

# Russia's Constitutional Reforms of 2020

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## Abstract

In January 2020, Russian President Putin proposed a number of potentially very significant amendments to the constitution of the Russian Federation. In March 2020, these were formally approved by parliament and signed by the president. In a nationwide vote held on 25 June – 1 July, just under 78 percent of those who voted did so in favour of the amendments, 21 percent voted against, while turnout was just under 68 percent. The amendments, which entered into force on 4 July, strengthened the powers of the Russian president, increased the powers of the center over regional and local governments, and reduced the independence of the courts. They asserted that the Russian constitution should take precedence over decisions reached by international institutions. Not least, they opened the possibility for Putin to remain in office following the expiry of his current presidential term in 2024. To be more precise, they enabled Putin to avoid becoming a lame duck and to keep the elite in suspense over what he would eventually decide to do in 2024. They also provided him with security should he decide to leave office.

## Keywords

Russian Federation – balance of powers – constitution – constitutional amendments – Vladimir Putin

## 1 Part One—Chronology of Events

On 15 January 2020, during his annual address (*poslanie*) to the-Federal Assembly (the two houses of the Russian parliament), President Vladimir Putin announced his desire for the constitution of the Russian Federation (hereafter

RF) to be amended.<sup>1</sup> Putin's announcement was met with surprise, though it should not have been. There had long been speculation about the possibility of amending the constitution given that, under Article 81 of the current constitution, Putin would not be able to run for office again when his current term in office ended in 2024. Though it was still early days, there were already clear signs of alarm within the elite that did not know what would happen after 2024, who would take power, and what their own futures might hold (not least, of course, how they might maintain their control over the financial flows).<sup>2</sup>

Putin said he did not agree with those who said that Russia needed a new constitution or that it was necessary to replace the current constitution, which had been adopted in 1993. But, after a speech filled with a majority of non-constitutional content, he said he thought the time had come to carry out certain constitutional amendments, which he then went on to list.

Russia's constitution had in fact been controversial ever since its adoption,<sup>3</sup> chiefly because of the imbalance of powers it created between the president and the legislature. This was a result of the circumstances in which the constitution—Russia's first since the collapse of the Soviet Union—was adopted. Russia in 1993 had come close to civil war, with President Boris Yeltsin increasingly in conflict with the opposition-dominated legislature which attempted to whittle away Yeltsin's presidential powers and extend its own influence over the government. The crisis peaked when Yeltsin dissolved parliament, prompting tens of thousands of Russians to go onto the streets in protest. Early in the morning on 4 October, the army, on Yeltsin's orders, shelled the parliament building. Troops entered the building and began to arrest the

1 The full text of Putin's address, with video, is here: <http://www.kremlin.ru/events/president/news/62582>.

2 Writing on 31 May 2016, Andrei Kolesnikov argued that the Kremlin was already preparing for a new presidential term—and not, he argued, that which would follow the election of 2018, which was expected to be won by Vladimir Putin, but that which would be held in 2024. "Because," Kolesnikov wrote, "this period [2018–2024] contains one potentially nasty feature. If the Constitution of the Russian Federation is not altered in the Tajik manner—that is, by placing no limits on the number of terms a single individual may govern—2024 will be Putin's last year in power. Accordingly, even on the occasion of the 2018 inauguration, members ... of the elite will be suffering a severe headache over the question, 'So where will I be following the next inauguration, and with whom do I need to forge a friendship during these next six years in order to be invited to the Kremlin on the occasion of the next inauguration of the new head of state?' ... The important thing is that the burden will not be laid on ordinary citizens. They will remain onlookers rather than participants in the fateful processes." <https://www.gazeta.ru/comments/column/kolesnikov/8272877.shtml>.

3 For the text of the Russian constitution prior to the amendments of 2020, see: <http://www.constitution.ru/en/10003000-01.htm> and [https://www.constituteproject.org/constitution/Russia\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Russia_2014.pdf?lang=en).

opposition leaders. Yeltsin announced that he was suspending the existing constitution and, in November, he introduced a new draft giving sweeping powers to the president, at parliament's expense. That draft was approved in a nationwide plebiscite and entered into force on 25 December 1993.<sup>4</sup> It remains in effect today.

The imbalance of powers between president and parliament was highly controversial and prompted numerous repeated calls for constitutional reforms.<sup>5</sup> In the event, however, the anti-Yeltsin opposition did not push changes through since, by the later 1990s, it was enjoying high public opinion ratings and was confident that one of its nominees would be elected president in 2000. At that time, no-one in the opposition foresaw that Yeltsin would hand over power in December 1999 to his prime minister, Vladimir Putin, or that Putin would remain in power for the next two decades.

But while the 1993 constitution remained controversial and there were frequent calls for its revision, very few amendments were subsequently made, and those that were made were relatively minor and did not fundamentally affect the essential workings of the political system. Most substantial was the move by President Dmitrii Medvedev in 2008 to extend the presidential term from four to six years and that of the State Duma (the lower house of Russia's bicameral parliament) from four to five years. Medvedev did not, however, attempt to remove the clause specifying that an individual might not serve more than two consecutive presidential terms, or to amend the constitution to say that no individual could ever serve more than a total of two terms.<sup>6</sup> In 2014, a set of further amendments reorganized the process of appointing officials to the procuracy, increasing the power of the president in that respect.<sup>7</sup>

4 For a detailed study, see Jane Henderson, *The Constitution of the Russian Federation. A Contextual Analysis*. Oxford and Portland, Oregon: Hart Publishing, 2011.

5 The sweeping powers of the president had many critics. One such critic that it is ironically interesting to note today was Sergei Kirienko, then leader of the New Force movement, now in charge of domestic policy in Putin's Presidential Administration. In August 1999, Kirienko declared his intention to organise a national referendum prior to the 2000 presidential election, specifically on the need to amend the constitution. "The new president should be elected under a new constitution," Kirienko told Ekho Moskvyy radio station on 10 August. This should address "the restriction of the president's absolute power to fire the cabinet ... A system under which the cabinet lacks sufficient authority and may be summarily sacked at the president's whim without any explanation, does not create a climate in which the cabinet can operate properly," Kirienko asserted. In the event, no such referendum was organised.

6 This had featured in the Soviet constitution when the presidency of the USSR was introduced in 1990 under the leadership of Mikhail Gorbachev.

7 Under the constitutional amendments of 2014, the Prosecutor General lost much of his previous power to appoint his deputies and the regional prosecutors. In future, the Prosecutor General and his deputies were to be appointed or dismissed by the Federation Council on

Putin himself frequently voiced caution about the possibility of amendments. Rumors nonetheless continued to bubble up, not least in the run-up to the 2018 presidential election. In October 2018, the chair of the Constitutional Court, Valerii Zorkin, published an article in the official government newspaper in which he called for selective (“pin-prick” was the word he used) amendments, including establishing a better balance between the executive and the legislative branches.<sup>8</sup> The constitution, Zorkin claimed, had become “a living constitution,” by which he meant that, as society evolved, the constitution would need to be amended, but he warned against substantial changes.

