

# opción

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# **Modern theoretical and legal amendments to the constitution of the Russian Federation**

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## **Abstract**

The study aims to investigate modern theoretical and legal amendments to the constitution of the Russian Federation via the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. As a result, the competence of the State Council, in particular the right to determine the main directions of domestic and foreign policy, comes into direct conflict with the prerogatives of the President. In conclusion, Formal

and theoretical contradictions of the Constitution of the Russian Federation pose a threat to the territorial unity, independence, social, political and legal stability of the state.

**Keywords:** Human rights, Freedoms, Russian federation.

## Enmiendas teóricas y legales modernas a la constitución de la Federación Rusa

### Resumen

El estudio tiene como objetivo investigar las enmiendas teóricas y legales modernas a la constitución de la Federación de Rusia a través del método dialéctico de cognición de fenómenos y conceptos sociales y legales en su desarrollo e interdependencia. Como resultado, la competencia del Consejo de Estado, en particular el derecho a determinar las principales direcciones de la política interna y externa, entra en conflicto directo con las prerrogativas del Presidente. En conclusión, las contradicciones formales y teóricas de la Constitución de la Federación de Rusia representan una amenaza para la unidad territorial, la independencia, la estabilidad social, política y legal del estado.

**Palabras clave:** Derechos humanos, Libertades, Federación de Rusia.

### 1. INTRODUCTION

The Russian President's message to the Federal Assembly dated January 15, 2020 States that Russia has gone through large-scale, difficult transformations and has established itself as a democratic society on a free and independent path. However, from the point of view of the most important task of ensuring the implementation of human rights and freedoms, we have not yet reached the level we

need. To move forward and develop dynamically, we must expand the space of freedom, develop the functions of the social state, and strengthen the structures of civil society. Creating conditions for a significant increase in real incomes of Russians is the most important task of the government and the Central Bank of Russia (CBR), Vladimir Putin said in a message to the Federal Assembly and listed the steps necessary for this.

In the Constitution of the Russian Federation, our country is declared a democratic, Federal, legal, social state with a Republican form of government (articles 1, 7 of the Constitution). At the same time, it must be recognized that many problems lie in the way of its formation, which greatly complicates and slow down this process. Successful formation of a legal society is impossible without creating real conditions for this process. These conditions include: achieving a high level of political and legal awareness of people; humanization of human relations; creation and development of alternative public structures (cultural, scientific, religious, etc.) to the state to expand the sphere of direct democracy, the introduction of dialogue procedures to develop agreed solutions, restriction of state intervention in the economy, legal reform to create a single, internally consistent legislation, and several others.

Vladimir Putin's message to the Federal Assembly in 2020 was special. For the first time, the President announced it at the beginning of the year, making it clear that the work should start faster. In the first part of the speech, he elaborated on new measures of social support, in

the second-on the reform of the Constitution. Only one sentence was said about foreign policy. It became clear that it is now more important for the country to focus on internal development (PUSHKAREV, 2009).

The most important part of the President's address was proposals to change certain provisions of the Russian Constitution. But before announcing them, Vladimir Putin made an important reservation: there is no need to adopt a new Constitution today, although such proposals were made. The potential of the 1993 Constitution is far from exhausted, and the fundamental foundations of the constitutional system, human rights, and freedoms, I hope, will remain a solid value base for Russian society for many decades to come, the head of state said. But still, in his opinion, time requires adjustment of the Basic Law. This is what Vladimir Putin proposed to do:

\* Guarantee the priority of the Russian Constitution in our legal space. The requirements of international legislation and treaties, decisions of international bodies can be applied on the territory of the Russian Federation only to the extent that they do not entail restrictions on human and civil rights and freedoms, and do not contradict the Constitution;

\* Stipulate in the Constitution that members of the government, heads of other Federal bodies, governors, deputies, and senators, as well as judges cannot have foreign citizenship, residence

permit or other documents that allows permanent residence in the territory of another state. For candidates for the post of President of the Russian Federation, fix the requirement of permanent residence in the territory of Russia for at least 25 years, as well as the absence of foreign citizenship or residence permit in another state, not only at the time of participation in the elections but also earlier. Remove the consecutive clause in the article limiting the President's tenure to two terms;

\* Consolidate the principles of a unified system of public power, expand the powers and real opportunities of local self-government;

\* To fix in the Constitution the norm already existing in the law that the minimum wage in the Russian Federation cannot be lower than the subsistence level of the working-age population, as well as the norm on regular indexation of pensions;

\* Dramatically increase the role of governors in decision-making at the Federal level. To fix the corresponding status and role of the State Council in the Constitution;

\* Entrust the state Duma with not just approval, but approval of the candidacy of the Prime Minister of the Russian Federation, and then, on his proposal, all Deputy Prime Ministers and Ministers. The President will not have the right to reject candidates approved by the Parliament, but he will have the

right to remove the Prime Minister, his deputies and Federal Ministers from office in the event of improper performance of duties or loss of confidence.

