

Stability as Property of Constitution: Russian Experience

LAZAREVA, Marina

Kutafin Moscow State Law University
North-West Institute (affiliate)
Department of constitutional and municipal law
Vologda, Russia
lazareva-mn@yandex.ru

Abstract

Stability is one of the basic juridical properties of constitution. The main way to ensure stability of a constitution is a special complicated procedure for changing it. The Russian constitution was approved on December 12, 1993 at a referendum. So, like most of the constitutions in Central and Eastern Europe it is just over twenty years old. The Russian constitution can be called especially rigid and mixed with regard to the methods of its changes. To this date there have been thirty three drafts of amendments to the Constitution. Only three bills have been approved by the Parliament and have passed the ratification in the regions.

Keywords: amendments to constitution, constitution, Russia

JEL classification: K40

1. INTRODUCTION

Last year, in 2013 we celebrated the 20th anniversary of our Constitution.¹ That was a chance to assess quality of this document. Scientific and political circles had a very hot discussion whether to change the Constitution or not. Supporters of renewal of the Constitution claim that the Constitution must be dynamical and meet the changing public relations. Besides, they pay attention to drawbacks of the 1993 Constitution content (especially, to a strong role of the Russian President). Opponents to the changes say about a necessity of stability and respect to the Constitution, setting an example of the USA, because twenty years is a small period for a constitution.² And potential of the 1993 Constitution is yet to be fully achieved!

If we look at the experience of the largest countries of the continental Europe,

¹ Constitution of the Russian Federation (adopted at national voting on December 12, 1993) (considering the amendments introduced by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation of December 30, 2008 no. 6-FKZ, December 30, 2008 no. 7-FKZ, February 5, 2014 no. 2-FKZ), available at: <http://constitution.garant.ru/> [cit. 2014-06-25].

² Torkunov, Anatoly: *20 лет для Конституции не срок* [20 years for the Constitution are not a term], 2013, available at: <http://www.rg.ru/2013/09/18/konstituciya.html> [cit. 2014-06-25].

which anyway are close to our country, recently they have been changing their constitutions rather actively. In 2008 at the time of Nicolas Sarkozy there were amendments and additions made to 64 articles of the French Constitution. In 2006 Federal Republic of Germany considerably updated the articles on distribution of powers between the federation and its members. The best example is Hungary that passed a new Constitution three years ago.

2. PROCEDURE FOR AMENDING THE CONSTITUTION

The 1993 Russian constitution can be called especially rigid and mixed with regard to the methods of its changes. It means that different chapters are changed by two different and rather complicated procedures. The Chapter 9 regulates them. Proposals on amendments to the Constitution may be submitted by the President of the Russian Federation, the Federation Council, the State Duma, the Government, the legislative (representative) bodies of the subjects of the Russian Federation, and also by groups of the deputies of the State Duma.

To change the three protected Chapters (Chapter 1 on the main principles, Chapter 2 on human rights and Chapter 9 itself on constitutional amendments) it requires not only to get a consent of the majority of deputies of the both chambers of the Parliament, but also to convene a Constitutional Assembly, which drafts a new constitution and can pass it by itself or submit it to the popular vote. So far there is no law about such a Constitutional Assembly, all know why: this trick allows to ensure stability of the protected chapters of the Constitution (though there are a few drafts in academic circles).

To change the rest of the Constitution chapters (from the 3rd to the 8th which are devoted to the federative structure, the President, the Parliament, the government, courts, local self-government) there is another procedure, also rather complicated. Amendments are approved again by the both chambers of the Parliament, but after that they must be ratified by two thirds of the Russian Federation subjects. Thus, to make a change or an addition to any chapter of the Constitution it is required to get consent of a wide circle of people, this also facilitates stability of the Constitution.

3. PRACTICE OF AMENDING THE CONSTITUTION

3.1. Initiators of the amendments

If we have a look at the practice of amendments to the Russian constitution we can see the following specific features. To this date there have been thirty three drafts of amendments to the Constitution.

If we look at initiators of the constitutional amendments we will see that most of the drafts (15 – almost a half) were submitted by the legislative bodies of the Russian subjects (we will refer to them as legislative assemblies, though they also have other names; a federative structure of Russia is very complex; the largest

territory in the world, multinational composition; this is a separate subject for research and an important factor of influence on the entire life of the country). One third of these suggestions (5 out of 15) were made by Sakhalin region, 2 – by Ivanov region, 1 – by Tatarstan Republic, Moscow region, Altai region, Tyumen region, Volgograd region, Smolensk region, Tambov region, Astrakhan region each (in total, 10 subjects out of 85 took part in this process).

A bit fewer amendment drafts to the Constitution were proposed by the deputies of the State Duma (12, which is rather logical, because they have to deal with legislation on a day-to-day basis). And 3 suggestions were received from the Federation Council and the President of Russia each. One can take a guess whose suggestions after all were accepted.

