

Jarosław Matwiejuk¹

Key Systemic Changes in the Amendment to the Russian Constitution of March 14, 2020

Keywords: Constitution, basic law, Russian Federation, Russia, President of the Russian Federation, federal system, amendment to the Constitution

Słowa kluczowe: konstytucja, ustawa zasadnicza, Federacja Rosyjska, Rosja, Prezydent FR, ustrój federalny, nowelizacja konstytucji

Abstract

The 1993 Russian constitution has been amended many times. The largest amendment was carried out on March 14, 2020. However, this is not a revision of the Constitution. The amendment includes changes strengthening the constitutional position of the President of the Russian Federation, correcting the federal system and the legal status of the bicameral Parliament and the Government of the Russian Federation. A new constitutional body was introduced, the State Council of the Russian Federation, and, for the first time, a provision on faith in God was introduced. Russia's right not to recognize rulings and decisions of international bodies contrary to the Russian Constitution and the right to support compatriots living abroad in the exercise of their rights to protect their interests were enshrined. The amendment to the Russian Constitution is of fundamental importance for the policy pursued and the implementation of Russia's national security strategy.

¹ ORCID ID: 0000-0001-6346-330X, Assoc. Prof., Department of Constitutional Law and Political Systems, Faculty of Law, University of Białystok. E-mail: matwiejuk@uwb.edu.pl.

Streszczenie**Kluczowe zmiany ustrojowe w nowelizacji
Konstytucji Rosji z 14 marca 2020 r.**

Konstytucja Rosji z 1993 r. była wielokrotnie zmieniana. Największa nowelizacja została przeprowadzona 14 marca 2020 r. Nie jest to jednak rewizja ustawy zasadniczej. Nowelizacja zawiera zmiany wzmacniające pozycję konstytucyjną Prezydenta FR, korygujące ustroj federalny oraz status prawny dwuizbowego parlamentu i Rządu FR. Wprowadzono nowy organ konstytucyjny Radę Państwową FR oraz po raz pierwszy zapis o wierze w Boga. Zapisano prawo Rosji do nieuznawania orzeczeń i decyzji organów międzynarodowych sprzecznych z Konstytucją FR oraz prawo wspierania rodaków mieszkających za granicą w wykonywaniu ich praw w celu zapewnienia ochrony ich interesów. Nowelizacja Konstytucji FR ma zasadnicze znaczenie dla prowadzonej polityki i realizowania strategii bezpieczeństwa narodowego Rosji.

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I. Admission

The Basic Law has the highest legal force in the system of the sources of Russian law and occupies the highest position in the hierarchy of sources of law. The Constitution of Russia² regulates classic constitutional content, including the issues of its amendment and revision, introducing a closed catalog of entities having a constitutional initiative in this regard³. It is a normative act that is subject to relatively frequent changes⁴. The Constitution of

² The names Russian Federation and Russia are used interchangeably in this publication. It results from the wording of Art. 1 sec. 2 of the Russian Constitution “The names Russian Federation and Russia are equivalent”.

³ Proposals for changes to the constitution may be submitted by: the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation, legislative (representative) bodies of the constituent entities of the Russian Federation and at least one fifth of the members of the Federation Council or deputies of the State Duma.

⁴ The Constitution of the Republic of Poland of April 2, 1997. it was only amended twice. Amendment of September 8, 2006. introduced the possibility of extraditing a Polish citizen.

the Russian Federation (FR), adopted by nationwide vote on December 12, 1993⁵, was amended seventeen times since its entry into force on December 25, 1993. The constitutional provisions in Chapters 3–8 of the Basic Law have been amended five times. Art. 65 of the Russian Constitution, which deals with entities constituting Russia⁶. So far, the constitutional norms contained in three chapters of the Constitution have not been changed: the first (Fundamentals of the constitutional system), the second (Human and civil rights and freedoms), and the ninth (Constitutional changes and revision of the Constitution). The most comprehensive and most far-reaching is the amendment to the Constitution, which was carried out based on the Russian Law on Amending the Constitution of the Russian Federation of March 14, 2020. On improving the regulation of certain issues of the organization and functioning of public authority⁷.

