

## TWENTY YEARS AND TWENTY DRAWBACKS OF THE RUSSIAN CONSTITUTION\*

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### **Article info**

Received –

2020 January 18

Accepted –

2020 March 13

Available online –

2020 March 30

### **Keywords**

Jubilee of the RF Constitution,  
Constitution, drawbacks,  
constitutional reform,  
constitutional system, political  
practice

The subject of the research is the legal norms of the current Constitution of the Russian Federation. The work analyzes the chapters of Constitution, identifies the main shortcomings of the existing norms that do not correspond to modern reality and puts forward proposals for their change.

The purpose of the study is to confirm or disprove the hypothesis that changes to the Constitution of the Russian Federation are inevitable due to the presence of defects in it that cannot be eliminated in any other way.

The methodological basis of the research is a set of general scientific methods of knowledge and special scientific techniques and methods developed in law, including: logical method, comparative legal analysis, system method and formal legal analysis.

The main results and scope of their application. The problems that critically affect the stable development of our society and state and its success were formulated. Among these problems are: the absence in the Constitution of the institute of parliamentary control over the executive authorities; the rise of the institution of the President of the Russian Federation over the three branches of government; the unequal status of constituent entities of the Russian Federation; the absence in the Constitution of the concepts "public property" or "national heritage". A significant part of these problems is related to the text of the current Constitution of the Russian Federation. In this regard, the author notes that the current Constitution of the Russian Federation has many defects. The author points out 20 drawbacks of the current Constitution of Russia which make the authorities imitate the principles of democracy and people's power in the actual political practice and substantiates the conclusion on the necessity of the constitutional reform. Conclusions. Revision of the Constitution of the Russian Federation is inevitable, since the Basic Law of the country is not devoid of shortcomings that require correction and legislative changes.

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\* This article was published previously in the journal "Constitutional and municipal law [Konstitutsionnoe i munitsipalnoe pravo]"(2013, no. 3. pp. 33-38). The reprint was approved by the decision of the Editorial Board of the Law Enforcement Review" due to the acute relevance of the ideas contained in the article in the light of the ongoing constitutional reform in Russia.

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The main drawbacks of the current Russian Constitution, in my opinion, are as follows.

1. Chapter 2 "Rights and freedoms of man and citizen should be called "Rights, freedoms and duties of man and citizen", which would correspond to its content, as well as emphasize the mutual responsibility of the state and the individual.

2. The principle of equality of subjects of the Russian Federation, formulated in part 1 and part 4 of Article 5 of the Constitution, is initially stillborn because of the asymmetry of the Federation and the inequality of the status of its subjects (so, shall have in accordance with part 1 of Article 66 of the Constitution, as well as the right to establish its official language (part 2 of Article 68 of the Constitution)).

3. The principle of separation of powers, enshrined in Article 10 of the Constitution of the Russian Federation and designed to provide a system of checks and balances, is turned into something opposite by the second provision of this Article: "legislative, Executive and judicial authorities are independent", which should be supplemented by the provision: "Legislative (representative) authorities exercise control over Executive authorities".

4. The absence in the Constitution of the Institute of parliamentary control over the Executive, including the Deputy request Institute, of electors, investigative committees and other forms of parliamentary control and feedback with the people, turn Parliament into a weak link state mechanism, which is dependent from the Executive power, fully fused with the state bureaucracy.

5. Institute of Russian President stands above the three branches of government named in Article 10 of the Constitution, and

inconsistent with the principle of separation of powers in the form in which he set out in that Article; the mechanism of power, in the form in which it is established in chapters 4 - 7 of the Constitution (in the mechanism of power is the essence of the Constitution), would be more consistent with a more honest wording: "State power in the Russian Federation is based on the separation of presidential, legislative, Executive and judicial". This wording is more consistent with part 1 of Article 11 of the Constitution, according to which "state authority in the Russian Federation is exercised by the President of the Russian Federation, the Federal Assembly (the Federation Council and State Duma), the Government of the Russian Federation, courts of the Russian Federation".

6. Part 3 of Article 80 of the Constitution, providing Russian President the right unilaterally to determine the main directions of internal and foreign policy of the state, has an authoritarian nature, destroying the principle of checks and balances as the basis of the principle of separation of powers; this provision needs to be balanced by the right of the Federal Assembly of the Russian Federation to determine the main directions of domestic and foreign policy.

7. The enumeration of subjects of legislative initiative in Article 104 of the Constitution begins with the President of the Russian Federation, which is contrary to the principle of separation of powers, turning the President into the main part of the legislative process.