Zorkin’s article provoked a wave of speculation over how Putin would resolve the “2024 problem,” given that, having served two consecutive presidential terms (2012–18, 2018–24), he would not be able immediately to run again when his current term expired. There was much discussion throughout 2019, a leading role in which was played by the speaker of the State Duma, Vyacheslav Volodin, who called (unsurprisingly) for more powers to be entrusted to parliament.<sup>9</sup> And, in a clear signal that constitutional changes were on the way, when Putin held his annual end-of-year press conference in December 2019 he too described the constitution as a “living instrument.” At the same time, Putin ruled out the adoption of a new constitution, stipulating that reforms needed to be prepared with care and extensive public debate.<sup>10</sup>

In his *poslanie* on 15 January 2020, Putin laid out seven specific proposals regarding constitutional reforms. These are detailed below. They were an odd mix, with some proposals slotted together that appeared to have little relevance to one another. Putin noted that, in order for the constitution to be amended, the proposals would have to be approved by the State Duma and the Federation Council (the lower and upper houses of the Russian parliament, respectively) and by two-thirds of regional legislatures; then they would need to receive the required presidential signature and confirmation by the Constitutional Court that the proposed amendments were consistent with the constitution, in particular with Chapters 1, 2 and 9, which are considered the foundational bases of the constitution.<sup>11</sup> Moreover, Putin said, the

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the recommendation of the president, and regional prosecutors were to be appointed by the president on the recommendation of the Prosecutor General with the agreement of the regional authorities. Jane Henderson, “The 2014 amendments to the 1993 Constitution of the Russian Federation,” *The Uppsala Yearbook of Eurasian Studies*, 2017.

8 <https://rg.ru/2018/10/09/zorkin-nedostatki-vkonstitucii-mozhno-ustranit-tochechnymi-izmeneniami.html>.

9 [http://www.ng.ru/politics/2019-01-21/1\\_7487\\_volodin.html](http://www.ng.ru/politics/2019-01-21/1_7487_volodin.html) and <https://yandex.ru/turbo/s/pnp.ru/politics/zhivaya-konstituciya-razvitiya.html>.

10 <http://en.kremlin.ru/events/president/news/page/25>.

11 The procedures for amending the constitution are laid out in Chapter 9, and relate to all the chapters of the constitution except for Chapters 1, 2 and 9; these three foundational

amendments should be put to a popular vote in order to ensure that the voices of the population were heard.

Immediately following his speech, Putin signed an order setting up a 75-member working group, whose membership he himself approved, to assess the proposed draft amendments and to consider additional proposals before these were put to the vote by parliament and the population. The group started work immediately.

On 20 January, Putin signed and submitted to the State Duma a 21-page document laying out his proposed amendments in the form of a draft bill entitled “On improving the regulation of various issues concerning the organization of public power” (“*O sovershenstvovanii regulirovaniya otdel'nykh voprosov organizatsii publichnoi vlasti*”).<sup>12</sup> As will be discussed below, the use of the term “public power” appeared to introduce a significant new concept, though no precise definition was provided as to what was meant by it. The State Duma undertook to fast-track the document, putting it up for discussion at a meeting on 23 January. All the proposed amendments related to Chapters 3–8 of the 1993 constitution, meaning that they could be approved by a two-thirds majority in both houses of the Federal Assembly and with the approval of two-thirds of the regional parliaments—though, as noted above, Putin had said he thought that a popular vote was also essential to give the Russian population a voice. It was already noticeable however, as will be discussed below, that there were certain differences between what Putin had said in his *poslanie* on 15 January and what was proposed in the document he submitted on 20 January.

After three days of discussion, the State Duma on 23 January voted unanimously to approve the bill in the first reading. The proposed amendments would in effect guarantee the supremacy of the Russian constitution over the rulings of international legal institutions throughout Russia's legal space; further expand the powers of the president over the government and the judiciary; place more responsibilities in the hands of the State Duma and Federation Council; weaken the powers of regional governments; and strengthen the social obligations of the state.

From January until 2 March 2020, the working group was charged with collecting proposals for further amendments from members of federal and regional parliaments, local authorities and social organizations. On 13 and 26 February, Putin held meetings with the working group to discuss the proposals that had been submitted. Putin proceeded to reject or include them in

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chapters can be amended only by a Constitutional Assembly, on the creation of which no law yet exists.

12 <http://duma.gov.ru/media/files/L1oSoAABMRzIzW9pqpXRDbR87WohxEv.PDF>.

the bill one by one. The State Duma's second reading of the bill had initially been scheduled for 11 February but, because of the large number of proposed amendments submitted,<sup>13</sup> the reading was postponed several times: in total the working group received more than 900 proposals for amendments.

On 2 March 2020, Putin submitted to the State Duma for the second reading a 68-page package of amendments.<sup>14</sup> This was considerably longer than the proposals Putin had originally made and, while the proposed amendments reflected much of what Putin had originally said, they also differed in some significant ways.<sup>15</sup> They also included a number of new proposals not related to Putin's original topics but put forward to the working group, such as an article pointing to Russia's millennium-long history and pledging homage to the "ancestors who bequeathed to us their ideals and belief in God." This amendment was reportedly tabled by the presidential administration at the urging of the Russian Orthodox Church to add a reference to God to the constitution; this had however proved hard to do since Article 14, which was in the foundational Chapter 1 of the 1993 constitution, defined Russia as a secular state and said that "no religion may be established as state or obligatory." Another amendment described marriage as a "union of a man and a woman," thereby confirming traditional values and effectively outlawing same sex marriage. Children were defined as the state's priority and should be raised to be healthy, patriotic and respectful of their elders. And, in line with calls to outlaw disparaging the role played by the USSR in World War II, an article was added pledging to protect historic truth and to forbid "belittling the people's heroic protection of the Fatherland." The Russian language, already defined in the constitution as the state language, was singled out as "the language of the state-forming people." Another amendment made it illegal for Russia to give away any part of its territory to a foreign power, an addition clearly related to Russia's 2014 annexation of Crimea from Ukraine and its ongoing dispute with Japan over the Kuril Islands. Another amendment clearly related to the annexation of Crimea and to Russia's support for separatists in eastern Ukraine, but with implications for Russia's relations with other neighboring states, required Russia to support its compatriots abroad.

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13 That was the official explanation; there was also speculation that the delay related to difficulties in working out how to incorporate the nationwide vote into the constitutional-legal process (personal communication from Ben Noble).

14 <http://static.kremlin.ru/media/events/files/ru/2fZyaW9dqV1AAEuvMfATCKONAcAbTdCa.pdf>.

15 <https://sozd.duma.gov.ru/bill/885214-7>.

On 10 March, the State Duma met to discuss the proposed amendments in the second reading. The second reading was critical because that was when lawmakers were able to make substantial changes to the proposed legislation. Most sensational on 10 March was that Valentina Tereshkova, 83-year-old Duma member and the world's first woman to fly into outer space, came up with a last-minute proposed amendment that would remove presidential term-limits from the constitution and re-set the clock on those served by Putin, zeroing out the four terms he was soon about to have served. On this, the particular amendment was very specific, applying only to those who held or had held the post of president and allowing them to ignore the terms served. Invited to the Duma, Putin delivered an address in which he rejected the removal of term-limits but agreed to Tereshkova's "annulment" (*obnulenie*). The final text of Article 81(3) then stated that "One and the same person may not hold the office of president more than two times." This meant that, should Putin so choose, he would be able to run again for president not only in 2024, but also in 2030, potentially keeping him in power until 2036, when he would be 83. Putin said however that this measure must be adopted only if the Constitutional Court ruled that it did not violate the 1993 constitution (the Court did indeed so rule). The Duma then approved that and the other proposed amendments in the second reading.

On 11 March, the Duma approved the bill in the third and final reading. It was approved on the same day by the Federation Council, and subsequently by the regional parliaments. On 14 March, the bill was formally signed by Putin and, on 16 March, the Constitutional Court ruled that the amendments were in accordance with Chapters 1, 2 and 9 of the Russian constitution.