\* The President may appoint the heads of all law enforcement agencies and regional prosecutors following consultations with the Federation Council;

\* To provide in the Constitution the powers of the Federation Council, on the proposal of the President, to dismiss judges of the constitutional and Supreme courts if they commit offenses that discredit honor and dignity, as well as in other cases provided for by law;

\* To enable the constitutional court to check the constitutionality of draft laws adopted by the Parliament before they are signed by the head of state at the request of the President.

## **2. METHODOLOGY**

The methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative-legal,

statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

### **3. RESULTS**

The proposed innovations relate to significant changes in the political system and the activities of all branches of government. The President proposed to hold a vote of the country's citizens on the entire package of proposed amendments, and only make a final decision based on its results. Vladimir Putin is well aware that Russia needs to move away from the emergency management model. The need for such governance, and, as a result, for a super-presidential Republic that gives the President enormous personal power, arose as a result of the events of the 1990s. It was necessary to lead the country out of a situation of chaos, when there was a threat of the collapse of the country, the elimination of the Russian state (KOMSOMOLSKAYA, 2008).

Indeed, the Constitution of the Russian Federation of 1993 no longer fully meets these requirements. The Constitution of the Russian Federation does not disclose the concept of a legal system. The legal system includes the main components of the national legal culture: legislation, legal practice and legal ideology. What questions, in



particular, would you like to pay attention to? The content of, for example, article 7 of the Constitution of the Russian Federation, which defines Russia as a social state, is not consistent with the lack of the right to work. The Constitution of the Russian Federation in article 16 establishes that the rules of law enshrined in articles 17-137 must not contradict the provisions of articles 1-16 that define the foundations of the constitutional system of Russia.

There is no oversight of the constitutionality of the provisions of the Constitution itself. Chapter 1 of the Constitution of the Russian Federation turns into a Declaration, the rules of which can be interpreted exactly the opposite, making changes and additions to other chapters, through the adoption of Federal constitutional laws (FCZ). The discrepancy is visible between item 'a' of article 71 of the Constitution of the Russian Federation and Article 136. It is unclear the content of the terms General issues and General principles (paragraphs e, I, h of part 1 of article 72 of the Constitution of the Russian Federation), within which laws of the Russian Federation and its subjects can be adopted. There is no obligation of the state to ensure the safety of its citizens. There is a reason to point out that the preservation of the gene pool of the Russian people is the responsibility of the state (SINYUKOV, 1991). There is no mention of the Russian people, who make up about 82.3% of the country's population.

The reference to the multinational nature of the Russian state is erroneous and unscientific (BONDAR, 2014). Russian maybe not only

the great Russians, Belorus, Malorus (Ukrainian) Cossack, but also anyone who speaks Russian, having roots, living in accordance with the traditions of Russian culture (SINYUKOV & GRIGORIEV, 1995).

The ideological basis of political and legal consciousness is the fundamental law of the state in the Constitution, which, according to thought MAZUR (2004), is a kind of mechanism of formation of the constitutional legal awareness of personality, which is politico-legal. Constitutional legislation has a value-ideological impact on society, fixing the ideals of the country's political organization. The reflection of constitutionally significant aspects of material and spiritual reality in a person's mind is based on the recognition of constitutional values by a person.

When the Constitution of the Russian Federation does not reflect the objective realities of the time, it is impossible to ensure its implementation, even spending significant law enforcement and material resources, because the people will not perceive such a right as their being. Legal norms lose their binding, regulatory and protective capacity if they do not find the appropriate legal expression. The working group on changing the Russian Constitution believes that at least 17 articles of the basic law should be amended. It is required to follow the rules of legislative technique when drafting each law. Preliminary voting on the amendments will take place in Russia on April 12, 2020. In particular, experts suggest to adjust:

- Articles 15 and 79 (priority of the Constitution of the Russian Federation over international law is fixed);

- Article 75 (the minimum wage cannot be lower than the subsistence minimum, pensions must be indexed);
- Art. 78, 97, 110, 119, 129 (the basic requirements for persons holding key public positions, members of Parliament and judges are fixed);
- Article 81 (stricter requirements for a candidate for the post of President of the Russian Federation);
- Article 114 (establishes the obligation of the government to ensure the fulfillment of these obligations);
- Article 125 (expanding the competence of the constitutional court of the Russian Federation in terms of checking adopted laws);
- Article 132 (establishes the principle of unity of public power);
- Articles 83, 102, 103, 129 (expanding the powers of the Federal Assembly and clarifying the powers of the President);
- Article 14 (the essence of the change is still unknown, this article says that Russia is a secular state, and no religion can be established as a state or mandatory).

