

CONSTITUTIONAL REFORMS IN RUSSIA CAUSES AND CONSEQUENCES

MEHMET ÇAĞATAY GÜLER, ANNA SHAKIROVA

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SUMMARY

This analysis addresses the potential changes in the constitution of the Russian Federation and the reasons behind the acting government's resignation brought upon by President Putin on January 15, 2020.

The work aims to underline the causes behind the proposed constitutional amendments and the government dissolution as well as its consequences on the future governance of Russia.

The constitutional reforms in Russia proposed by Vladimir Putin brought about a degree of uncertainty both domestically and internationally. The changes cover a vast spectrum of subjects, varying from the formation of the Russian government to the inclusion of social support measures and addition of certain state organs into the constitution. However, the cornerstone of these suggested constitutional amendments is the decrease of the presidential power and the increase of the power of the Federal Assembly, the legislative body of the Russian Federation, over the formation of the government of Russia. This brings a significant shift in power sharing between the executive (presidential) and legislative branches over a formation of the executive branch.

The resignation of Prime Minister Dmitry Medvedev and the dissolution of his cabinet came along with the proposal for the constitutional amendments. The former is being seen as irrelevant to the latter by the public, both domestically and internationally. This analysis aims to fulfill the need for elucidation of both current developments.

The paper aims to restore the connection between these firestorm-like events by answering the questions that have risen as a result. Primarily, it will elaborate on the constitutional reforms, the peculiarities of their implementation, and their consequences. This will be followed by an analysis of the whys and wherefores behind the prime minister and the acting government's suspension. Finally, the paper will conclude by providing different scenarios for Putin's future and governance.

INTRODUCTION

The largely debated constitutional amendments propelled by Putin's annual appeal to the Federal Assembly (the legislative body that consists of two chambers: the lower chamber is the State Duma and the upper chamber is the Federation Council) cover a vast number of areas. The modifications aim to engrave the following aspects into the new constitution:¹ the securement of social support measures; the superiority of the constitution over international law; the introduction of new requirements to be a president; securing the role of the State Council; the verification of the constitutionality of laws; the introduction of new requirements for officials, deputies, and judges; the strengthening of the role of the Federal Assembly; and the empowerment of the Constitutional Court along with changing the number of its judges.

The shift in the distribution of power between the presidential and legislative branches of government is at the center of the proposed

constitutional changes. Currently, the executive branch, meaning the government of Russia, is formed by Articles 111 and 112 of the Constitution of the Russian Federation according to which the head of the state appoints the chairman of the government of Russia (prime minister) by getting consent solely from the State Duma.² Consecutively, the prime minister forms his cabinet and requires a signature from the president for the decrees on the appointments of the ministers.³ This approach to the government formation demonstrates the centralized nature of the system which paves the way to an accumulation of power in the hands of the president by almost entirely bypassing the parliamentary participation in the process. Putin acknowledged the need of amendments to Articles 111 and 112 by proposing a number of changes.

Despite the proposed redistribution of power, an overall transformation of the Russian system of governance from the current presidential to a presidential-parliamentary republic is out of question. Despite such a revisionist proposal, Putin bafflingly emphasized that Russia is a strong presidential republic and must remain as such. This statement whiffles the so-called presidential-parliamentary republic transformation away, since the head of state retains the rights to determine the priorities of the government and to remove the prime minister (or anyone in the cabinet) from the office in the case of a misdemeanor. Furthermore, the president of Russia preserves the direct control of the armed forces and the entire law enforcement system.⁴

1. "Какие изменения в Конституцию поддержаны в первом чтении", Государственная Дума Федерального Собрания Российской Федерации, 23 January 2020, <http://duma.gov.ru/news/47599/> (retrieved on January 24, 2020).

2. "Chapter 6. The Government of the Russian Federation", The Constitution of the Russian Federation, <http://www.constitution.ru/en/10003000-07.htm> (retrieved on January 24, 2020).

3. "Глава 6. Правительство Российской Федерации", Конституция Российской Федерации, <http://www.constitution.ru/10003000/10003000-8.htm> (retrieved on January 22, 2020).

4. "Послание Президента Федеральному Собранию", Президент России, January 15, 2020, <http://kremlin.ru/events/president/news/62582>, (retrieved on January 23, 2020).