The constitution in the new format was published on 16 March in *Rossiiskaya gazeta*,<sup>16</sup> the official newspaper of the Russian government where laws are published when they have been officially approved. Formally, therefore, the amendments had ticked all the boxes allowing them to pass into law. However, Putin had said that there must a nationwide vote, and this was built into the structure and content of the bill. The vote was initially set for 22 April, but then the coronavirus epidemic hit the world and the vote was postponed until such time as the president decided was right. Putin subsequently announced on 1 June that the vote should be completed on 1 July, with the ballot opened for a week beforehand to encourage Covid-safe voting.

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16 <https://rg.ru/2020/03/16/popravka-v-konstituciyu-dok.html>.



## 2 Part Two—Unpacking the Proposed Amendments

To look more closely at the constitutional amendments that were discussed, let us examine Putin's original seven proposals in his *poslanie*, at whether and how these were adapted by the working group and then by parliament, and at how they were finally drafted. Some of the amendments were minor, some were potentially very significant, and some appear quite contradictory.

### 2.1 *Putin's First Proposal—Asserting the Priority of the Russian Constitution over the Decisions of International Institutions*

Putin's first proposal in his *poslanie* of 15 January sought to establish that Russian constitutional law should take precedence over the rulings of international legal institutions. "Russia," he asserted, "can be and remain Russia only as a sovereign state." The time had come, Putin said, to amend the constitution in order "directly to guarantee the priority of the constitution in our legal space." This would mean ensuring that "the requirements of international law and treaties, as well as decisions of international bodies, can act on the territory of Russia only to the extent that they do not place restrictions on the rights and freedoms of man and citizen, and do not contradict our constitution."

In the document submitted to the State Duma on 20 January, Putin proposed supplementing Article 79 of the 1993 constitution, which read in its original formulation: "The RF may participate in interstate associations and transfer to them part of its powers in accordance with international treaties, as long as this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the RF," with the following: "Decisions of interstate bodies adopted on the basis of the provisions of international treaties of the RF which, as they are interpreted, contradict the constitution of the RF, shall not be enforced in the RF." This amendment was included in the package of proposals approved in March, at which time the following clause was also added: "The RF is taking measures to maintain and strengthen international peace and security, ensure the peaceful coexistence of states and peoples, and prevent interference in the internal affairs of the state." Article 125 was moreover to be amended to state that the Constitutional Court of the RF would rule on whether or not international rulings contradicted the Russian constitution.

This issue had long been a thorn in the side of the Russian authorities. Specifically annoying had been several occasions when the European Court of Human Rights (ECtHR) had found against Russia.<sup>17</sup> Russia is signatory to the

<sup>17</sup> See Bill Bowring, "Russia's cases in the ECtHR and the question of implementation" in Lauri Mälksoo and Wolfgang Benedek (eds), *Russia and the European Court of Human Rights*:



European Convention on Human Rights (ECHR), which means that Russian citizens can appeal to the ECtHR if their cases have been rejected by the highest relevant Russian court. The amendment would also affect rulings by other international bodies such as the International Court of Justice.

However, in asserting Russia's right to refuse to obey the decisions of international institutions if these were found not to comply with its constitution, the amendments proposed in 2020 appeared to call into question Article 15 of the Russian constitution, which gave international law priority over national legislation and stated that "The universally-recognized norms of international law and international treaties of the RF shall be a component part of its legal system. If an international treaty of the RF fixes other rules than those envisaged by law, the rules of the international treaty shall be applied." While there had been numerous calls for Russia to amend Article 15, this had not been possible since it was part of Chapter 1 of the 1993 constitution, which was hard to amend.<sup>18</sup> These calls increased following the international condemnation of Russia's 2014 annexation of Crimea in March 2014, and a ruling by the ECtHR in July 2014 that Russia should pay compensation to shareholders of the disbanded Yukos oil company.<sup>19</sup> In February 2015, for example, TASS quoted the powerful head of Russia's Investigative Committee, Aleksandr Bastrykin, as saying, "Experience shows that this constitutional provision works against Russia's interests and is being skillfully used by Russia's opponents."

While it was clearly significant, the constitutional amendment called for by Putin in January 2020 would in fact formalize several previous rulings already made by the Russian Constitutional Court which had also run counter to Article 15. On 14 July 2015, the Constitutional Court ruled that, while Russia was legally bound by the ECHR, Russia might ignore judgments of the ECtHR if they conflicted with the Russian constitution.<sup>20</sup> On 4 December 2015, the State Duma endorsed the Court's position and amended the Federal Constitutional Law<sup>21</sup> on the Constitutional Court of the RF,<sup>22</sup> granting the Court the right to declare a decision of an international court unenforceable in Russia if it was

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*The Strasbourg Effect*. Cambridge: Cambridge University Press, 2018, pp. 188–221, and Bill Bowring, "Politics and Pragmatism: The Constitutional Court of the Russian Federation and its 20 Years of Engagement with the European Convention on Human Rights," *East European Yearbook on Human Rights*, Vol. 1, 2018 <https://ssrn.com/abstract=3149747>.

18 As noted above, Chapters 1, 2 and 9 can be amended only by a Constitutional Assembly.

19 <https://www.bbc.co.uk/news/business-28579980>.

20 <https://www.bbc.co.uk/news/world-europe-33521553> and <https://www.kommersant.ru/doc/2754724>.

21 A federal constitutional law regulates in detail what is stipulated in the constitution; it is adopted by a qualified majority in both houses of parliament.

22 <http://www.ksrf.ru/en/Info/LegalBases/FCL/Documents/Law.pdf>.

found to contradict the Russian constitution.<sup>23</sup> Therefore, the amendment to Article 79 did not essentially change the existing situation, even though it contradicted Article 15. In this respect, the amendment resembled several others adopted in 2020, which embedded in the constitution rules that had already been adopted under federal law.

### 2.2 *Putin's Second Proposal—Controlling the Bureaucracy*

In his second proposal on 15 January, Putin proposed enforcing tougher controls over individuals in high-ranking state posts, starting with the president (Article 81) and including regional governors (Article 77), heads of federal state institutions (Article 78), federal government ministers (Article 110), members of the judiciary (Article 119) and prosecutors (Article 129). Specifically, these officials would not be allowed to hold foreign citizenship, have foreign residence permits, or keep money or valuables in foreign countries, either during their time in office or, in the case of the president, at any time before. This represented the formalization of the policy of “nationalization of the elite” that had been introduced by Putin in 2012 and 2013.<sup>24</sup> The number of years that the president would have to have lived in Russia before he assumed office was raised to 25 from the previous ten years.

Continuing his *poslanie* on 15 January, Putin said: “I also know that society is discussing the constitutional provision that the same person should not hold the position of president of the RF for more than two consecutive terms. I do not think that this issue is fundamental, but I agree with this.” In the documents submitted by Putin to the State Duma on 20 January and 2 March, the word “consecutive” was removed from Article 81, while the article continued to state that an individual could not serve more than a total of two presidential terms.

But then, as noted above, Tereshkova proposed re-setting the clock on Putin's presidential terms to zero. Her argument was that the changes that were to be made to the constitution were so substantial that, while it was not a new constitution, it would have changed so significantly that Putin's four terms under the old version should be discounted. Her amendment read as follows: “The provision of Article 81(3) of the constitution of the RF, limiting the number of

23 <https://www.bbc.co.uk/news/world-europe-35007059>.

