, as it is more vague than the current presidential decree on this topic. Thus, it is not clear whether the Council is to make decisions by voting or by consensus. In addition, whereas the soon to be defunct presidential decree details the composition of the State Council, the president will now have the discretion to appoint anyone he pleases to be a member. Thus, the bill could be described as a form of framework legislation that leaves room for future political creativity.

## The ideological amendments

The Constitutional chapter on rights and freedoms is written in a liberal manner and is modelled on various international instruments for securing human rights. However, a number of ideological amendments were added to the Constitution by means of the July plebiscite, leading to obvious discrepancies between the original chapter on human rights, which cannot be amended, and new ideological provisions in other chapters.



### Ideological elements added to the Constitution:

- Protection of Russia's sovereignty and territorial integrity (art. 67 sec. 2.1),
- Definition of Russia as the successor of the Soviet Union (art. 67.1 sec. 1),
- Mentions of God and of a "historically developed state unity" (art. 67.1 sec. 2),
- Protection of "historical truth" and a ban on "denigrating the significance of the deeds of the people who defended their Fatherland" (art. 67.1 sec. 3),
- Children as a priority of the state policy and their patriotic upbringing (art. 67.1 sec. 4)
- The Russian language as the language of "state-bearing people" (art. 68 sec. 1)
- Culture as a unique heritage of Russia's multicultural people (art. 68 sec. 4)
- Support for cultural and linguistic pluralism as well of Russians abroad (art. 69 sec. 2 and 3)
- Marriage as a union between a man and a woman (art. 72 sec. 1.ж.1)
- Preservation of traditional family values (art. 114 sec. 1в)

These distinctly ideological amendments are seen by many as merely symbolic political measures that will not necessarily be implemented in full in ordinary legislation and that should not cause significant policy modifications "on the ground". However, two new sets of bills closely associated with the ideological provisions in the new Constitution were submitted to parliament shortly after the plebiscite in July. These bills concern the so-called ban on ceding territory, and family law. The choice of amendments that the Russian legislature decided to implement through ordinary legislation illustrates which issues are most important to the current political elite. The first two sets of bills submitted to parliament following the constitutional amendments and their implications for the life of ordinary Russians are discussed below.

#### **The ban on ceding territory**

The new version of the Constitution introduced a ban on actions and calls for actions "with the intention of alienating part of the territory of the Russian Federation". One of the first initiatives of parliament

following adoption of the new Constitution was to pass a number of bills on Russia's "territorial integrity" and the ceding of its territory. One bill, passed at the end of July 2020, extended the definition of extremist activities to comprise "alienation of part of the territory of the Russian Federation". Other bills propose administrative as well as criminal penalties for "public calls challenging the territorial integrity of the Russian Federation". They also propose criminal liability for "violations of territorial integrity" or concrete actions aimed at the ceding Russian territory. The legislation in the latter bills has not yet been passed.

There were no legal reasons for the introduction of a constitutional amendment to protect Russia's "territorial integrity". Since its first adoption in 1993, the Constitution has contained a clause stating that Russia's territorial integrity must be respected. This provision is also supported by sanctions in the criminal code. However, the amendments make the concept of ceding territory more explicit in Russian legislation.





The amendments on “territorial integrity” will further erode the rights and freedoms of ordinary Russians. Just as the ban on sharing “extremist materials” has led to a number of politically motivated prosecutions, the proposal could result, for instance, in civil and criminal prosecutions of activists, or of anyone else who criticizes recent foreign policy actions by the government on the Internet. First and foremost, a person can now be prosecuted for calling the events in Crimea in March 2014 an “annexation” instead of a voluntary reunification, thereby calling into question Russia’s “territorial integrity” as defined in its current Constitution and laws.

Even so, the risk of mass prosecutions may not be too great, in the light of previous experience with legal norms limiting freedom of expression. For example, convictions for “extremist” expression on the Internet are in the hundreds, even though the amount of politically undesirable content on the Internet is certainly much larger. It is impossible to control all forums on the Internet, and prosecutions for violations of such laws can be arbitrary and are sometimes instigated by a public servant who wants to advance her or his career rather than for objective reasons.

The effect of the proposed amendments is in fact a partial liberalization of Russia’s criminal law, since previous challenges to territorial integrity were punishable solely by the criminal code, whereas they will now be regarded as civil offences if first offences. The current provisions in the criminal code are rarely used.<sup>1</sup> It is therefore expected that new administrative sanctions will be a “tax” on freedom of expression, that is, they will constitute a method of financial

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<sup>1</sup> According to data from the human rights group OVD-Info, 17 people have been convicted of calls to cede territory since the penalty was introduced in 2013.

pressure on citizens who publicly express their opinions on political matters, and that the number of administrative cases will increase after adoption of the bills. The same practice has previously been used in relation to other politically motivated crimes, such as “participation in unlawful demonstrations”, and this approach is seen as more successful and effective than prison sentences, which are perceived as unreasonable by the general public and can lead to street protests.