PROPOSED CONSTITUTIONAL CHANGES

At the outset, as part of the changes, the president will be able to appoint the prime minister, the deputy prime minister, and the executive ministers only after the Duma's approval.⁵ Secondly, the president will not be able to refuse the appointment of the candidates proposed by the Duma; however, s/he will have the power to dismiss them. Generally speaking, Putin proposed to change the status quo by entrusting the State Duma and the Federal Council (two chambers of the Federation Assembly, which is a legislative organ) with extensive powers over the executive cabinet formation. Thirdly, despite the fact that the appointment of the leaders of the critical "power departments" such as the GRU, the FSB, and the SVR remains among the powers of the presidency, from now on, with the proposed changes, the president is to do so following consultations with the Federation Council.⁶ In this context, the power of the Federation Council will be slightly increased, which will result in the decrease of the presidential power over the legislative one.

Furthermore, the proposed reforms touch upon the Supreme and Constitutional Courts. In accordance with the current 1993 constitution, the Federation Council has the power to appoint candidates for the Constitutional Court and Supreme Court as well as the right to appoint and dismiss the chief prosecutor. However, in the case the proposed alterations are accepted, the Federation Council, along with maintaining its rights to appoint candidates to the Constitutional Court and Supreme Court, will also have the power to dismiss them.⁷

5. Александра Чунова, "Путин внес в Госдуму проект поправок в Конституцию", *Ведомости*, January 20, 2020.

6. Чунова, "Путин внес в Госдуму проект поправок в Конституцию".

7. Чунова, "Путин внес в Госдуму проект поправок в Конституцию".

As for the Constitutional Court's further empowerment, the court is to be granted a right to verify the constitutionality of bills adopted by the Federal Assembly on the request of the president - a power it did not have before.⁸ Moreover, the Constitutional Courts will be able to evaluate not only the laws but also other legal acts of state authorities at both federal and regional levels for their compliance with the country's constitution.⁹ Another minor proposal further shaping the trajectory of the Constitutional Court is a reduction in its judges from 19 to 11.¹⁰

Furthermore, there is a premise of bringing rigorous requirements for those who wish to hold positions of critical significance for national security and sovereignty that did not exist previously. These positions include the heads of the constituent entities of the federation, the Federation Council, deputies of the State Duma, the head of government, his/her deputies, federal ministers, and judges. As such, candidates for such posts cannot have foreign citizenship or a residence permit of a foreign state.¹¹ Similar requirements or even harsher ones are proposed to be applied to the candidates for the presidency. For instance, a candidate has to reside in the Russian Federation for at least 25 years (it is 10 years according to Article 81[2] of the current constitution), and must not have a foreign passport or a resident permit not only at the time of his/her participation in the elections but also preceding the date

8. "Какие изменения в Конституцию поддержаны в первом чтении", *Государственная Дума Федерального Собрания Российской Федерации*, 23 January 2020, <http://duma.gov.ru/news/47599/> (retrieved on January 24, 2020).

9. "Послание Президента Федеральному Собранию", *Президент России*.

10. "Какие изменения в Конституцию поддержаны в первом чтении", *Государственная Дума Федерального Собрания Российской Федерации*, 23 January 2020, <http://duma.gov.ru/news/47599/> (retrieved on January 27, 2020).

11. "Какие изменения в Конституцию поддержаны в первом чтении", *Государственная Дума*.

of elections.¹² Moreover, during his annual press conference on December 19, 2019, Putin mentioned his readiness to change Article 81(3) and remove the word “consecutive” from the clause which suggests that “one and the same person cannot hold the post of head of state for more than two consecutive terms.”¹³ In this case, the next president will not be able to run for a third and subsequent term, as Putin himself has already done.¹⁴

One of the most significant innovations introduced on January 15 was the consolidation of the role of the State Council in the renewed constitution of Russia. Originally, the State Council is an advisory board to the Russian president that assists him in coordinating the interaction between different state bodies.¹⁵ Putin wants the Russian State Council, which is not currently referred to in the constitution, to be included in the constitution. It is not clear yet with which authority and status the Russian State Council will be included in the constitution. In addition, within the State Council, an enhanced role of governors in the development and implementation of policies at the federal level is opened for consideration.

The emphasis put on the need for the recognition of the superiority of the Constitution of the Russian Federation over international law is among the other groundbreaking proposals made by Putin.¹⁶ According to the amend-

ments, the latter becomes irrelevant if it contradicts the country’s constitution.¹⁷ The 1993 constitution, which is in force, approaches this aspect differently: Article 15(4) recognizes the principles and norms of international law and treaties as an integral part of Russia’s legal system, and acknowledges the need to apply the rules established by the international treaty even if they differ from the ones of the constitution.¹⁸ Even though, this proposal had a resonant effect on the international community, Russia occasionally does not hesitate to act outside of the frameworks of certain international conventions. Therefore, this change is not expected to greatly affect Russia’s overall behavior in terms of foreign policy.