24 Officially presented as an anti-corruption measure, Putin's “nationalisation of the elite” was also intended to ensure the loyalty of the elite by banning officials from holding foreign bank accounts and requiring them to disclose other foreign assets such as real estate held abroad. See <https://www.osw.waw.pl/en/publikacje/analyses/2013-04-10/nationalisation-elite-kremlin-tracking-officials-foreign-assets> and [https://www.rbth.com/politics/2013/04/12/whats\\_behind\\_the\\_nationalisation\\_of\\_the\\_elite\\_23739](https://www.rbth.com/politics/2013/04/12/whats_behind_the_nationalisation_of_the_elite_23739).

terms during which the same person may hold the office of the president of the RF, applies to a person holding the office of the president of the RF, without taking into account the number of terms during which they had held this position at the time that the amendment to the constitution of the RF enters into force ... and does not exclude the possibility for them to hold the office of president within the period allowed by the said provision.”

The State Duma approved the proposed amendments in the third and final reading on 11 March. As noted above, the bill was approved on the same day by the Federation Council, and subsequently by the regional parliaments. On 14 March, the bill was formally signed by Putin, and on 16 March the Constitutional Court ruled that the amendments met with the provisions in Chapters 1, 2 and 9 of the constitution. While this meant that, once the amendments entered into force, Putin would, at least in theory, be able to stand for re-election in 2024, it also meant that whoever eventually took over from Putin would likely be in a weaker position in that he (or she) would be restricted to two terms.<sup>25</sup>

Since this cleared the way for Putin to run again for president, there was much discussion not about whether Tereshkova had been set up to propose the change (it was generally assumed that she had) but about whether Putin set it up because he intended to run again in 2024, that is, that he did not plan to go away, or—equally and maybe even more likely—because he wanted to kick the can down the road, create uncertainty, and keep everyone guessing about what he would do in 2024. The fact that Putin had now secured the opportunity to stand down or to stay on would keep the elite in suspense.<sup>26</sup> This gave Putin wiggle room to go on leading the country without being challenged by factions of the elite who would otherwise be worrying about how they and their fortunes would survive without him after 2024. We know that Putin likes to surprise: as *The Financial Times* reported on 11 December 2007, “Putin loves to pull a rabbit out of the hat—and then it turns out to be a possum.”<sup>27</sup> Tereshkova’s amendment gave Putin both options: he could stay or he could leave in 2024, and that enabled him to preserve his power and prevented him from being seen as a lame duck.<sup>28</sup>

25 Under Tereshkova’s amendment Dmitrii Medvedev, who had served one term, would as a former president be eligible to serve two subsequent terms.

26 This point was made by Nikolai Petrov and Ben Noble in their comment <https://www.chathamhouse.org/expert/comment/russia-s-uncertain-regime-transformation>.

27 <https://www.ft.com/content/80e5e8a8-a81d-11dc-9485-0000779fd2ac>.

28 [https://www.svoboda.org/a/30646323.html?fbclid=IwARo\\_SdtGIpakXtbCW0NhKHmxALbUNT4AqNW-vQK329TqzPwQR2uKyY5FWwo](https://www.svoboda.org/a/30646323.html?fbclid=IwARo_SdtGIpakXtbCW0NhKHmxALbUNT4AqNW-vQK329TqzPwQR2uKyY5FWwo).

Evidence that, at least at first, Putin was thinking of standing down in 2024 and handing over power (as Yeltsin did in 1999) to a trusted successor was provided by that fact that in his *poslanie* Putin appeared (as detailed below) to suggest weakening some of the powers of the president and strengthening those of parliament. This would fit with the idea that Putin did not want his successor to be too powerful since then the successor could be seen as a threat both to Putin personally and to the elite that Putin had built over his twenty years in power. Meanwhile, Putin himself might move over to head a future power base such as, for example, the State Council—a hitherto informal body that, as detailed below, Putin now moved to formalize.<sup>29</sup>

Evidence that Putin perhaps changed his mind between January and March, and decided to keep open the option of remaining in office after 2024, may be found in the fact that many of the amendments that were finally approved further strengthened the powers of the president. But the fact that whoever would eventually succeed Putin as president would be restricted to two terms in office, and would therefore not be able to get too big for his boots, suggests that Putin continued to favor the idea of placing restrictions on the powers of his successor as a means of protecting the future interests both of himself and of his closest associates.

### 2.3 *Putin's Third Proposal—Local-Self-Government, “Public Power” and “Federal Territories”*

The third proposal in Putin's *poslanie* related to local and municipal self-government. He said: “Our task is to ensure high living standards and equal opportunities for everyone, throughout the country. The national projects,<sup>30</sup> all our development plans, are precisely aimed at achieving that goal.... At the same time, you know what problems are created in education, health care and other areas by the gap between the state and municipal levels of government ... The rights, opportunities and guarantees promised by law for all citizens are provided differently in different regions and municipalities. This is unfair to individuals and poses a direct threat to our society and to the integrity of the country. I consider it necessary to consolidate in the constitution the principles of a unified system of public power (*edinaya sistema publichnoi vlasti*), and to build effective cooperation between state and municipal bodies.

29 In fact, reforming the State Council as a bolthole for a post-presidential Putin had reportedly been under discussion since at least 2016 <http://www.kasparov.ru/material.php?id=57E8C1FED4B4>.

30 The thirteen national projects are a set of state-funded programmes, running from 2018 to 2024 and including infrastructure investments, aimed at improving the performance of the Russian economy.

At the same time, the powers and real capabilities of local self-government—the level of authority closest to the people—can and should be expanded and strengthened.”

So, as with Putin's proposal regarding the powers of parliament (see below), on the one hand Putin called for strengthening the powers of local self-government while, on the other hand, the changes that he proposed appeared set to weaken further the powers of local self-government. This would in fact cease to be self-government and would become one of the levels of state power.<sup>31</sup>

Let us first discuss the potential impact of Putin's proposals and of the amendments subsequently approved on local self-government, and then try to unpick Putin's new concept of “public power.”

Putin moved already during his earlier years as president to restrict the powers of local self-government.<sup>32</sup> Roald Babun wrote in 2018<sup>33</sup> that “Local government has been significantly weakened in recent years ... [It] is increasingly less competent, with less financial and administrative autonomy, fewer resources for self-organization, and more reliance on vertical state power.” At a public meeting in October 2019, Putin raised the matter of what he said was the need to regulate interaction between state power and local self-government, saying that there was a gap in the constitution between the municipal level of government and the state. “Municipal is not a state level, according to the constitution, but regional and federal is the state,” Putin said, referring to Article 12 of Chapter 1 of the constitution.<sup>34</sup> Putin spoke of this again at his meeting with parliamentary leaders in December 2019, when he commented that “Some things ... could be regulated differently, including the relationship between municipal authorities and state authorities, bearing in mind that a unified system of public power should be created.”<sup>35</sup> Reporting on this meeting, *Kommersant* commented that senior state officials had long been talking about the need to integrate local self-government into the hierarchy of state bodies. At the heart of the problem, *Kommersant* opined, was the discrepancy

31 In deliberate contrast to the Soviet system of a unified hierarchy of state power, the 1993 constitution emphasised the separation of local self-government by giving it its own chapter (Chapter 8), albeit a very short chapter with only four articles.

32 See Tomila V. Lankina, *Governing the Locals: Local Self-Government and Ethnic Mobilization in Russia*, Lanham, MD: Rowman & Littlefield, 2004, pp. 159–63.

33 R.V. Babun, “Local Self-Government in Russia. A New Stage of Municipal Development,” *Problems of Economic Transition*, 60:8–9, 624–639 <https://doi.org/10.1080/1061991.2018.1595832>.