8. The status of the President and his virtually unlimited powers turn him into a vestige of monarchy; the list of constitutional powers of the President of the Russian Federation must be interpreted as exhaustive, and the design of the "implied powers" must be declared unconstitutional; Institute dismissal, as embodied in the Constitution, is inherently

unenforceable, it performs a secondary role to the full irresponsibility of the President.

9. Giving the President of the Russian Federation the functions of guarantor of the Constitution, rights and freedoms of man and citizen (part 2 of Article 80) devalues the same function is carried out by the Constitutional Court of the Russian Federation, and increases the dependence of the public authority from the President of the Russian Federation, as the guarantor of the Constitution shall be the constitutional Court of the Russian Federation. Otherwise, the norm of part 3 of Article 100 of the Constitution of the Russian Federation turned into a stillborn in the part concerning the messages of the constitutional Court: "the houses may meet together to hear addresses of the President of the Russian Federation, messages of the constitutional Court of the Russian Federation...". In fact, the message of the constitutional Court of the Russian Federation were sent to the Federal Assembly of the Russian Federation only one time, and then it lost all meaning, due to the fact that the main violator of constitutional legality, the Constitutional Court had to call the Duma, which had not performed more than thirty decisions of the constitutional Court of the Russian Federation, obliging to bring a particular law into conformity with the Constitution.

10. The absence in the Constitution of the concepts "public property" or "public property" deprives the political democracy established in Article 3 of the Constitution of the Russian Federation, its economic basis, because the people who do not have property, does not have power (not by chance the word "power", "own", "possess", "to settle" - same root word).

11. Although part 2 of Article 8 and part 2 of Article 9 of the Constitution of the Russian Federation states the equality of all forms of

property, but in both cases the Constitution of the Russian Federation put private property first and only then state and other forms of property; however, it should be emphasized that land and other natural resources can be transferred to private ownership only after approval of such transactions prepared in accordance with the law, respectively, by the highest legislative (representative) bodies of state power or representative bodies of municipal power (no land plot is transferred to private ownership without a decision of the representative authority, as is done in many countries).

12. There is no concept of "the welfare of the people" as a criterion for the effectiveness of power, as there is no concept of "the interests of the people", "through the people", as, for example, in the same Constitution of France, the form of government adopted by the founding fathers of our Constitution.

13. In Article 3 of the Constitution of the Russian Federation, there is no single concept of representative bodies of state power and local self-government (this concept, meanwhile, is present in part 2 of Article 97 of the Constitution of the Russian Federation: "a Deputy of the State Duma may not be a Deputy of other representative bodies of state power and local self-government"); the absence of a single concept and a single system of representative authorities, on the one hand, weakens the representative authorities, reduces their constitutional function to be representatives of the interests of the people, on the other hand, levels the representative and Executive authorities in favor of the latter.

14. The wording of Article 12 of the Constitution of the Russian Federation, according to which "local governments are not included into system of public authorities", in conjunction with Chapter 3 "Federal structure",

creating a regional level of government makes the administrative centers of subjects of the Russian Federation and other large cities in pseudohemophilia nothing to do with the government not having, while it should be the third level of government.

15. The norm stipulated in part 4 of Article 81 of the Constitution of the Russian Federation, according to which "the procedure for electing the President of the Russian Federation is determined by Federal law", should be supplemented with the word "constitutional" after the word "Federal".

16. The norm stipulated in part 2 of Article 96 of the Constitution of the Russian Federation, according to which "the procedure for forming the Federation Council and the procedure for electing deputies of the State Duma are established by Federal laws", should be supplemented with the word "constitutional" after the word "Federal".

17. The absence of the head of the "Electoral system of Russia", as well as two of the named norms of the Constitution, diminishing the value and validity of electoral laws and, as a consequence, only the electoral legislation, transform the latter into a rubber tool of political games, while electoral laws must have the status of a constitutional (statutory) laws and adopted by a qualified majority.

18. In the text of the Constitution can not be trifles, and the absence of a comma after the word "General" in part 1 of Article 81 of the Constitution ("the President shall be elected... on the basis of universal equal and direct suffrage by secret ballot") has turned from a stylistic error into a substantive error, since without the comma, such an independent principle of suffrage as universal suffrage disappears.