3.2. Content of the amendments

As for the content of the drafts it can be said that almost all of them (with a rare exception) concern state authorities and do not affect basics of the social order or human rights. It can be explained by an extremely complicated procedure for changing and adding to these chapters of the Constitution. Moreover, rights and freedoms enshrined in the Constitution to the full extent comply with international standards. But on the other hand, it can be explained by inattentiveness of federal and regional deputies to the society and human rights, unlike struggle for power (pulling-over of power between the Parliament, the President and their supporting parties).

In total 28 articles of the Constitution were suggested to be changed (out of 137). One can distinguish three characteristic groups of suggestions about changes.

3.2.1. Form of state rule

The form of state rule itself is not indicated in the Russian Constitution (except that it is a republic, of course). Review of constitutional provisions shows that the Russian Federation is a mixed republic with a dominating President (some scientists call it the presidential or even super-presidential, but this is not correct). The President is elected by the people. The government is formed by the President together with the Parliament and is accountable to them both. The Parliament can be dissolved.

Initiators of the amendments suggest to weaken the role of the President and consequently to strengthen the role of the Parliament primarily with regard to the government and control over its activity. For example, authors of three drafts suggested to provide to the State Duma the right to give consent not only to a candidacy of the prime-minister (as it does now), but also of a number of the main ministers (internal affairs, foreign affairs, defense, etc.), as well as to introduce an individual non-confidence vote to a certain minister (now it is impossible; today we have only a joint non-confidence vote when the President fully decides upon its outcome). Besides that it was suggested to include into the Constitution a provision about a right of the chambers to carry out parliamentary investigations (not so long ago there was a federal law passed on this issue, but the Constitution does not give such a right to the chambers). In general, the idea was to strengthen control of the Parliament over the government.

3.2.2. Public Prosecutor's Office position

Traditionally since the Soviet time the Russian Prosecutor's Office has been a very strong supervising authority with wide powers. Besides the functions of supporting the prosecution in courts and supervising prisons, it has kept a function which is absent in the western countries and which was abandoned by most of the Eastern European countries when they moved to democracy. This is a function of general supervision over statutory compliance of all public bodies. It was inherent to the Soviet totalitarian system.

In the Russian constitution only one article about the Prosecutor's Office can be found in Chapter 7 «Judicial power». One can agree that this is not a very fortunate statutory resolution. It is suggested to have the Prosecutor's Office in the title of this chapter, and also to provide to the Prosecutor General the right of legislative initiative and the right to apply to the Constitutional Court.

3.2.3. Territorial issue

As we said before it is very critical for Russia (as for any other state). It has significance not only due to the recent Ukrainian events and joining of Crimea and Sevastopol' to Russia, but first of all due to the Chechen wars and existing tension in the Northern Caucasian region. It was suggested (three times! in 1995, 1998) to provide to the upper chamber of the Parliament (the Federation Council) the right to give consent to the President to use of armed forces not only outside the country (as stated by the Constitution), but also on the territory of the Russian Federation to ensure sovereignty and national integrity of the Russian Federation, protection of rights and freedoms of humans and citizens. Hence the inviolability of the territory of Russia was underlined.

As for human rights, twice (!) it was suggested to change only Article 43 of the Constitution about the right for education.

3.3. Consideration of the amendments

As for the time of the suggested drafts of the Constitution amendments, we can note that the most number of the initiatives had been submitted until 2000 (when V. Putin was elected the President). The most number of initiatives (17) were finally declined in 2013, this was done obviously to the 10th anniversary of the Constitution. The most common way to complete the constitutional process is to decline the draft bill in the State Duma or to return it to its author due to non-compliance with requirements of the Constitution and the State Duma Regulations.

The longest time of consideration (15 years) was devoted to an amendment about strengthening of parliamentary control over the government. The shortest and the most successful consideration was two months. And the happy author of these amendments was the President of the Russian Federation.

4. ADOPTED AMENDMENTS TO THE CONSTITUTION

In November 2008 the President D. Medvedev unexpectedly for many people

submitted two draft bills about amendments to the Constitution, and the Parliament approved them already on December 30 the same year. The first amendment increased the terms of office of the Parliament and the President: the State Duma from 4 to 5 years; the President from 4 to 6 years. Thus, if previously two presidential terms in a row totaled 8 years, now it is 12 years (this is a lot; there were suggestions to make it 7 years!).³

The second amendment insignificantly strengthened controlling powers of the State Duma: annual reports of the government to the State Duma about the performance results were introduced, including on issues raised by the Duma itself. We should note that it is not enough. For example, after hearing of the report the State Duma could hold debates and raise a question about approval or disapproval of the government policy (in fact, about confidence or non-confidence to the government).⁴

The last, third amendment to the Russian constitution was also passed very quickly and unexpectedly upon an initiative of the President (V. Putin) in February of this year. It caused turbulent debates in a legal community, especially among the civilists. It abolished the Supreme Arbitration Court and subordinated a system of the arbitration courts to the Supreme Court.⁵

To make the picture complete, it must be said that there is one more category of making amendments to the Constitution – resulting from emergence of a new subject of Russia or a change of a name of the subject. Upon 1995 Ruling of the Constitutional court new names into the Constitution text (into Article 65, which lists all the subjects of the Russian Federation) are introduced by the President by his decree (it is also a rather arguable decision).⁶ So, strictly speaking the latest amendment to the Russian constitution was inclusion of words about Crimea and Sevastopol⁷ as new constituent entities in the composition of the Russian Federation into Article 65.⁷

³ Law of the Russian Federation on amendment to the Constitution of the Russian Federation no. 6-FKZ of December 30, 2008 «On changes of the terms of office of the President of the Russian Federation and the State Duma». *Collection of Laws of the Russian Federation*, no. 1, art. 1 (2009).