34 As reported in *Kommersant* on 25 December 2019 <https://www.kommersant.ru/doc/4343976>.

35 <https://www.kommersant.ru/doc/4343976>.

between the level of authority of the local self-governments and the resources available to them, which state officials believed could be eliminated by incorporating local self-government into the state power hierarchy. *Kommersant* quoted political commentator Vitalii Ivanov as predicting that “a unified system of public power” would be established. This appears to have been precisely what Putin spoke of on 15 January 2020. But, while in his *poslanie* Putin spoke of the need “to expand and strengthen the powers and real capabilities of local self-government,” many of the amendments as finally approved in March appeared intended not to expand, but to reduce the powers of local government bodies by bringing them under closer federal control.

This appears directly to contradict Article 12 of Chapter 1 of the constitution, which reads, “Local self-government shall be independent within the limits of its authority. The bodies of local self-government shall not be part of the system of bodies of state authority.”

Article 131, which is in Chapter 8 on local self-government, and which previously stated simply that “The structure of local governments is determined by the population independently,” was supplemented in March 2020 to read “is determined by the population independently in accordance with the general principles of local government in the RF established by federal law.” Article 131 was further supplemented in March to read: “Organs of state power may participate in the formation of local governments, and appoint or dismiss local-government officials in the manner established by federal law.” This addition gives the state a powerful role it did not previously have. According to Nikolai Petrov and Ben Noble, these proposals “put the autonomy of local self-government at risk, with Moscow and regional executives gaining the constitutional power to hire and fire [local] officials who are not even technically part of the state.”

### 2.3.1 “Public Power”

In the package of constitutional changes submitted by Putin to the State Duma on 20 January, a clause was added to Article 132, reading: “Organs of local self-government and organs of state power form part of a unified system of public power (*единая система публичной власти*) in the RF and cooperate for the most effective resolution of tasks in the interests of the population living in the respective territory.” This addition was approved in March. It appears significant since it mentions the “unified system of public power” to which Putin referred in his January *poslanie* but which he did not define, and which was also highlighted in the titles both of his 20 January package and of the amendments signed into law by Putin on 14 March 2020 (*O sovershenstvovanii regulirovaniya otdel'nykh voprosov organizatsii publichnoi vlasti*).

Carolina Vendil Pallin and her colleagues, in their expert analysis of Putin's constitutional reforms,<sup>36</sup> described the introduction of the concept of public power as “an attempt to bring together state power and local self-government, which has already been severely restricted in the past. The result is that the right to local self-government is circumvented further with the constitutional changes.” Similarly, Ben Noble commented that one motive for Putin's inclusion of the term “public power” in his constitutional reforms seemed to be to create a way to unite state and local self-government organs into a single whole.<sup>37</sup>

### 2.3.2 “Special Territories”

A further mention of “public power” was added in the March amendments to Article 131, making it read: “Aspects of the exercise of public authority in the territories of cities of federal significance, administrative centers (capitals) of the constituent entities of the RF and in other territories may be established by federal law.” The concept of “special territories” was not mentioned in either the *postlanie* or the 20 January package, but was introduced in early February under the auspices of the working group on constitutional amendments. Senator Andrei Klishas, one of the co-chairs of the group, was quoted on 5 February as hinting that the constitution might be amended to include a provision that would allow the federal government to declare certain areas of the country “federal territories” and to administer them directly.<sup>38</sup> According to Klishas, these might include the so-called closed cities, of which there were approximately 40 in Russia, ten of which were established for atomic-energy projects. Other territories might be those judged environmentally vulnerable, such as the Arctic zone.

Article 67 was indeed amended in March to read “On the territory of the RF, federal territories may be created in accordance with federal law. The organization of public power in the federal territories is established by the relevant federal law.” No further information was provided, but the amendment set off considerable speculation that it represented a potential possibility for the

36 Gudrun Persson, Carolina Vendil Pallin and Maria Engqvist, “*Ryssland ändrar grundlagen—innehåll och konsekvenser*” (Russia Amends the Constitution. Content and Consequences), Swedish Defence Research Agency, FOI Memo 7091, 4 May 2020 <https://www.foi.se/en/foi/reports/report-summary.html?reportNo=FOI%20Memo%207091>.

37 Personal communication.

38 [https://www.znak.com/2020-02-06/zato\\_mogut\\_izyat\\_iz\\_sostava\\_uralских\\_regionov\\_v\\_ramkah\\_konstitucionnoy\\_reformy](https://www.znak.com/2020-02-06/zato_mogut_izyat_iz_sostava_uralских_regionov_v_ramkah_konstitucionnoy_reformy), <https://yandex.ru/turbo/s/pnp.ru/politics/v-konstitucii-predlagayut-zakreplit-ponyatie-federalnaya-territoriya.html>, <https://ria.ru/20200206/1564316849.html> and <https://www.kommersant.ru/doc/4243970>.



central authorities to assert control over large swathes of the country and turn Russia from a federal into a unitary state run from the center.

### 2.3.3 Socio-Economic Sweeteners

Having discussed these unclear but potentially significant amendments, Putin ended his third proposal with a promise to embed in the constitution guarantees that the minimum wage would always be at least equal to the average subsistence minimum (also known as the living wage) calculated for the able-bodied population as a whole, and that pension payments would be indexed (that is, raised by a certain percentage each year) to keep up with inflation, thereby ensuring that the real purchasing power of the pension should not be allowed to fall. Article 75 of the constitution was duly supplemented, including a promise that other social benefit payments would also be indexed to keep up with inflation. Commentators suggested that the inclusion of these amendments was intended to secure popular support and persuade people to turn out to vote in favor of the reform package as a whole.

### 2.4 *Putin's Fourth Proposal—Institutionalizing the State Council*

Putin's fourth proposal in the *poslanie* ostensibly related to the role of regional governors, but in fact focused on the role of the State Council. Putin said, "I consider it necessary to radically increase the role of regional governors in the development and adoption of decisions at the federal level. In 2000, on my initiative, the State Council was revived,<sup>39</sup> in which the heads of all the regions participate.... I consider it appropriate to consolidate the corresponding status and role of the State Council in the constitution of Russia."

The proposal provoked much speculation since Putin had, during his twenty years in power, significantly reduced the powers of regional governors. When he assumed office in 2000, Putin made it clear that he felt many governors enjoyed far much too power in their regions and had escaped control by the federal center. At that time, regional governors had automatic membership of the Federation Council. They valued the access to Moscow with which this provided them, their ability to use the Federation Council to shape legislation and lobby for regional interests, and the personal immunity from prosecution that their membership assured them. One of Putin's first moves in 2000, therefore, was to strip the governors of membership in the Federation Council (he was able to do this because the 1993 constitution did not specify how the

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39 This refers to the role of the State Council in the tsarist period.

senators were to be appointed<sup>40</sup>). This move was strongly resented by the governors and, by way of meagre compensation, Putin by a presidential decree on 1 September 2000 created the State Council, of which all the regional governors are members, along with other members appointed at the president's discretion, but which does not grant immunity from prosecution. Until now, moreover, the State Council has been an *ad hoc* institution with no constitutional status and none of the powers of the Federation Council. Rather it has been seen as a ceremonial body that "advises" the president but cannot make any decisions of its own.