II. Amendment to the Constitution of the Russian Federation of March 14, 2020 – Procedural Aspects

The Constitution of the Russian Federation provides for four procedures for amending the Constitution, depending on the constitutional matter to be amended. One of the procedures concerns the amendment of the constitutional norms contained in chapters 3–8 of the Russian Constitution, which regulate the following issues: federal system, the President of the Russian Federation, the Federal Assembly, the Government of the Russian Federation, the judiciary and public prosecutor's office, and local self-government.

Amendment of May 7, 2009 concerned the extension of the premises of passive electoral law (the author of the article participated in the work on the changes as vice-chairman of the Constitutional Committee of the 6th term of the Sejm).

⁵ Konstitutsiya Rossiyskoy Federatsii (Rossiyskaya gazeta, December 25, 1993, No. 237).

⁶ The Russian Federation consists of 85 equal entities: republics, countries, oblasts, cities of federal importance, autonomous oblasts and autonomous districts. In 2014, the constitution was changed and the Republic of Crimea and Sevastopol were incorporated into the Russian Federation as a city of federal importance.

⁷ Zakon RF o popravke k Konstitutsii RF ot 14 marta 2020 g. "O sovershenstvovanii regulirovaniya otdel'nykh voprosov organizatsii i funktsionirovaniya publichnoy vlasti", <https://rg.ru/2020/03/16/popravka-v-konstituciyu-dok.html> (26.06.2021).

Amendments to the Fundamental Law are adopted in the manner and mode appropriate for the enactment of federal constitutional law. An amendment to the Constitution of the Russian Federation is considered adopted if it is adopted by a majority of at least three-fourths of the total number of members of the Federation Council and by a majority of at least two-thirds of the total number of deputies of the State Duma. In addition, approval of the changes by the legislative authorities of at least two-thirds of the federal entities included in Russia is required. The adopted federal constitutional law shall be signed and published by the President of the Russian Federation within maximally fourteen days. It should be emphasized that the President of the Russian Federation may not exercise a legislative veto concerning the federal constitutional law. It is also not obligatory to hold a nationwide referendum to ratify the changes.

This procedure is not recognized in the Russian legal doctrine as a revision procedure of the Russian Constitution. Revisions of the provisions of the Constitution are considered only to change the constitutional principles defining the foundations of the constitutional system and to change the constitutional status of an individual, as well as to change the procedure for amending the Constitution⁸. Due to the material scope of the constitutional changes proposed by the President of the Russian Federation, the procedure for amendments to chapters 3–8 of the Russian Constitution was applied.

For the first time, the proposal for the last amendment to the Russian Constitution was presented by the President of Russia, Vladimir Putin⁹, in the annual address to the Federal Assembly of the Russian Federation on January 15, 2020. As a consequence, the messages will be delivered on January 20, 2020. The President of the Russian Federation submitted to the State Duma a draft federal law containing 206 amendments to the Basic Law. Formally, the amendment to the Constitution was carried out based on the Russian Law on Amending the Constitution of the Russian Federation of March 14, 2020. On improving the regulation of certain issues of

⁸ S.A. Avak'yan, *Konstitutsionnoye pravo Rossii. Uchebnyy kurs: Uchebnoye posobiye*, Moskva 2020, pp. 331–338.

