On 10–11 March, the State Duma passed in the second and third reading the constitutional amendments bill, thereby concluding the next step in the constitutional reform announced by Vladimir Putin on 15 January. The most important amendment, announced at the last minute, was a ‘reset’ of the President’s terms of office (under the current Constitution, Putin could not run for president in 2024). The constitutional amendments are expected to take effect once they are approved by a ‘nationwide vote’ in April 2020.

The reform comes at a time of long-term economic stagnation, turbulent global markets, relatively low public support for the President, and growing disquiet among the elite about how the political situation will play out in the next few years. Against this background the haste in work on the reform is indicative, as well as violation of the procedures required under the Constitution. There were also quite significant developments in the wording of the amendments in the period between 15 January, when Putin made his address to the parliament, and 10 March, when the second reading of the bill was held in the State Duma. The finalised version suggests consolidation of the ‘super-presidential’ system and formal dismantling of the tripartite separation of powers. The reform is clearly one of the crucial elements of the succession of power in Russia; however, the wording of the bill still does not determine definitively which political scenario the Kremlin will eventually choose.

The wider context

The constitutional reform comes in a specific economic, social, and political context. The economic outlook for Russia is long-term stagnation (GDP to grow by no more than 1-2% per year) due to structural barriers to growth. The international economic sanctions imposed on Russia since 2014, and increasing turbulence on the international energy and financial markets also pose a threat. The standard of living of the population is deteriorating, not only due to real incomes falling in the years 2014-2019, but also due to the poor state of the health service and escalating environmental problems. The protest mood among the Russian people is on the rise (although its scale is not yet a threat to the Kremlin), and sociologists are observing growing public demand for change and increasing ineffectiveness of state propaganda. Putin’s approval rating is still fluctuating at above 60%, while the number of respondents who would not like to have him as president after 2024 is increasing.

Under the current Constitution, Putin’s present term would end in 2024, and he would not be eligible to run in the next election. The prospect of a top-level reshuffle would potentially destabilise the political system. For this reason, devising a well-considered plan of succession to ensure that the system remains stable and to preserve authoritarian rule was deemed top priority. In addition to the announcement of the
reform, the dismissal of Prime Minister Dmitri Medvedev’s government was a kind of prologue to this succession process (see OSW Analysis 15 January 2020 analiza OSW z 15 stycznia br.).[2]

Main areas of constitutional amendment

The purpose of the reform envisioned by Putin in the January address was supposedly to ensure a greater balance between the branches of state power, principally a moderate increase in the powers of the legislature. However, as Putin himself put it, strong presidential rule would have to be preserved; the head of state should not be deprived of the right to define the government’s responsibilities and priorities and to dismiss the Prime Minister and other members of the cabinet in the event of poor performance or if the President loses trust in them. The president should also remain the supreme commander of the armed forces and directly supervise the state agencies responsible for public safety and order. At the same time, Putin reiterated the arguments that are central to the Russian political tradition: ‘Due to its huge territory, complex territorial and nationality structure, and diversity of historical and cultural traditions, Russia is not able to develop normally or even exist in a stable fashion in the form of a parliamentary republic’. [3]

Contrary to Putin’s statements, the final version of the constitutional reform is not intended to moderately increase parliament’s powers while maintaining a strong position of the president. It rather aims to further solidify the ‘super-presidential’ system, in which the Kremlin is the sole true decision-making centre. This will be achieved mainly by definitively subjugating the judicial authorities to the President, and weakening the position of the government and the Prime Minister. Consequently, the reform will institutionalise informal control of the head of state over authorities at various levels, which Putin was able to establish and gradually expand over a period of 20 years of rule, in addition to his extensive formal powers.

The amendments passed in the second reading can be divided into several categories. The first one contains those amendments that truly change the balance of power in Russian political system. They formally give the President greater direct control over the executive. The position of the Prime Minister and government has been weakened, as has the position of the judiciary. This way the political practice existing so far has been formalised.

Following the amended Constitution, the President will take overall charge of the work of the government, and the Prime Minister will no longer determine the guidelines of government’s activities. Executive power, which formally has been in the hands of the Prime Minister, will be divided. Some members of the cabinet, mainly the ‘siloviki’, will be supervised by the President, and others (the ‘civilian’ ministries) by the Prime Minister. Moreover, these two groups will be appointed in different ways. The Prime Minister will be personally accountable to the President, which means that his dismissal will not automatically mean the dismissal of the whole cabinet. This gives the head of state greater room for manoeuvre with regard to government reshuffles. The President
will also have the power to determine which federal agencies fall under his power and which fall under the power of the Prime Minister.

The current *de facto* subjugation of the judicial authorities to the executive branch will become *de iure*. The number of judges in the Constitutional Court will be reduced from 19 to 11, which will make them more susceptible to political pressure. The President will also have the power to submit a request to the Federation Council for dismissal of presidents, vice-presidents and judges in the Constitutional Court and Supreme Court, and certain lower-level courts.

The broadening of powers of parliament announced in the January address will largely be fictitious. The State Duma, which in the past has ‘given consent’ to a Prime Minister appointee, will now ‘approve’ the appointment (the difference is not clear). The Duma’s significant power to approve not only a candidate for prime minister, but members of the cabinet as well, has been neutralised by another provision: if over one third of cabinet positions are not filled due to Duma’s objections, this is potential grounds for dissolving parliament. While the President will now be obliged to ‘consult’ the Federation Council with respect to some appointments, the outcome of these consultations will not be binding.