Putin continued during his presidency to weaken the independence of regional governors. In September 2004, he abolished the direct election of governors who were in future to be appointed on the recommendation of the president, while confirmed (or in theory rejected) by regional legislatures. This proved so unpopular a move with the Russian population that, in the context of the 2011–12 protest demonstrations, President Medvedev called for it to be revoked, and the direct election of governors was reinstated in the majority of regions. However, the law restoring their election, which came into effect in 2012, was ring-fenced not only with a "presidential filter"—meaning that the president would propose candidates—but also with a "municipal filter" that made it difficult if not impossible for independent candidates to register and run for election. Moreover, the governors who had come to office in the most recent years had largely been young technocrats and so-called Varangians, that is, outsiders who until their election had had few or no links to the region and who were, therefore, dependent more on the Kremlin than on their regional electorates.<sup>41</sup>

There was accordingly suspicion that Putin's real purpose in embedding the State Council in the constitution was not to give more power to regional governors, but rather to create an alternative power center that Putin himself might head should he decide to step down as president in 2024, something to which

40 For the State Duma, Article 96 of the 1993 constitution specifically stated that its members should be elected, but Article 95 was silent on how Federation Council members should be put in post, beyond saying that half should represent the executives, and half the legislatures, of the subjects of the RF (plus, since 2014, the possibility of a handful of presidential appointees).

41 The lack of regional autonomy was highlighted during the coronavirus epidemic when in May 2020 Putin devolved responsibility for tackling the epidemic to the regional governors, without providing them with the funding they needed to control the situation in their respective regions. On 12 May 2020, *The Guardian* quoted Mark Galeotti as saying, "This is abdication of responsibility, the architect of Russia's hyper-presidential system suddenly discovering local authorities when it is convenient. Putin is giving them the responsibility to fight the pandemic without the funds or the powers."

he seemed in January 2020 to be giving serious thought. Putin appeared, it was speculated, to be thinking of following the example set by Kazakhstan's president Nursultan Nazarbayev, who stepped down in March 2019, handing the presidential reins to his chosen successor but retaining significant control over policy by assuming lifelong chairmanship of Kazakhstan's Security Council.

Be that as it may, Article 83 of the constitution, which defined the powers of the president, was supplemented as follows in the 20 January document: "The president of the RF forms the State Council of the RF in order to ensure the coordinated functioning and cooperation of organs of state power, [and to] determine the main principles of domestic and foreign policy of the RF and of the socio-economic development of the state; the status of the State Council of the RF is determined by federal law."

Since the State Council had not until then been mentioned in the constitution, this was all quite new. The fact that the State Council would "determine the main principles of domestic and foreign policy" certainly sounded as if it would in future play a more significant role than it had in its first twenty years of existence. Moreover, the amendment granted the president the sole right to appoint the members of the State Council. (In the case of Kazakhstan, members of the Council are appointed by the president, but then have to be approved by the State Council chair, that is, by Nazarbayev.) As Gordon Hahn pointed out,<sup>42</sup> however, the functions assigned to the State Council in the amendment duplicated those already assigned to the president in Article 80 of the 1993 constitution. This suggested that the State Council would share these functions with the president and, while the amendment stated that the State Council would be formed by the president, it did not state that the president would chair the State Council. In theory, therefore, Hahn pointed out, the amendment introduced a new player into to the power vertical, meaning that, if Putin left the presidency in 2024, the role of chair of the State Council might be waiting for him. It remains of course to be seen what is set out in the federal law of which Putin spoke but which has yet to be adopted.

The amendment was approved in March with one small but potentially significant change. That is, what read in the January draft as "organs of state power" was changed in March to read "organs of public power." The latter wording appears to imply a broader reach than the former; the concept of "public power" was, as noted above, new and in the process of formation but appeared to be significant.

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42 <https://gordonhahn.com/2020/01/21/putins-perestroika-update/>.

### 2.5 *Putin's Fifth Proposal—Strengthening the Role of Parliament?*

Putin stated that “The Federal Assembly is ready to take on greater responsibility for the formation of the government. And if it takes more responsibility for the formation of the government, that means taking on more responsibility for the policies that this government pursues.... At present, in accordance with Articles 111 and 112 of the constitution, the president receives the consent of the State Duma only to appoint the prime minister, and then the president himself appoints the head of the cabinet, his deputies, and all other ministers. I propose entrusting the State Duma with approving the candidacy of the prime minister and then, on the prime minister's recommendation, the candidacies of all deputy prime ministers and federal ministers. In this case [i.e., if the State Duma approves the nominees], the president will be obliged to appoint them; that is, he will not have the right to reject the candidacies of the relevant officials approved by the parliament.”

At first Putin's proposal was widely interpreted as moving the political center of gravity from the president to the State Duma and empowering the prime minister to select and appoint the cabinet of ministers. This was seen as a signal that Putin was looking ahead to 2024, when he might leave the presidency, and seeking to weaken the powers of his successor so that he himself would not risk attack. This interpretation turned out to be mistaken since, as shown below, the president kept the last word, suggesting that Putin perhaps changed his mind between January and March.

Indeed, Putin added the following caveat in the *poslanie*: “I am convinced that our country with its vast territory, complex national-territorial structure, and variety of cultural and historical traditions cannot ... exist stably in the form of a parliamentary republic. Russia must remain a strong presidential republic. Therefore, the president must retain the right to determine the tasks and priorities of the government, as well as the right to remove the prime minister, his deputies and federal ministers in the event of their improper performance of duties or in connection with the loss of confidence. Also, the president should remain in direct control of the armed forces and the entire law-enforcement system.”

Most of the amendments adopted in March strengthened rather than weakened the powers of the president. This is for example the case with Article 110, which in the 1993 constitution read simply that “Executive power in the RF shall be exercised by the government of the RF,” but which in March was supplemented with the following words “under the general leadership of the president of the RF.” Article 110 was supplemented further to stress the role of the president, stating that: “The government of the RF directs the activities of the federal executive bodies, with the exception of the federal executive bodies

which are managed by the president of the RF.” This clearly relates to Putin’s assertion in his *poslanie* that the president, not the government, controls the armed forces and the law-enforcement bodies.

Article 111, which in the 1993 constitution gave the president the power to dissolve the State Duma and call fresh parliamentary elections if the Duma rejected the president’s nominee for prime minister three times, was amended in March to state that, in these circumstances, the president might indeed dissolve the Duma and call fresh elections. Unlike in the earlier version of the constitution, however, the president might also decide to leave the Duma in place and appoint his chosen prime minister without the approval of the Duma. This was seen as giving the president more wiggle-room than before.

Articles 111 and 112 were amended in the January and March versions, and the powers of both houses of parliament—the Federation Council and the State Duma—were expanded. Thus, in the version submitted in January and approved in March, Article 111 was amended to read: “The prime minister of the RF is appointed by the president after his candidacy is approved by the State Duma.” This was seen as increasing the power of the State Duma. Whereas previously the Duma had merely given its consent to the prime minister’s appointment, now it would have the final say. At the same time, however, Article 111 was amended in January and approved in March to stress the power of the president to dismiss the prime minister without consulting parliament.

This appeared to be new, since it was not previously spelled out in the constitution. But in fact, it was already the established practice. Under the Federal Constitutional Law on the Government of the RF of 1997, the president was already empowered to dismiss the prime minister, either if he resigned or if he was unable to fulfil his duties; the president was merely obliged subsequently to notify the two house of parliament of his decision.<sup>43</sup> All that was new, therefore, was that this was now made explicit in the constitution.