⁹ Vladimir Vladimirovich Putin has been the President of Russia since December 31, 1999. In 2008–2012, when he was the Chairman of the Government of the Russian Federation. The president of the Russian Federation at that time was Dmitry Anatolyevich Medvedev.

the organization and functioning of public authority. Legislative work proceeded very quickly despite submitting many additional amendments, including what seems to be a key amendment making the so-called resetting the previous terms of office of the President of the Russian Federation¹⁰. The State Duma passed a federal law amending the Basic Law on March 10, 2020. The upper house of the Russian Parliament. The Federation Council approved all changes on March 11, 2020. Then on March 12–13, 2020, all the representative bodies of the Russian constituent entities accepted and approved all the submitted amendments¹¹. The Constitutional Court of the Russian Federation on March 16, 2020, issued a decision on the compliance of the changes with the Russian Constitution¹². The legislative process related to the amendment to the Constitution was carried out at an express pace following the procedure provided for in the Constitution of the Russian Federation.

Based on Art. 2 of the Russian Law on Amending the Constitution of the Russian Federation On the improvement of the regulation of certain issues concerning the organization and functioning of public authorities on March 17, 2020, the President of the Russian Federation issued Decree No. 188 on the holding of the all-Russian vote on the adoption of amendments to the Constitution of the Russian Federation¹³. Based on the presidential decree, the all-Russian vote was ordered on April 22, 2020. However, due to the threats related to the rapidly developing COVID-19 pandemic and threats to the health of the citizens of the Russian Federation, based on the decree of the President of the Russian Federation of March 25, 2020. On the postponement of the all-Rus-

¹⁰ The amendment was proposed by the deputy general major. Walentyna Tereshka (the world's first female cosmonaut, 1963) arguing with concern for Russia's security and future, <https://www.kommersant.ru/doc/4283602>, Tereshkova predlozhila snyat' ogranicheniye po chislu prezidentskikh srokov (26.06.2021).

¹¹ The federal law amending the constitution has been supported by 85 parliaments of federal entities (Article 136 of the Russian Constitution requires the approval of at least 57 parliaments of federal entities).

¹² A. Pushkarskaya, Y. Fokht, *Konstitutsionnyy sud podtverdil zakonnost' obnuleniya srokov Putina. Na eto ushlo dva dnya*, <https://www.bbc.com/russian/news-51912485> (26.06.2021).

¹³ Ukaz Prezidenta RF ot 17.03.2020 No. 188 "O naznachenii obshcherossiyskogo goslovovaniya po voprosu odobreniya izmeneniy v Konstitutsiyu Rossiyskoy Federatsii", <http://publication.pravo.gov.ru/Document/View/0001202003170038> (26.06.2021).

sian vote on the adoption of amendments to the Constitution of the Russian Federation, it was established that this date would be specified in a separate subsequent decree of the President of the Russian Federation¹⁴. Based on the decree of the President of the Russian Federation No. 354 of June 1, 2020. On the setting of the date of the all-Russian vote on the adoption of the changes to the Constitution of the Russian Federation, the date of the all-Russian vote on the adoption of the changes to the Constitution of the Russian Federation was set for July 1, 2020¹⁵. Due to the ongoing COVID-19 pandemic, it was possible to vote from June 25, 2020, and the possibility of electronic voting had been introduced for the first time. The participants of the referendum could vote for or against the amendment of the Constitution. It should be emphasized that there is no possibility of voting on specific amendments to the Russian Constitution. Central Election Commission of the Russian Federation (CKWFR) on July 2, 2020. announced the official results of the all-Russian vote on the approval of changes to the Russian Constitution. According to CKWFR, 77.92% of voters supported the changes to the Russian Constitution, 21.27% of voters were against the changes, and the turnout was 67.97%¹⁶. The only region that rejected the amendments was the Nenets Autonomous Okrug¹⁷. According to the decree of the President of the Russian Federation of July 3, 2020. On the official publication of the Constitution of the Russian Federation, as amended, the Basic Law was published on the same day, including all the adopted amendments, and entered into force on the day of publication¹⁸.

¹⁴ Ukaz Prezidenta RF ot 01.06.2020 No. 205 "O perenose daty obshcherossiyskogo golosovaniya po voprosu odobreniya izmeneniy v Konstitutsiyu Rossiyskoy Federatsii", <http://publication.pravo.gov.ru/Document/View/0001202003250022> (26.06.2021).