This is part of the constitutional reform that did not take place in 2018, after V. Putin's election, and was postponed. What questions would you like to pay attention to?

1) The contradiction of the Constitution of the Russian Federation. Unable to amend articles 1, 2 and 9 of the Constitution, which establish and regulate human and civil rights and freedoms, it is proposed to amend other articles. These amendments come into fundamental conflict with the foundations of the constitutional system and are essentially a denial of the constitutional foundations of the state: the supremacy of the rights and freedoms of citizens, including the norms of international law; equality of citizens' rights, including the right to be elected; separation of powers, and independence of the judiciary. The amendments introduced disavow the political and legal principles of the state established in 1993.

2) Strengthening the power of the President. Even compared to the current model, the control of the judiciary, especially the higher courts (Constitutional and Supreme), is being strengthened. It is not only a question of further diminishing the independence of the judicial system, but it is also a question of mixing the branches of power, which is a threat to the stability of the state in a situation of national conflicts. The President gets a second veto on Federal constitutional laws through the Constitutional Court. This expresses a deep distrust of the Parliament (BRZEZINSKI, 1999).

The role of Parliament is not increasing. Replacing approval with approval for members of the government is nothing more than a play on words because the President appoints them to positions. The figure of the head of government is weakening – now he can be dismissed alone, without a government. The list of law enforcement agencies creates the possibility of another structure: The Ministry of public security. What will she do? What powers will he have? In General, all the amendments made are additional props, insurance and new levers of influence for the President's power (SEREGIN, 2016).

3) The Council of State. Which branch of government (Executive? the legislative?) will include a body created to ensure the coordinated functioning and interaction of public authorities, determining the main directions of the domestic and foreign policy of the Russian Federation and priority directions of socio-economic development of the state? What place will it occupy in the system of power? Finally, how (through what formal mechanisms) will it influence policy? There is no answer: the status of the State Council of the Russian Federation is determined by Federal law.

Can the President not be the head of The State Council? Can there be a position of General Secretary of the State Council? There are no answers, except that the state Council is formed by the President. The proposal for a state Council destroys the balance and order in the work of the system of state power and creates an informal and unpredictable resource for influencing it.

4) The Incompleteness and incompleteness. The most significant part of the draft introduced by Vladimir Putin is the list of Federal legislation acts subject to invalidation, suspension, modification or adoption in connection with the adoption of the law of the Russian Federation on an amendment to the Constitution of the Russian Federation. It contains 34 Federal constitutional laws and Federal laws and the 35th new Federal Law On the State Council of the Russian Federation.

It is in these thirty-five Federal regulations that all the real details will be visible. All these 35 acts will be adopted by the Federal Assembly (the State Duma and the Federation Council), and the company will not be able to have any influence on their content and adoption. The amendments made by V. Putin are only a shell for the actual political reform that will be carried out by the government itself.

5) Disproportion to the status of the Constitution. The authors of the amendments do not fully understand the place and role of the Constitution in the system of national law and belittle its status. This is the Basic law; it cannot be overloaded with particulars. One amendment is significant: the same person cannot hold the office of President of the Russian Federation for more than two terms, the word consecutive is removed. If you meet the level of the Constitution, this should have been limited, all other proposed amendments are not only important but also urgent.

Most of the amendments are a package of restrictive measures for candidates for elected office, which have a place in special Federal laws, but not in the Constitution. The text of the Basic law is proposed to be supplemented with a list of barriers for various types of elections and appointments. The Constitution is turned into a manual for the Ministry of Internal Affairs and the Central Election Commission. It is very dangerous to create the habit of multiple changes to the Constitution on a small scale: this leads to the impression of mediocrity, the ordinariness of such changes, the Constitution loses the character of an inviolable main document, when amendments are accepted only in exceptional, principled cases. With this approach, the Constitution ceases to be the Basic law in public perception. At the same time, overloading the Constitution with prohibitions shifts its essence from the establishment of rights, freedoms and state guarantees to the restriction of rights and freedoms, that is, the mission of the Constitution is completely distorted.