Given the overall deterioration in law-making skills in the Russian Parliament, the most recent legislation is not devoid of casuistic provisions. Although the new bills prohibit calls or actions that undermine territorial integrity, this prohibition does not include a delimitation or demarcation of the border. Some observers have suggested that the purpose of this norm is to enable the transfer of border territories to China or the Kuril Islands to Japan if there is the political will to do so in the future.

Regardless of whether this is a valid point, it is possible to make a more general observation regarding the evolution of Russia’s legal system. There has been a gradual drift away from the principle that “everything that is not prohibited is allowed” to a general rule that “everything that is not allowed is prohibited”. Every decision, even if limited in scope, needs to have been earlier prescribed and allowed by specific legal provisions. If not, there is a risk that it will be declared unconstitutional in the future.

#### **Amendments to family law**

Another set of proposed amendments concerns Russia’s family law and legislation on parent-child relations. These proposals

<https://ovdinfo.org/articles/2020/07/08/statyuo-separatizme-hotyat-chastichno-dekriminalizovat-no-pri-etom-vvesti>.



rely on two recent modifications to the Constitution: a ban on same-sex marriage, resulting from the fact that the Constitution now defines marriage as a union between a man and a woman; and constitutional provisions to the effect that children are “the most important priority of state policy” and the government must act to preserve “traditional family values”. Adoption of these constitutional amendments means that the term “traditional values”, which for has for many years been a part of the discourse of the Russian political elite, has been incorporated into Russian legislation for the first time.

Given that the Russian family code already contained a definition of marriage as a union between a man and a woman before the amendments to the Constitution, the legal status of lesbians and gay men in Russia will be little affected by these constitutional amendments. Instead, following publication of the bills, it was the transgender community that found that its rights would be most fundamentally changed. The amendments make it impossible for people who have undergone sex reassignment therapy to change their legal gender from that which is specified on their birth certificates. This affects a wide range of transgender rights, such as the right to marry a person of the same sex as that specified on their birth certificate, and exposes them to additional discrimination.

In addition to transgender rights, the proposals also focus on the relationship between parents and children. On the positive side, lawmakers suggest that these amendments extend the private sphere in family matters. In certain cases, it is important that parents are able to enjoy a greater degree of freedom in the way they raise their children. For example, in 2019 a couple was harassed by the authorities for attending a political demonstration with their children. The authorities threatened to

take the children into care and – and although that did not happen in this case – the parents would have benefited from stronger protection of family rights.

On the other hand, it is suggested that family legislation be governed by the principle of “respect for the family and the moral values of the people of Russia”. Lawmakers have suggested the addition of a presumption of good faith on the part of parents in relation to their children, which only the courts will be able to question. This means that in future, only a court will be able to remove a child from the care of her/his parents, whereas today social services are authorized to do so if the circumstances are pressing without the intervention of a court. At the same time, however, the rights of the child are restricted compared to current legislation. For instance, a child will have the right to express an opinion in family matters only if he or she “is capable of formulating his/her views”, while under the current law every child has the right to do so.

According to the authors of the current proposals, there is a demand in Russian society for traditional family values to be preserved, which is why the legislation must be amended to put the focus more on the interests of the family as a whole instead of its individual members. Lawmakers also stress the political value of the traditional family as a means of maintaining political stability. The aim of the proposals is therefore to further limit the freedom of individuals to make decisions about their personal lives.

Curiously, the proposals on family law and rights do not appear to enjoy the universal approval of Russian decision makers. Although submitted in July 2020, bills to put them into effect have not yet been approved by parliament, which rarely procrastinates when the interests of the



state are at stake. A much less controversial bill on a similar topic written by a different group of lawmakers was also submitted to parliament in July. This bill contains no provisions on transgender rights and its only purpose is to transfer decision-making powers on taking children into the care of local authorities from social services to the courts. This indicates that the amendments to family law based on traditional values may have been dropped or at least postponed as a result of disagreements within the political elite and pressure from civil society, which has been actively campaigning against the amendments.

## Electoral legislation

Although electoral legislation was not part of the package of constitutional amendments, its adoption before and immediately after the constitutional plebiscite can shed some light on the state of political developments in Russia. Substantial amendments to the electoral law had already been introduced ahead of the constitutional plebiscite. In May 2020, the list of crimes that disqualifies citizens from participating as candidates in elections was extended to include around 50 further violations of the Criminal Code, including politically motivated crimes such as “extremism” or organizing “unlawful demonstrations”. This made it impossible for some opposition leaders to participate in future elections.

In addition, the lawmakers reduced the allowable limit on so-called faulty voters when collecting signatures for a candidacy from 10% to 5%. Previous experience has shown that signatures are assessed in a highly arbitrary fashion. This limitation is therefore likely to further restrict the political rights of independent candidates. On the other hand, lawmakers added the

option of collecting signatures on the Internet, which could in theory simplify the procedure and minimize the issue of faulty signatures. Before the September 2020 regional elections, this option had been used in only a small number of Russian regions, meaning that most regions experienced an overall reduction in the fairness of elections.