¹⁵ Ukaz Prezidenta RF ot 25.03.2020 No. 354 "Ob opredelenii daty provedeniya obshcherossiyskogo golosovaniya po voprosu odobreniya izmeneniy v Konstitutsiyu Rossiyskoy Federatsii", <http://publication.pravo.gov.ru/Document/View/0001202006010049> (26.06.2021).

¹⁶ Tsentral'naya Izbiratel'naya Komissiya Rossiyskoy Federatsii, <http://www.cikrf.ru/analog/constitution-voting/info> (26.06.2021).

¹⁷ M. Domańska, *Farsa przy urnach. Głosowanie konstytucyjne w Rosji*, <https://www.osw.waw.pl/pl/publikacje/analizy/2020-07-02/farsa-przy-urnach-glosowanie-konstytucyjne-w-rosji> (26.10.2021).

¹⁸ The unified text of the Russian Constitution is available at: <http://publication.pravo.gov.ru/Document/View/0001202007040001> (26.06.2021).

III. Amendment to the Constitution of the Russian Federation of March 14, 2020 – Material Scope: Federal System and the President of Russia

Due to the limited size of this publication, it is not possible to present all corrections. Therefore, only the key and most important for the Russian system will be presented. These include changes to the federal system and the President of the Russian Federation.

Chapter 3 of the Russian Constitution, which regulates the federal system, introduces the principle that federal entities may be established in the territory of the Russian Federation only following federal law. The sovereignty and territorial integrity of the state were guaranteed, and activities or incitement to isolate parts of Russian territory were banned. A new provision has been added under which Russia has the right to maintain and strengthen international peace and security, ensure the peaceful coexistence of states and nations, and prevent interference in the state's internal affairs. As the language of a state-building nation and a member of the multinational union of equal nations of the Russian Federation, Russian was recognized as the only state language in the entire territory of Russia. Federal competences were extended to include: organization of public authority, science and technology policy, health care system, upbringing, and education system, security of the individual, society, and the state in the use of information technologies, circulation of digital data, and metrological service. Previously unknown restrictions (bans) were introduced for persons holding positions in the federal state service, e.g., the President of the Russian Federation, ministers, judges, and prosecutors. These persons may not have the citizenship of a foreign state or a residence permit or other document confirming the right of permanent residence of a Russian citizen in the territory of a foreign state. They may not open and hold accounts (deposits), store cash and valuables in foreign banks located outside the territory of Russia. At the same time, the catalog of common competences of the Russian Federation and federal entities was supplemented with the following issues: protection of the family, motherhood, paternity, and childhood, protection of the institution of marriage as a union between a man and a woman, creating conditions for the dignified upbringing of children in the family, as well as exercising the obligation to care for parents through adult children, agricultural policy and youth policy. Rus-

sia has been recognized as the legal successor of the Union of Soviet Socialist Republics (USSR) on its territory, in international organizations and bodies of international organizations, and international agreements. As part of the amendment, a new rule has been introduced, according to which, in the event of a conflict with the Russian Constitution, judgments and decisions, and their interpretation from international bodies, are not recognized or enforced in Russia and taken based on the provisions of international agreements to which Russia is a party. At the same time, a provision was added to support compatriots living abroad in the exercise of their rights in order to protect their interests and preserve the all-Russian cultural identity. It is somewhat surprising to introduce in this chapter the provisions stating that the Russian Federation preserves the memory of the ancestors who passed on the ideals and faith in God¹⁹, honors the memory of the defenders of the Fatherland, ensures the protection of historical truth²⁰, Laws have also been added that recognize children as the top priority of Russian policy that puts family upbringing first²¹ and guaranteeing the protection of employee rights, including the right to a minimum wage and the right to retirement pension adjustment, and compulsory social security.