⁴ Law of the Russian Federation on amendment to the Constitution of the Russian Federation no. 7-FKZ of December 30, 2008 «On controlling powers of the State Duma in regard to the Government of the Russian Federation». *Collection of Laws of the Russian Federation*, no. 1, art. 2 (2009).

⁵ Law of the Russian Federation on amendment to the Constitution of the Russian Federation no. 2-FKZ of February 5, 2014 «On the Supreme Court of the Russian Federation and the Public Prosecutor's Office of the Russian Federation». *Collection of Laws of the Russian Federation*, no. 6, art. 548 (2014).

⁶ Ruling of the Constitutional Court of the Russian Federation no. 15-P of November 28, 1995 «On interpretation of part 2 of Article 137 of the Constitution of the Russian Federation». *Collection of Laws of the Russian Federation*, no. 49, art. 4868 (1995).

⁷ Federal Constitutional Law no. 6-FKZ of March 21, 2014 «On admission of the Republic of Crimea into the Russian Federation and creation of new constituent entities in the composition of the Russian Federation – the Republic of Crimea and the city of federal

5. CONSTITUTIONAL COURT

Speaking about the Constitutional court of the Russian Federation and stability and dynamism of constitution (looking back on the beginning of this article), it must be mentioned that in a sense the Court promotes both thanks to its rulings, especially in respect of the Constitution interpretation. In total, the Court interpreted the Constitution eleven times (from 1995 to 2000 – look at that year again!). Interpretation mostly touched upon the articles on the highest state authorities, federative structure, changes to the Constitution and not basics of the state rule, human rights and freedoms.

6. CONCLUSION

What conclusion can we draw with regard to this essay? Twenty years are a very short period to change a constitution. As a first step it is necessary that all wonderful ideas embodied in the Russian Constitution on numerous human rights, democratic principles, etc. shall be translated into life and become a part of a daily life of every person or a state authority⁸.

LIST OF REFERENCES

Books, chapters in a book, articles

- [1] KOZLOVA, E. I. – KUTAFIN, O. E.: *Конституционное право России* [Constitutional law of Russia], 2010, Prospect, Moscow.

Electronic sources

- [1] TORKUNOV, ANATOLY: 20 лет для Конституции не срок [20 years for the Constitution are not a term], 2013, available at: <http://www.rg.ru/2013/09/18/konstituciya.html> [cit. 2014-06-25].

Legal and other sources

- [1] Constitution of the Russian Federation (adopted at national voting on December 12, 1993) (considering the amendments introduced by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation of December 30, 2008 no. 6-FKZ, December 30, 2008 no. 7-FKZ, February 5, 2014 no. 2-FKZ), available at: <http://constitution.garant.ru/> [cit. 2014-06-25].
- [2] Law of the Russian Federation on amendment to the Constitution of the Russian Federation no. 6-FKZ of December 30, 2008 «On changes of the terms of office of the President of the Russian Federation and the State Duma». Collection of Laws of the Russian Federation, no. 1, art. 1 (2009).

significance Sevastopol'». *Collection of Laws of the Russian Federation*, no. 12, art. 1201 (2014).

⁸ KOZLOVA, E. I. – KUTAFIN, O. E.: *Конституционное право России* [Constitutional law of Russia], 2010, Prospect, Moscow, 76.

- [3] Law of the Russian Federation on amendment to the Constitution of the Russian Federation no. 7-FKZ of December 30, 2008 «On controlling powers of the State Duma in regard to the Government of the Russian Federation». Collection of Laws of the Russian Federation, no. 1, art. 2 (2009).
- [4] Law of the Russian Federation on amendment to the Constitution of the Russian Federation no. 2-FKZ of February 5, 2014 «On the Supreme Court of the Russian Federation and the Public Prosecutor’s Office of the Russian Federation». Collection of Laws of the Russian Federation, no. 6, art. 548 (2014).
- [5] Federal Constitutional Law no. 6-FKZ of March 21, 2014 «On admission of the Republic of Crimea into the Russian Federation and creation of new constituent entities in the composition of the Russian Federation – the Republic of Crimea and the city of federal significance Sevastopol’». Collection of Laws of the Russian Federation, no. 12, art. 1201 (2014).
- [6] Ruling of the Constitutional Court of the Russian Federation no. 15-P of November 28, 1995 «On interpretation of part 2 of Article 137 of the Constitution of the Russian Federation». Collection of Laws of the Russian Federation, no. 49, art. 4868 (1995).