Overall, the amendments propose significant alterations in the distribution of power in terms of empowering the state’s legislative branch of government by granting it with extended influence over the cabinet formation, and the appointment and dismissal of judges of the Supreme and Constitutional Courts.

At a plenary meeting on January 23, the first reading of the amendments at the State Duma was concluded with 432 deputies unanimously voting for the bill. As a result, the draft was adopted after the reading proposed amendments to 22 articles under Chapters 3 and 8 designated in the 1993 constitution.¹⁹ Afterward, the Committee on State Building and Legislation chaired by Pavel Krasheninnikov offered to set a 15-day deadline for the further amendments to be made by the politi-

12. “Chapter 4. The President of the Russian Federation”, *Constitution of the Russian Federation*, <http://www.constitution.ru/en/10003000-05.htm> (retrieved on January 21, 2020).

13. “Глава 4. Президент Российской Федерации”, Конституция Российской Федерации, <http://www.constitution.ru/10003000/10003000-6.htm>, (retrieved on January 21, 2020).

14. Светлана Бочарова and Елена Мухаметшина, “Путин согласился изъять из Конституции оговорку, позволившую ему вернуться на пост президента”, *Ведомости*, December 19, 2019.

15. “State Council”, President of Russia, <http://en.kremlin.ru/structure/state-council> (retrieved on January 21, 2020).

16. “Послание Президента Федеральному Собранию”, *Президент России*.

17. Илья Ремесло, “Что важнее – суверенитет, права людей или международные обязательства”, *РИА Новости*, December 18, 2019.

18. “Глава 1. Основы Конституционного Строя”, *Сайт Конституции Российской Федерации*, <https://constitution.garant.ru/rf/chapter/36bf7176e3e8bfbe718035887e4efc/> (retrieved on January 21, 2020).

19. “Государственная Дума приняла в первом чтении предложенные Президентом изменения в Конституцию”, *Государственная Дума Федерального Собрания Российской Федерации*, January 23, 2020, <http://duma.gov.ru/news/47598/> (retrieved on January 28, 2020).

cal factions of the State Duma.²⁰ The second and third readings will most likely take place in March.²¹ These amendments need at least three-quarters of the total votes in both chambers of the Federal Assembly and at least two-thirds of the subjects (districts/regions) of the Russian Federation to become permanent.²² Being capable of adopting the relevant constitutional changes with the parliament's approval, Putin is determined to let Russian citizens have the final word. Therefore, a referendum on the entire package of the proposed amendments is expected.²³

THE ACTING GOVERNMENT'S STEP BACK: THE RESIGNATION OF PRIME MINISTER MEDVEDEV AND HIS GOVERNMENT

After the resignation of Dmitri Medvedev as prime minister, to the surprise of everyone, the former head of the Federal Tax System Mikhail Mishustin took over the cabinet. Prior to the appointment, his candidacy was taken before the State Duma. He received an overwhelming majority from the political parties right-wing United

Russia, far-right LDPR, and center-left Just Russia; in specific 383 of 450 favored the candidacy, 41 abstained, and there were no against votes.²⁴

The most intriguing part of the presented changes is the urgent dissolution of the current government, which is not a necessity for starting the process of a constitutional amendment. The process of constitutional amendments and a new government formation came simultaneously. While the former takes a long and thorny path the latter has to be formed within two weeks (by January 29) referring to Article 111(2) of the current constitution.²⁵

Relatedly, the “inexplicably urgent” new Cabinet formation took place on January 22, with ministers with the most prominent roles such as foreign affairs, defense, and economy, retaining their positions.²⁶ The offices of the ministers of culture, education, health, sports, and certain others left their posts.²⁷ Overall, Medvedev's resignation and his cabinet's dissolution caused an earthshaking effect among the public; however, it has not brought about any essential alterations to the state of affairs.

At this point, it might be thought that Putin gave up on his close friend with whom he started his political journey. This, though, would be a very naïve reading of the situation. Rather than being discarded, he is going to be promoted to a position that is more influential and less visible, namely that of the deputy chair of the Security Council. This post did not even exist before Putin, who has the right to create

20. “Как будут дальше рассматриваться поправки в Конституцию”, *Государственная Дума Федерального Собрания Российской Федерации*, 23 January 2020, <http://duma.gov.ru/news/47603/> (retrieved on January 28, 2020).