It is here that these norms are written in the Constitution, not in the preamble or the first two chapters of the Constitution, which is the most obvious and natural from the point of view of arranging the matter of constitutional regulation due to procedural reasons. Only the inclusion of this matter in chapter three of the Russian Constitution made it possible to apply the easier procedure of amending the Constitution provided for the amendment of chapters 3–8 of the Russian Constitution, and not the much more difficult procedure of revising the Constitution envisaged for changing provisions in chapters 1–2 and 9 of the Russian Constitution.

¹⁹ For the first time in the history of Russian constitutionalism, after the dissolution of the USSR, belief in God was invoked in the constitution.

²⁰ The Constitution of the Russian Federation in Art. 671 par. 3 also considers it unacceptable to “diminish the importance of the nation’s heroic effort to defend the homeland”.

²¹ Critical about changes, e.g., U. Czaszczichin, *Popravki v Konstitutsiyu RF dlya rosta demografii i ekonomiki*, Moskwa 2020; E. Fokht, S. Goryashko, I. Barabanov, *Popravki v Konstitutsiyu prinyaty. Chto eto pomenyayet v balanse vlasti i zhizni rossiyan?*, <https://www.bbc.com/russian/features-53282145> (26.06.2021).

Amendment to the Constitution of the Russian Federation of March 14, 2020, is another one that significantly strengthens the legal position of the President of the Russian Federation. It can be said that the fundamental, but not the only, purpose of the amendment to the Russian Basic Law was to strengthen and expand the scope of the competences of the President of the Russian Federation. It is in line with the process of reforms of the political system carried out earlier during the presidency of Vladimir Putin and the presidency of D. Medvedev, whose priority was to consistently strengthen the political position of the President of the Russian Federation²². The most significant change is the adoption of the principle according to which the limitation of the number of terms of office of the head of state to two does not apply to the current President of the Russian Federation. That gives the current President of Russia the right to re-stand and hold office for two consecutive six-year terms. A provision has also been introduced according to which the President of the Russian Federation enjoys immunity after the end of his term of office, which he can only be deprived of by the Federation Council based on an accusation made by the State Duma of committing high treason or committing another serious crime. The State Duma may adopt resolutions in this regard and the Federation Council by a majority of at least two-thirds of the total number of deputies and senators, respectively, at the request of at least one-third of the State Duma deputies after the work of a specially appointed commission in the State Duma has been completed. The resolution of the Federation Council on the removal of the immunity of the President of the Russian Federation should be adopted within maximally three months after the charges against the President of the Russian Federation were formulated by the State Duma. The census of domicile has also been tightened for candidates for the presidency of the Russian Federation, who can only be a Russian citizen who has permanently resided in the territory of the Russian Federation for at least 25 years.

The competences of the President of the Russian Federation have been significantly expanded. The following were added to the previous ones: taking actions to maintain peace and civic harmony in the country; appoint-

²² J. Matwiejuk, *Federacja Rosyjska*, [in:] *Ustroje konstytucyjne wybranych państw europejskich*, ed. S. Bożyk, Białystok 2020, p. 257.

ment of the Chairman of the Government of the Russian Federation, whose candidacy was approved by the State Duma on the proposal of the President of the Russian Federation; dismissal of the Chairman of the Government of the Russian Federation; exercising general leadership over the Government of the Russian Federation; approving, at the request of the Chairman of the Russian Government, the structure of federal executive bodies and introducing changes to it; the power to define federal executive bodies, whose activities are managed, and federal executive bodies, whose activities are directed by the Government of the Russian Federation; accepts the resignation of the Chairman and Vice-Presidents of the Government of the Russian Federation and the heads of federal executive bodies.