19. The unclear status of the public Prosecutor, which ideally forms a separate

branch in the system of separation of powers that stressed the independence of the judiciary (Article 10 would sound like this: "State power in the Russian Federation is based on the separation of presidential, legislative, Executive, judicial and prosecutorial"). In the text of the Constitution in Chapter 7 "Judicial power" (Article 118 - 129) Article 129 is dedicated to the Russian Prosecutor's office as a single centralized system with subordination of inferior prosecutors to superior prosecutors and the Prosecutor General of the Russian Federation. It would be more correct to call Chapter 7 of the Constitution of the Russian Federation "Judicial power and Prosecutor's office".

20. The Constitution of the Russian Federation should be supplemented by a separate Chapter "the Electoral system and people's representation in Russia". This Chapter should indicate that all election laws, Federal and regional, are constitutional (statutory) and are adopted by a qualified majority of votes of the legislative (representative) body of power of Russia and the legislative (representative) body of power of the subject of the Russian Federation, respectively. The basic principles of the electoral system should be set out here, in particular, the mixed electoral system for forming the State Duma of the Russian Federation and legislative (representative) bodies of state power of the subjects of the Russian Federation, and the inadmissibility of eliminating single-member electoral districts.

These shortcomings of the Constitution of the Russian Federation provoke the authorities to imitate the principles of democracy and democracy in real political practice.

Thus, the TOC chairmen, who have little to decide in terms of territorial public self-government, are absolutely corrupted by the

possibility of making money in elections by selling themselves to all candidates at once.

The essence of the constitutional system is democracy.

The quality of democracy is manifested primarily in the nature of elections and in the people who are invested with power through the institution of elections. Often the most deceitful, dishonest. But with money and connections.

If the formula of Article 3 of the Constitution of the Russian Federation about the people as a source of power is not a fiction, then it requires the development of real forms of democracy and control over power.

Electoral legislation, along with legislation on representative bodies of power, is the core of the constitutional system of each state, and therefore must be adopted by a qualified majority of both chambers of the Federal Assembly of the Russian Federation, and by a qualified majority of the legislative (representative) body of state power of a subject of the Russian Federation.

The essence of a written Constitution is not in the beautiful rights and freedoms of the individual that are written in it and displayed in the window of politics, but in the mechanism of power that it establishes and which is often veiled.

The constitutional system itself arose there, then, and in so far as, where, when, and in so far as the Parliament emerged as the representative body of the people.

A strong Parliament means a strong constitutional system, and a weak Parliament symbolizes a weak constitutional system. In a weak and dependent Parliament, as well as in loyal, corrupt and disrespectful deputies, the Executive power is interested: such parliamentarians are easier to pressure and easier to manage. What kind of parliamentary control is there? Look at the face of the current

representative government: a collection of individuals engaged in their own business, most of whom forget about the people immediately after the election (there are, of course, exceptions, but the rule is that the population of the Duma as a government body mutually despises, and the deputies hate).

Russia has Federal and regional parliaments that are restricted in all their main functions: legislative, budgetary, and control.

In concentrated form, the mechanism of power is expressed in section 3 of Article 80 of the Constitution: "the President of the Russian Federation in accordance with the Constitution of the Russian Federation and Federal laws defines the basic directions internal and foreign policy".

As the head of state (part 1 of Article 80 of the Constitution of the Russian Federation), the President is removed from all three authorities in the state, stands above them, coordinates them and actually modifies the classic principle of separation of powers, having the right of legislative initiative and standing over the legislative power, too.

The super-presidential model of state power is a reality in Russia, as no one doubts. The presidential power is not even a branch, but a trunk of power, on which other authorities are strung in the form of an exaggerated branch of the Executive power and deformed branches of the legislative and judicial authorities.

In this constitutional model, there is no place for a strong Parliament, because in this model of constitutionalism, the Parliament was originally conceived as a weak and dependent body on the head of state and the Executive power. Thus, the budget function of The state Duma, as well as the budget function of the legislative bodies of the Russian Federation, has been reduced to a minimum in recent years, as recognized by the Chairman of the Budget Committee of the state Duma A. Makarov on

November 17, 2012 (the budget is fully formed in the bowels of the Executive power, and even at the stage of its adoption, the role of Parliament is minimal, permanent conciliation commissions have been eliminated, etc.).

From the presidential form of government, the Russian model has absorbed only what strengthens the President, and from the parliamentary one - only what weakens the Parliament, such as the possibility of its dissolution by the President, which is excluded in the presidential Republic.