New methods of voting, such as Internet voting or voting by mail, were introduced or extended without the establishment of efficient control mechanisms. Golos,<sup>2</sup> a Russian NGO watchdog for voting rights, highlighted several procedural shortcomings in the September 2020 regional elections. For instance, amendments to the electoral law were adopted at very short notice and electoral campaign periods were arbitrarily shortened.

The July 2020 constitutional plebiscite was carried out according to a special law that had been hurriedly adopted in the spring. This law was not fully compliant with Russia’s ordinary electoral law. Most independent observers state that it is impossible to judge national sentiment on the new Constitution based on the procedure implemented.

Shortly after the plebiscite, a new law entered into force containing new regulations that, to a certain extent, parallel the above-mentioned law on the constitutional plebiscite. Elections can now take place over the course of three days. In some regions, the new procedures were employed for the September 2020 regional elections. A ban was also introduced on what was termed “observer tourism”, meaning that observers from Moscow, for example, are banned from monitoring elections in other Russian regions. This measure limits the opportunities for

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<sup>2</sup> Golos means “vote” or “voice” in Russian.





external observation. As a whole, this new electoral legislation will further undermine the legitimacy of future elections.

After Moscow's 2019 electoral crisis, when many opposition candidates were barred from participating in the city elections, NGOs working for fair elections published recommendations on how to improve electoral legislation in order to level the playing field between different political blocs. The most recent amendments to the electoral law, however, failed to make elections more transparent and predictable. On the contrary, Golos asserts that electoral legislation has led to a drift away from fair procedures and further complicated public scrutiny of elections. Experts are already labelling the current electoral system the worst in 25 years.

## Conclusions

Having studied law at university, Putin is known for his ambition to always act according to the letter of the law. When it is not possible to achieve a political goal by following the law, legislation must be changed. This is what happened with the Russian Constitution in July 2020. The amendments to the Constitution and parallel changes to the ordinary legislation, which either are being or have been implemented, are a "lifejacket" for the regime should a storm break in Russian politics.

The effect of the amendments is to shift the balance of power in favour of the president. Even though the amendments were presented as a measure to strengthen the power of parliament, they in fact formalize the president's extended powers. The role of the State Council is still unclear and its mandate remains undefined. The Constitutional Court suffered the greatest loss of power in the course of this constitutional reform. Although judges have

in previous years shown their loyalty to the current political regime, for instance by endorsing the annexation of Crimea and amendments to the Constitution, they are apparently still regarded by the current political elite as potentially unreliable. The weakening of the Court also has implications for the rights of ordinary Russians, given the fact that it is not uncommon for the court to side with individuals against the state, and to soften repressive legislation to some extent. Many of the proposed amendments – especially those with an ideological element – contradict basic provisions of the Constitution's unamendable chapters, and lack inner logic and coherence. This makes them hard to interpret and unpredictable for the ordinary person. Notwithstanding the legal consequences, an explicit ban on ceding territory and the provision that only a man and a woman may marry are superfluous, since such norms have been part of Russian legislation for some considerable time. These amendments and the others described above could pave the way for further prosecutions on political grounds and for the restriction of minority rights.

Instead of introducing changes aimed at improving living standards, which was the main thrust of the official advertising campaign ahead of the plebiscite, lawmakers began with symbolic measures, such as strengthening the role of traditional values and stressing the status of territories the Kremlin acknowledges as its own. We are currently observing a process of the ideologization of Russian legislation. Whereas the original basic law of 1993 formed the basis for the Constitution of the Russian Federation, following these amendments it can now be called "the Putin Constitution". Through the 2020 amendments, Putin has projected his views on state design, and those of his entourage, on the entire country. That said, the



creeping introduction of identity politics into Russian legislation is nothing new. The President of the Constitutional Court, Valery Zorkin, has been talking about identity in the Russian Constitution for a couple of years now.

Neither the constitutional amendments nor the implementing legislation that followed shortly afterwards were the subject of a broad dialogue in society. Neither civil society nor individual citizens had any real chance to influence the reform process. As a consequence, a narrow elite group conducted decision-making without taking any account of the opinions of broader social layers. In this regard, for instance, the statement in the commentary on the family law proposals that Russian society demands better protection for traditional family values reflects hardly any actual demand from Russian society.

Electoral law has been changed in order to limit the representation of political forces critical of the current regime. It is noteworthy that lawmakers felt a pressing need to introduce legislation to amend the electoral law both before and directly after the adoption of Putin's Constitution. Although the ruling elite claimed that the new Constitution was supported by more than half the population of Russia, sociological data shows that support for the current power-holders is declining. Without amendments to the electoral law, it was no longer certain that the ruling camp would continue to receive a majority of votes. To avoid defeat in future elections, the electoral rules had to be changed.

These amendments to the Constitution must be seen in the wider context of the political transformation that has begun in Russia. The political leadership is finding elections harder and harder to win as public opinion moves against them, and rigging the results is no longer enough. Following

the adoption of its new Constitution, Russia has entered a new legal reality, but this does not resolve the problem that the citizens of Russia may not want Putin to continue to rule after 2024. It is more likely that the amendments to the Constitution and how they were put into practice – involving electoral violations and during a pandemic – will add to the discontent in society rather than help the ruling elite consolidate its power.



# brief



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