This is a legal error: the amendment (in the singular) cannot cover different, unrelated areas of legal regulation. With this approach, besides, only one person can make amendments to the amendment: the author of the amendment. Anyone can offer anything, but only the guarantor can make a new version. This multi-purpose amendment will be submitted to the all-Russian vote in a consolidated form.

10) Amendments have been developed, introduced and adopted as a matter of urgency. This is not a mode of interaction with society. After the lightning-fast and unanimous adoption of the draft law by the

state Duma in the first reading (the Crimean consensus of United Russia, the Communist party, the LDPR, and Just Russia was recreated), the entire country was given 15 (fifteen) days (until February 6) to make amendments. No full discussion is expected, and the all-Russian vote will take place after the completion of the draft law in Parliament.

A citizen on the all-Russian vote (the Federal law on which there is still no law) will not be able to speak on the merits of any amendment separately, will only be able to support or not support the package as a whole, to say either YES to all this (and all this) or NO (to all this and all this). At the same time, amendments to the Constitution may not enter into force before the expiration of the period of operation of state bodies whose constitutional powers are being amended (the President, the State Duma). This makes any early elections extremely likely: the authors of the amendments will want to take advantage of them as soon as possible. As you can see, the government is not going to hold a referendum on this issue.

#### **4. CONCLUSION**

The basic law of the Russian state in part 2 of article 13, stating that no ideology can be established as a state contradicts the General theory of state power. The idea of the legitimacy of public power and the justice of existing economic, political, and other public relations is substantiated utilizing state ideology. The Constitution of the state,



first of all, defines the ideological foundations of the constitutional system of the country: the principles of the organization of the political system, the form of the state, the sources of state power, etc. In part 1 of article 13 of the Constitution enshrines the ideological diversity, in part 1 of article 1 sets out the form of the state, in article 3 defines the sources of democracy, article 8 reglementary the basis of ownership relations and economic subjects, and the preamble articulates the purpose and grounds approval of a new constitutional order, etc. the Constitution of the Russian Federation – the main program document of the political ideology of the Russian state.

Following part 2 of article 75 of the Constitution, the main function of the Central Bank of the Russian Federation (CBR) is to protect and ensure the stability of the ruble, which it carries out irrespective of other public authorities, contrary to article 10 does not talk about an independent financial or banking authorities. The Central Bank of the Russian Federation, according to the Constitution of the Russian Federation and other Federal laws, is not obliged to provide or stimulate the growth of the industry, the welfare of citizens and the country's economy as a whole.

Formal and theoretical contradictions of the Constitution of the Russian Federation pose a threat to the territorial unity, independence, social, political and legal stability of the state. Therefore, it is necessary to adopt amendments to the Constitution of the Russian Federation. While the Central Bank of the Russian Federation is obliged to implement the recommendations, the IMF has long turned

into a branch of the fed. This subordination is spelled out in three documents at once: article 15.4 of the Constitution, Federal law FZ №. 86, and The decision of the Plenum of the Supreme court. Two foreign consulting companies were founded to manage the Bank but the management center. These are Price Waterhouse Coopers and Oliver Wyman. Without the permission of the Central Bank of the Russian Federation, the state cannot dispose of the country's property, and even more so, the country's gold and foreign exchange reserve. Now the rate at which the Central Bank of the Russian Federation lends money to other banks is 11 %. These percentages are the main drag on the Russian economy. If you reduce the rate to 5 %, even with such draconian taxes as now, many businesses will raise their heads, salaries will increase, and more children will be born.

The Constitution of the Russian Federation imposed articles 13, paragraph 2, and article 15, paragraph 4: the refusal of the Russian state to protect its traditional values (ideology) and the recognition of the priority of international law over domestic law. There is no clause stating that all natural resources belong to the state. Therefore, proper control over them is excluded, but the state cannot fully dispose of them. SEREGIN (2016) proposes articles 9 and 36 of the Constitution of the Russian Federation in the following wording: Article 9. 1. Land and other natural resources are used and protected in the Russian Federation as the basis for the life and activities of the multi-ethnic people of the Russian Federation, as well as the peoples living on the relevant territory. 2. Land and other natural resources are the exclusive property of the Russian Federation or its subjects.

The state guarantees the protection of the family, its organization, as a necessary basis for social order, indispensable for the prosperity of the people and the state. There is a reason to amend the Constitution of the Russian Federation Chapter provides solutions to critical issues of public life should be nationwide (Federal), regional (subjects of the Russian Federation) and other types of referendums provided for in the constitutional law On referendum.

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