Thus, in the United States, as in a presidential Republic, the President does not have the right to initiate legislation and cannot dissolve Parliament. Dissolution of Parliament - the institution of a parliamentary form of government as a form of resolution of the parliamentary crisis. In our country, the institution of dissolution of Parliament is an instrument of additional pressure on the Parliament in order to force it to be compliant.

The Russian model of power can be reformed only in the direction and to the extent that the President of the Russian Federation wants it.

In principle, the Russian model is not subject to reform in the direction of strengthening the role of the Parliament, and consequently, the democratization of the electoral law. Such attempts to reform or modernize the current Constitution in the Message of the President of the Russian Federation to the Federal Assembly of the Russian Federation dated November 5, 2008 are called a reformist itch, which, quoting the Message, "should be stopped".

Amendments to the Constitution aimed at extending the powers of the President of the Russian Federation and the State Duma of the Russian Federation, in the understanding of the initiators of these amendments does not mean reform of the Constitution, and even more

stabilize the Federal government, as well as constitutional. Yes, it is. And yet this is a reform, and completely dependent on the will of the President of the Russian Federation and its political leader, who for four years did not coincide in one person, forming a powerful duumvirate, a tandem.

Hardly anyone would argue that an increase in the term of office of the head of state by one and a half times is nothing but a strengthening of the most important element in the mechanism of power, and if this is so, it is a serious intrusion into the system of power from the position of weakening the possibilities of its renewal.

Moreover, the increase in the term of office of the state Duma from four to five years only increased the latter's dependence on the bureaucratic apparatus with even greater distance from the people.

A separate analysis is required by the Institute of Government responsibility to Parliament, glimpses of which can be seen in the amendment concerning the government's annual report to the state Duma of the Russian Federation. But the very possibility of the state Duma of the Russian Federation to hear such a report from the Government is nothing more than a decorative formality and does not mean that the Government is truly responsible to the Parliament as the highest legislative and representative body of the country. What kind of control is there on the part of parliamentarians, when the lists of candidates for elections, judging by the results, are shuffled on the table of the President of the Russian Federation and the Executive power (in the regions - on the table of the presidents of republics and governors), and often regional FPG, as in the Samara region.

Some regional parliaments have duplicated the institution of government responsibility to the Parliament at the regional

level, fixing in their constitutions (charters) the annual reports of the Governor (Chairman of the government of the Republic, etc.) to the legislative (representative) authority of the relevant subject of the Russian Federation.

It is interesting that an attempt to introduce such a legislative initiative in the Charter of the Samara region in may 2009 ended in failure: the legal Department of the Samara provincial Duma prepared a conclusion according to which such a norm is not necessary and, moreover, does not rely on the corresponding Federal norm. There was even a reference to the fact that the rule of the Charter on the accountability and control of the Governor of the Samara provincial Duma is quite sufficient. The Institute of responsibility of the Governor to the Samara provincial Duma is more than illusory.

But it took only six months after this failed attempt to introduce the institution of report of the Governor before the Samara provincial Duma, as the idea of an annual report of senior officials to the regional Parliament have sounded in the Message of President RF to the Federal Assembly of the Russian Federation dated 12 November 2009. And three days later, the relevant legislative initiative of the Governor of the Samara region arrived to the Samara regional Duma. And the

lawyers of the Duma's legal Department agreed with this initiative with the same success as they recently proved its uselessness. What kind of parliamentary control is there?

The science of constitutional law already justifies the need for constitutional reform, including for the stability of the constitutional system, so that the Constitution has a future...

The future of the Constitution largely depends on the real political will of the President. And while this is so, it is better for the President of the Russian Federation to mark the 20th anniversary of the Constitution of the Russian Federation with its overdue reform, than to continue to adjust the constitutional system to the needs of the authorities, without changing the Constitution. This is not the best, imitative democracy, nor is it the best, largely fictitious, contradictory and flawed constitutionalism, which can only create the appearance of approval of power by the people. Or is this visibility enough for the authorities?

The task of freezing the text of the Russian Constitution unchanged for the sake of stabilizing society and the state has exhausted itself and turned into a brake on social development. There is a constitutional crisis that can only be resolved by a fundamental reform of the Constitution.

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#### BIBLIOGRAPHIC DESCRIPTION

Bobrova N.A. Twenty years and twenty drawbacks of the Russian Constitution. *Pravoprименение = Law Enforcement Review*, 2020, vol. 4, no. 1, pp. 21–28.  
DOI: 10.24147/2542-1514.2020.4(1).21-28. (In Russ.).