Article 112 was amended to state that the prime minister would present his candidates for the post of deputy prime minister and other federal ministers to the State Duma for its approval. Previously, the prime minister had proposed his candidates to the president, so this represented new power for the State Duma. Moreover, the State Duma had previously had the right to approve a candidate for prime minister nominated by the president, but had had no voice in the appointment of other government ministers. The amendment stressed however that this would not apply to the key ministerial posts appointed by

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43 Federal Constitutional Law on the Government of the Russia Federation [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS48\\_LEG\\_79.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS48_LEG_79.pdf). I am most grateful to Jane Henderson for pointing this out.

the president—the defense, foreign, interior, justice and emergency situations ministries and the security services as identified in amended Article 83 on the powers of the president.<sup>44</sup> Article 112(3) was supplemented to state that, once the candidates proposed by the prime minister had been approved by the State Duma, they would be appointed by the president who would not have the right to refuse their appointment. This too was seen as increasing the powers of the State Duma.

However, Article 112(4), which was added in March, stated that, if the State Duma rejected three times the prime minister's candidates for deputy prime minister and other ministerial posts, the president would have the right to appoint the prime minister's candidates anyway. Moreover, if the State Duma's rejection of the prime minister's candidates meant that more than a-third of the ministerial posts in the government would remain vacant (excluding those key ministers directly appointed by the president), then the president could dissolve the State Duma and call new parliamentary elections. Article 112(5), also added in March, stated that if, in accordance with Article 112(4), the president dissolved the State Duma after it had rejected the prime minister's candidates three times, the president would be empowered to appoint the deputy prime ministers and federal ministers proposed by the prime minister. Articles 112(4) and 112(5) both appeared to strengthen the powers of the president and the prime minister, at the expense of parliament.

## 2.6 *Putin's Sixth Proposal—Confirming Presidential Control over the Power Ministries and Taking Power Away from the Regions*

Putin stated: "I propose to stipulate [in the constitution] that the president will appoint the heads of all the so-called power departments following consultations with the Federation Council. I believe that this approach will make the work of ... the law-enforcement agencies more transparent and accountable to society."

Articles 83 and 102 were duly amended in January and approved in March. Article 83 now stated that the president would, after consulting the Federation Council, appoint and relieve from office the heads of the defense, foreign, interior, justice and emergency situations ministries, and of the key security, intelligence and law-enforcement agencies. Article 102 stated merely that the president would consult the Federation Council about the appointment (no mention of the dismissal) of these key officials. This was presented as

44 The split between president-controlled and prime minister-controlled ministries, departments and agencies is spelled out clearly in the Federal Constitutional Law on the Government of the Russia Federation, *op. cit.*

enhancing the power of the upper house of parliament. In fact, it appeared to increase the powers of the president even more, since the amendments called for the president to consult with the Federation Council, but not for the Federation Council to give its specific agreement.

Putin continued in his *poslanie*: “The principle of appointment following consultations with the Federation Council can also be applied to regional prosecutors. Today they are appointed by agreement with the regional legislature. This can in practice lead to certain, including informal, obligations to local authorities, and therefore to risks of losing objectivity and impartiality.”

Under the 1993 constitution, as amended in 2014, the Prosecutor General of the RF was appointed and dismissed by the Federation Council on the proposal of the president. In January 2020, and in line with Putin’s *poslanie*, Articles 83, 102 and 129 were amended to empower the president, after consulting the Federation Council, to appoint both the Prosecutor General and also his deputies. But while the amendment proposed in January would have required the president to consult the Federation Council before dismissing the Prosecutor General and/or his deputies, this requirement was deleted from the version that was approved in March. Again, therefore, the powers of the president were increased rather than those of the Federation Council, further enhancing the presidential power over the procuracy conferred by the constitutional amendments of 2014.

Article 129 was further amended in January to read that regional, military and “other specialized prosecutors equal to regional prosecutors” were to be appointed by the president after consultation with the Federation Council and could be removed from their posts by the president. This represented a (limited) increase in the power of the Federation Council and a loss of power of the regional authorities. Under the 1993 constitution in its original form, regional prosecutors were appointed by the Prosecutor General by agreement with the relevant regional authorities. Article 129 had however been amended in 2014 to state that in future regional prosecutors would be appointed by the president on the recommendation of the Prosecutor General as agreed with the relevant region, and could be dismissed from office by the president. As amended in 2020, Article 129 stated that regional, military and other specialized prosecutors were to be appointed by the president after consultation with the Federation Council and could be dismissed by the president. This would accordingly weaken the powers of the regional authorities. Article 129 was further supplemented to read that “other [undefined] prosecutors” could be appointed and dismissed simply by the president.

Lastly, Article 129 was further supplemented to state that city and district prosecutors would be appointed or dismissed by the Prosecutor General. Again



this represented a reduction in the power of the regional authorities, as Putin himself made clear when he stated in his *poslanie* that, “The position of the regions on the candidacies of regional prosecutors can be taken into account during consultations in the Federation Council, which is precisely the chamber of the regions. We cannot have any homegrown legality in one and another region ... I am convinced that greater independence of the prosecutor’s office from the local authorities is in the interests of citizens ...” In line with these changes, Article 129, which in the original version of the constitution defined the prosecutor’s office as “a unified centralized system,” was supplemented in January to describe it as “a unified federal centralized system,” apparently signaling the introduction of greater centralized control.

### 2.7 *Putin’s Seventh and Last Proposal—More on the Powers of the Federation Council, and Those of the Courts*

“I consider it necessary,” Putin said as he approached the end of his *poslanie*, “to assert in the constitution the power of the Federation Council, on the advice of the president, to remove from office the judges of the Constitutional and Supreme Courts.”

Under Article 102 of the 1993 constitution, the president nominated his candidates for appointment as chairs and judges of the Constitutional and Supreme Courts to the Federation Council, which had the power to appoint them. The Federation Council could dismiss the judges of the Constitutional and Supreme Courts, but only at the request of the courts themselves. Commenting on 15 January 2020, *The Bell* wrote that “the fact that the President would now have the power to propose their dismissal meant that the independence of the higher courts would effectively be destroyed.”<sup>45</sup>

In keeping with Putin’s proposal, Articles 83 and 102 were amended in January and approved in March to empower the Federation Council, on the advice of the president, to dismiss from office the chairs and judges of the Constitutional and Supreme Courts and of the commercial and appeal courts if they were found to have “damaged the honor and dignity of the court.”

It was also proposed on 20 January and approved in March to amend Article 102 to state that the president would consult the Federation Council concerning his proposed candidates to head key government ministries—defense, foreign and internal affairs, justice, state security and emergency situations. This was approved in March and involved amendments to Articles 83, 102 and 112.

45 <https://thebell.io/kosmeticheskij-remont-ili-dom-pod-snos-zachem-putin-menyaet-sistemu-vlasti/>.

Putin continued in his *poslanie*: “I also propose to strengthen the role of the Constitutional Court by empowering it to verify, at the president’s request, the constitutionality of bills adopted by the Federal Assembly before they are signed by the head of state. You might also think about extending the powers of the Constitutional Court to assess the compliance with the constitution not only of laws, but of other normative acts by state authorities at both federal and regional levels.” On the face of it, Putin was calling for more power to be given to the Constitutional Court, which would be mandated to review the constitutionality of bills approved by parliament before they were officially signed into law by the president. Prior to this reform, the only drafts that the Constitutional Court had been required to assess were of international treaties.