21. “Срок принятия поправок к проекту об изменениях Конституции продлен до 2 марта”, *Государственная Дума Федерального Собрания Российской Федерации*, February 17, 2020, <http://duma.gov.ru/news/47808/> (retrieved on February 18, 2020).

22. “Как будут дальше рассматриваться поправки в Конституцию”, *Государственная Дума Федерального Собрания Российской Федерации*, January 23, 2020, <http://duma.gov.ru/news/47603/> (retrieved on February 10, 2020).

23. “Putin Calls for Referendum on Constitutional Changes”, *Bangkok Post*, January 15, 2020.

24. “State Duma's Voting on Mikhail Mishustin as Russia's Prime Minister 2020”, *Statista*, <https://www.statista.com/statistics/1088749/russia-state-duma-voting-on-mishustin-as-prime-minister-2020/> (retrieved on January 22, 2020).

25. “Глава 6. Правительство Российской Федерации”, *Конституция Российской Федерации*, <http://www.constitution.ru/10003000/10003000-8.htm> (retrieved on January 22, 2020).

26. “Новое правительство”, *Interfax*, January 15, 2020.

27. Andrew Roth, “Top Russian Ministers Keep Posts as Putin Appoints New Cabinet”, *The Guardian*, January 21, 2020.

such a post as president, declared it. The post's duties are supposed to be clarified under law – this is also among Putin's plans. As a result, on January 23, Medvedev was appointed to a position which is higher than the current post of the Secretary of the Security Council Nikolai Patrushev.²⁸ It is considered as the vice presidency. Nevertheless, it still does not explain the timing of the amendments.

Two interrelated reasons underlie the so-called urgent decision: the first is strengthening their hands against the opposition criticizing Medvedev and his allegedly unlawful actions. Dmitry Medvedev has long been targeted by the prominent opposition figures because of his actions and non-actions. There are also several lines of criticism that have gone viral worldwide that weaken the hands of Putin and the ruling party. Hence his removal from the office would relieve the public and increase the credibility of Putin. The second reason is convincing Russian citizens and the international community that Putin himself is eager to bring more democratic reforms even if it requires discharging his friend. Similar to the first reason, the resignation reinforces Putin's credibility and shows that he is going to keep his promises at any cost -including the dismissal of his friend and prime minister if necessary.

Conversely, it is also believed that it was a diverting moment that shifted public attention from the constitutional amendments to the government's resignation. Yet, the decision to step back did not have a diverting effect. Instead it put the spotlight on the constitutional reforms. Similarly, Medvedev's resignation rather than being a diversion or throwing in the towel was an eye-catching move in favor of the amendments and self-promotion.

28. "Госдума приняла закон о введении в Совбезе должности зампреда", *РИА Новости*, January 23, 2020.

DIFFERENT SCENARIOS, SIMILAR CONSEQUENCES

Since the very first day of the declaration of constitutional changes, most of the internal and international media channels have focused on the impact of these changes on the future of both Russia and thereby Vladimir Putin. It is often argued that these amendments are designed to safeguard the future of the country. The power of the legislation vis-à-vis the executive branch is enhanced in order to check and balance the plenary power of the president. Moreover, it is considered that the judiciary will become more influential and productive. Furthermore, multiple restrictions on the terms of being elected president are accepted as a guarantee of good governance. In a nutshell, people believe that Putin will step back in 2024 and hence he wants to make sure that the next president will serve Russia's national interest and thwart any chances of someone who might act against it. On the other hand, behind the proposal of the constitutional amendments, there seem to be different scenarios which all end up at the same conclusion: the continuation of Putin's power.

Behind the proposal of the constitutional amendments, there seem to be different scenarios which all end up at the same conclusion: the continuation of Putin's power.

After serving eight years as president and being elected via two consecutive elections in 2000 and 2004, Putin took over the post of prime minister in 2008 and served until 2012 -the constitution does not allow for more than two consecutive terms. Later, he was elected president again by receiving 63% of the votes in the 2012 elections. In the 2018 elections, Putin

secured 76% of the votes. The Russian leader has been a president for a total of four terms in his political life. His term will expire in 2024 and he will only be able to run again after waiting a term in the current system. However, if the proposed constitutional amendments enter into force and the word “consecutive” is removed from the aforementioned relative article, then he will not be able to run ever again. Hence, the declaration of the constitutional changes and the resignation of the government started a heated debate about the future of Putin and the governance of Russia after the elections in 2024. In this context, it is expected that Putin will continue to rule the country, yet the question here is how this can be actualized. There seem to be three scenarios at first sight: as supra-institutional president of the State Council, a strong prime minister, or an eternal president of the Security Council.