The strengthening of the powers of the President of the Russian Federation is also visible concerning the organs of the judiciary and the prosecutor's office. In this regard, the President of Russia proposes to the Federation Council candidates for the post of Chairman, Vice-Chairman, and judges of the Constitutional Court of the Russian Federation, Chairman, Vice-Chairman and judges of the Supreme Court of the Russian Federation, and appoints the chairmen, vice-chairmen, and judges of other federal courts. The President of Russia submits to the Federation Council motions on the termination of the term of office of the judicial authorities in connection with the commission of an act that defames the honor and dignity of a judge, as well as in other cases provided for by federal constitutional law, which prevent the exercise of the function of a judge. The President of the Russian Federation appoints and dismisses, after consulting the Federation Council, the Public Prosecutor General of the Russian Federation, and his deputy, prosecutors of the entities that are part of the Russian Federation, military prosecutors, and other prosecutors of specialized organizational units of the prosecutor's office.

As part of the expansion of the creative function of the President of the Russian Federation, the right to propose to the Federation Council candidates for the position of the Chairman of the Russian Accounting Chamber and half of the total number of the Chamber's auditors. The President of the Russian Federation also presents to the State Duma candidates for the position of Deputy Chairman of the Russian Accounts Chamber and half of the total number of the Chamber's auditors.

Based on the amendment to the Constitution of the Russian Federation of March 14, 2020, a new constitutional body was introduced into the Russian political system. The State Council of the Russian Federation is appointed by the President of the Russian Federation in its entirety. It was established in order to ensure the coordinated functioning and cooperation of public authorities, define the main directions of the internal and foreign policy of the Russian Federation, and the priority directions of the socio-economic development of the state. The detailed organization, competences, and procedure of operation of the State Council of the Russian Federation are defined in the federal law of December 8, 2020. About the State Council of the Russian Federation²³.

As part of the most recent amendment to the Russian Constitution, the goals of the Security Council of the Russian Federation, which had been established before and had functioned for many years, were also clarified. The Basic Law states that the Security Council of the Russian Federation was established to support the head of state in the exercise of his powers to ensure the national interests and security of the individual, society, and the state, as well as to maintain peace and civic harmony in the state. By protecting Russia's sovereignty, independence, and territorial integrity, is also supposed to prevent internal and external threats. The Security Council of the Russian Federation is chaired by the President of the Russian Federation, who convenes its meetings and manages its work.

IV. Summary

According to the Russian Law on Amending the Constitution of the Russian Federation of March 14, 2020. Changes that were significant for the Russian political system were introduced, primarily strengthening the position and expanding the competences of the President of the Russian Federation. Russia's right not to recognize rulings and decisions of international bodies contrary to the Constitution of the Russian Federation and to support compatriots living abroad in the exercise of their rights to protect their interests and

²³ Federal'nyy zakon ot 8 dekabrya 2020 g. No. 394-FZ "O Gosudarstvennom Sovete Rossiyskoy Federatsii", <https://rg.ru/2020/12/11/gossovet-dok.html> (26.06.2021).

preserve their all-Russian cultural identity were written down. These provisions are of key importance for the policy pursued and implementing Russia's national security strategy. Amendment of the Constitution of the Russian Federation of March 4, 2020, is a "change of the text of the constitution, which does not include its guiding principles"²⁴. Therefore, we can define it as a comprehensive partial amendment or an amendment to the Constitution. The amendment to the Constitution of the Russian Federation led to the adjustment of federal legislation to the new constitutional norms. For this purpose, 136 federal laws were amended, including many codes. In my opinion, the amendment's scope indicates that the factors exercising power do not plan another constitutional amendment soon, while various political scenarios are possible²⁵.

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²⁴ B. Banaszak, *Prawo konstytucyjne*, Warsaw 2008, p. 65.

²⁵ M. Domańska, *Zmiana konstytucji w Rosji – Putin na zawsze?*, <https://www.osw.waw.pl/pl/publikacje/analizy/2020-03-10/zmiana-konstytucji-w-rosji-putin-na-zawsze> (26.06.2021); J.L. Black, *Russia after 2020: Looking Ahead after Two Decades of Putin*, Routledge 2021.