Under federal law, however, the president already had the power to veto a bill presented to him by parliament for signature. If he did so, the proposed law would be returned to parliament for review and, if it gained sufficient votes—a qualified majority in each of the two houses—then the president’s veto would be overridden and he would be required to sign the bill into law. This latest amendment would give the president a fresh option, since he would be able to refer the legislation to the Constitutional Court for review. The proposal could therefore, as Jane Henderson pointed out, be seen as granting the president a new “super veto” in dealing with the Federal Assembly.<sup>46</sup>

Writing for Meduza on 29 January 2020, Denis Dmitriev<sup>47</sup> noted that the 1993 constitution had not previously defined the role of the Constitutional Court. The Court was however described in the Federal Constitutional Law on the Constitutional Court of 1994 as “a judicial body ... that autonomously and independently executes judicial decisions by means of constitutional legal proceedings.”<sup>48</sup> Dmitriev pointed out that that definition was included in the proposed amendment to Article 125 of the constitution as included in the bill of 20 January. This would now read (and was approved in this version in March): “The Constitutional Court of the RF is the highest judicial body for constitutional control, and executes judicial decisions by means of constitutional legal proceedings ...” What had been removed, Dmitriev pointed out, were the words “autonomously and independently” (*samostoyatel’no i nezavisimo*). While the Constitutional Court was described as Russia’s highest arbitrator of constitutional law, and the independence of the judiciary remained

46 Personal communication from Jane Henderson.

47 <https://meduza.io/en/feature/2020/01/30/russia-s-constitutional-reform-proposal-would-remove-the-word-independent-from-current-federal-law-s-description-of-the-constitutional-court>.

48 [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS48\\_LEG\\_73.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS48_LEG_73.pdf).

in Articles 10 and 120, Dmitriev warned that the proposed amendment would make the Constitutional Court less independent of the president than before.<sup>49</sup>

### 3 Part Three—The Powers of the President

The powers of the president were not explicitly mentioned by Putin in his *poslanie* and, as already noted, at first his proposals appeared to weaken some of the presidential powers. As events developed, however, it became clear that in fact the proposed amendments would further strengthen the powers of the president, even though a few concessions were made to other state actors. This section looks at Chapter 4 of the constitution, which deals with the powers of the president, and lists the relevant amendments made in January and March 2020 (some of which were made to articles in other chapters of the constitution).

Article 80 of the 1993 constitution stated that: “The president of the RF shall be the guarantor of the constitution of the RF, of the rights and freedoms of man and citizen. According to the rules fixed by the constitution of the RF, he shall adopt measures to protect the sovereignty of the RF, its independence and state integrity, and ensure the coordinated functioning and interaction of all the bodies of state power.” This last sentence was amended in March 2020 to state that the president “ensures the coordinated functioning and interaction of bodies that are part of the unified system of public power.” No explanation was provided of what “public power” meant or why it replaced “state power” here, but the fact that the change was made suggested that it bore some significance.

Article 83 previously stated that the president appointed the prime minister by agreement with the State Duma. This was proposed in January to be amended to state that the president would appoint the prime minister whose candidacy was approved by the State Duma on the president’s recommendation. This made it clear that the president would choose the prime minister, and that the Duma would merely be invited to approve his choice. Articles 83 and 111 were further supplemented to say that the president might dismiss the prime minister without dismissing the entire government. Previously, the president

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49 The 1993 constitution did not specify how the chair of the Constitutional Court would be appointed. In 2009, then President Medvedev signed into law new rules for the appointment of the chair and his two deputies. They would be nominated by the president to the Federation Council for appointment, rather than, as previously, elected by secret ballot by the Court judges. This provoked concern at the time that the chair would become dependent on the president. The author is most grateful to Jane Henderson for this information.

could dismiss the prime minister only if at the same time he dismissed the whole government. (This was in line with the Federal Constitutional Law on the Government of the RF,<sup>50</sup> according to which the dismissal of the prime minister “simultaneously entails the resignation of the government of the RF.”) Now the president would be able to choose to dismiss an unpopular prime minister or an individual minister without dismissing the whole government or needing to seek the approval of the State Duma.

Articles 83 and 110 were amended in March to state that the president should exercise general leadership of the government—something that was not specified in the 1993 version of the constitution. Moreover, the president would approve, at the proposal of the prime minister, the structure of federal executive bodies, make changes thereto, and determine which bodies would come under the leadership of the president and which would be headed by the government. If the prime minister was dismissed by the president, his newly appointed successor would not submit to the president proposals on the structure of the federal bodies of executive power. While this all seemed new, and expanded the powers of the president while reducing those of the prime minister, it in fact reflected what had already been the practice under Putin’s leadership.

The president would retain the right to appoint the heads of the armed forces and the law-enforcement agencies, even though he would be obliged to seek the approval of the Federation Council before making these appointments. Another amendment to Article 83 affirmed that the president would appoint the deputy prime ministers and federal ministers with the approval of the State Duma. A further amendment stressed however that these appointments would not include those of the top ministerial posts in charge of defense, state security, foreign and internal affairs, justice and emergency situations and public safety. The heads of these key ministries were to be appointed by the president following consultations with the Federation Council. And the wording of the amendment made it clear that, while the president appointed these key government officials after consulting the Federation Council, he could sack them without consulting anyone.

Articles 83, 102 and 128 were amended to state that the president should present to the Federation Council his candidates for appointment as chair, deputy chair and judges of the Constitutional, Supreme and other federal courts. And while the dismissal of top judges previously took place at the request of the courts, now the Federation Council would also be able to request the initiation of that procedure, thereby expanding the powers of the Federation Council.

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50 [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS48\\_LEG\\_79.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS48_LEG_79.pdf).

The number of judges in the Constitutional Court was to be reduced from nineteen to eleven.

Another amendment to Article 83 stated that the president would appoint, after consulting with the Federation Council, his candidates for the Prosecutor General and his deputies, regional prosecutors, military and other prosecutors with regional connections. But while in January the bill said that the president should seek the approval of the Federation Council before dismissing the Prosecutor General and his deputies, the March amendments made it clear that the president could sack these officials on his own initiative. In general, this amendment strengthened the power of the Federation Council but significantly weakened that of the regional authorities. While regional prosecutors had previously been appointed by the president at the proposal of the state prosecutor and in consultation with the regional parliaments, now they would be appointed in coordination with the Federation Council.

The constitution would also be amended to give the president the right to take up life-membership of the Federation Council (thereby granting him immunity from prosecution), and also to allow the president to appoint life-time senators. Meanwhile, the number of senators who could be nominated by the president was raised from seventeen to thirty.

#### 4 Conclusion

President Putin in his *poslanie* presented his proposed amendments as a way of “ensuring a greater balance between the various branches of power,” but the changes that were adopted in fact represented a significant shift in power in favor of the president and the federal center. While a number of the proposed amendments formally recognized what had already been the established practice, their formalization suggested that the original imbalance in the 1993 constitution would become even more pronounced in the future. Resistance to the new distribution of powers might be expected from the Russian republics and regions, whose powers stood to be considerably reduced. Moreover, some of the proposed amendments clearly contradicted certain principles of the original constitution, threatening to undermine the integrity of the law. In the immediate term, the amendments opened the way for Putin to remain in power but they also, and more importantly from the point of view of the Kremlin, kept the elite in suspense over what Putin's future plans might be. And, as Putin tantalisingly indicated at a meeting on 3 July with the working group on the constitutional amendments, further work would be needed on several topics mentioned but not explicitly defined in the constitutional amendments.

These topics (all of which have been referred to above) included “a unified system of public power,” the role of the State Council, and the so-far undefined “federal territories.”<sup>51</sup>

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51 <https://www.kommersant.ru/doc/4405391> and [https://www.vedomosti.ru/politics/articles/2020/07/05/834001-prezident-nashel?utm\\_campaign=newspaper\\_6\\_7\\_2020&utm\\_medium=email&utm\\_source=vedomosti](https://www.vedomosti.ru/politics/articles/2020/07/05/834001-prezident-nashel?utm_campaign=newspaper_6_7_2020&utm_medium=email&utm_source=vedomosti)