There seem to be three scenarios at first sight: as supra-institutional president of the State Council, a strong prime minister, or an eternal president of the Security Council.

To begin with, in the current system, the State Council serves as an advisory body and provides assistance to the presidency in terms of facilitating coordination between the different state bodies of power. It is composed of a chairman and members. The president of Russia is also the chairman of the State Council. The State Council includes speakers, special envoys, heads of the highest executive agencies, political party leaders, and senior officials. In the existing system, the State Council does not have any authority to enforce any action over the state bodies. Besides, there is no legal foundation that allows it to determine domestic or foreign policy. Hence, the State Council needs to be

transformed and placed in the constitution -if not above all institutions. With the help of these amendments, it will have a legal, constitutionally designated authority. Besides, its effectiveness in policymaking process will be enhanced further. Its rights and privileges will be specified in the constitution. Thus, after the completion of its legal design, it is highly likely that Putin will take on a leading role within this institution.

The second scenario is the empowerment of the prime minister’s role in the country. Russia is a strong presidential republic. Considering the decision-making process in the formulation of foreign policy and security-related matters, the prime minister has a rather passive role. The parliament mostly remains in the background. Within the foreign policy context, it has almost zero roles. Since the current proposed amendments to the parliament are formed to change the system, they started an argument about whether Putin would like to continue as a prime minister or not. After the constitutional reforms, the parliament and prime minister would possess relatively more prominent powers. As mentioned above, the power of the president will be reduced in certain areas. Therefore, this possibility comes to the fore. Nevertheless, the post of prime ministry will still not be powerful enough since the president keeps most of its crucial rights including the authority to discharge the prime minister. Hence, this scenario looks less favorable if Putin wishes to stay in charge of the state affairs.

Thirdly, apart from these positions, just as in the model applied in Kazakhstan, it is also possible for Putin to continue to stay in power by strengthening the Security Council, which is regarded as one of the important institutions in Russia. Last year, the founder and first president of Kazakhstan Nursultan Nazarbayev handed over his duty to Kasım Cömert Tokayev, even though there were no restrictions to him con-

tinuing in office indefinitely. Some of the powers and responsibilities of the president were transferred to the parliament and the government. Additionally, the parliament increased its authority over the government. On the other hand, Nazarbayev has become the lifelong president of the Security Council which is a very active institution in national security and foreign policy issues. He also decided to continue his duties as a member of the Constitutional Council and as chair of the ruling party Nur Otan. In this picture Nazarbayev, while promoting a more democratic system and enforcing the power of the parliament, has also secured his place as decision-maker. Overall, Vladimir Putin might be undertaking the same reforms in Russia with the aim to remain in power through similar amendments to the system.

CONCLUSION

After all the constitutional amendments, the judicial and legislative branches will be relatively empowered in relation to the executive power in Russia. In other words, the Constitutional and Supreme Courts, the upper and lower wings of the Russian parliament, and the office of the Prime Ministry are getting stronger. Thus, the position of the parliament is expected to be reinforced. In brief, along with these alterations the principle of separation of powers is being put under the spotlight. Moreover, these

changes bring more restrictions and increase the criteria to become president as well as limit the term constraints of the presidency.

Considering the four years ahead of Putin's presidency, the declaration of the constitutional amendments and related resignations seem untimely. People are preoccupied trying to figure out the reasons behind the timing and the changes. Even if it seems that the parliament might be getting stronger, as Putin said, Russia continues to have a strong presidential system. Despite the restriction on the prolongation of his presidency and other significant changes, the probability of Putin stepping down from the higher circles of decision-making seems unlikely. Although some argue otherwise, there are different scenarios that ensure the continuation of his power.

To conclude, Putin aims to place his leadership over the institutions and to distribute power evenly among the legislative and executive branches. To this end, he has set his sight on creating his own governing model by changing the political system and the constitution. In this way, Putin aims to position himself at the top of the political system by weakening the president's current authority and empowering the rest of the governing bodies. Although all the details are not yet clear, this can be achieved by Putin ascending to one of the three aforementioned positions: a supra-institutional president of the State Council, a powerful prime minister, or an eternal president of the Security Council.

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