The head of state will also be more powerful within the system due to a constitutional guarantee of immunity for former presidents. To date, they have enjoyed this protection only by statute. In addition, former presidents will hold the office of senator for life (‘senators’ is a new constitutional term that describes members of the Federation Council, a house within parliament that represents the regions of Russia).

There is also a new constitutional duty of the President to ‘maintain public order and harmony in the country’. This wording not only reflects the paternalistic notion of the state-citizen relations; it can also serve as another pretext for violating – to an even greater extent than before – civil rights guaranteed under the Constitution (the constitutional guarantee of immunity for the former presidents may strengthen such inclination).

The only sign of true weakening of the head of state’s position is the new rule that one and the same person cannot serve more than two terms as president (the current wording is ‘more than two consecutive terms’). This restriction does not apply however to the incumbent President or former President Dmitri Medvedev. Under an amendment made at the last minute, there will be a ‘reset’ of terms served before the new Constitution takes effect – see OSW Analysis 10 March 2020 analiza OSW z 10 marca br.[4] Potentially, this would mean that Putin is able to serve until 2036, because the ‘reset’ does not mean that an early presidential election has to be held to renew Putin’s mandate.

What is also noteworthy is the new constitutional status and extensive formal powers vested upon the State Council, an advisory body to the President created under Putin’s decree in 2000. It is made up of the heads of regions, speakers of the two houses of parliament, president’s plenipotentiary representatives in the federal districts, and heads of parliamentary fractions in the State Duma. Under the amendments, the Council will *de facto* duplicate the powers of the President – the head of state will appoint this body
to ensure harmonious functioning of the public authorities and cooperation between them, as well as to define the guidelines of domestic and foreign policy and priorities for the country’s social and economic development. The ‘status’ of the Council is to be provided for in detail in an act of law. Recently, Putin has reiterated that this body cannot have ‘presidential’ powers, as this would lead to dual power in the state; the act defining the status of the State Council can therefore be expected to maintain its advisory role deprived of significant decision-making powers.

Another distinct intention of the constitutional reform is to bring about further centralisation of power and eliminate the remains of weak local government. The amendments include the new principle of a ‘single public authority system’ of various levels – federal, regional, and municipal; harmonious operation and cooperation between these levels is to be guaranteed by the head of state. Paradoxically, the official reason thereof is to improve the quality of public services and make them more accessible (it mainly refers to the health service, being on the verge of collapse due to the policy of federal authorities).

The second category of amendments refers to ‘sovereignisation’ of Russia’s approach to its international legal obligations; the prevalence of the Russian Constitution over international treaties and decisions of international bodies is to be secured. It would be prohibited to implement the decisions of international bodies whenever they are based on ‘unconstitutional’ interpretation of international treaties ratified by Russia. Russia will also not comply with obligations imposed by international courts, including arbitration tribunals, if they constitute ‘a violation of the foundations of legal public order of the Russian Federation’. To date, this logic prevailed in acts of law and in adjudication practice. In addition, it is also prohibited to take action, or incite action, aimed at separation of part of Russia’s territory; thus the annexation of the Crimea has been declared irreversible. Together with the provisions described above, this is a clear political demonstration addressed to the West.

The third category of amendments contains populist provisions. Some of them duplicate the current wording of statutes at constitutional level. This applies most of all to a welfare package, including a guarantee that: the minimum wage does not fall below the minimum subsistence level; welfare and pension payments are linked to inflation; pensions are adjusted to inflation no less than once a year. Realisation of these amendments is in any case dependent upon detailed secondary implementation provisions in acts of law. This raises doubts about whether constitutional guarantees with regard to welfare have any true value. The populist amendments also include a commitment to provide support for ‘compatriots abroad’ (previously regulated in an act of 1999), acknowledgement of the good of children as the ‘state’s highest priority’, and appreciation of ‘working people’ (which reiterates a provision from the Constitution of the USSR). The aim of these amendments is to secure broad public support for a reform intended to further centralise the state and strengthen the authoritarian regime.

The fourth category of amendments is those of an ideological nature; they describe the Russian nation as ‘state-forming’ (Russia is officially a multi-national state), and make reference to God, the tradition and the legacy of the Soviet Union. These confirm the conservative course of the Kremlin, initiated in 2011–2012. On one hand, this is a move
aimed at gaining the support of conservative voters, while on the other it seeks to legitimise the Kremlin’s anti-Western, great power rhetoric (other provisions of this kind include the duty to honour the memory of defenders of the fatherland and to defend ‘historical truth’).

The Kremlin’s main objectives

The constitutional reform has two main aims. First, it is intended to ensure the long-term stability of the authoritarian system. Given the growing concern on the part of the Russian elite regarding the ‘2024 question’ and a reshuffle at the highest levels of power, a series of anticipatory measures were decided upon. These include designing a new legal-institutional model and manifesting Putin’s full control over political processes. This gives him a broad room for manoeuvre as regards the ultimate choice of the political scenario for the coming years. The Kremlin will have enough time to test the new political-institutional design – in terms of both the relationship between authorities, and of professionalism and loyalty of key players in the system. This is why the proposed constitutional amendments also include provisions disciplining members of the elite in high-level state posts. Ministers, members of parliament, judges and public prosecutors will have to give up citizenship of a foreign country and right of permanent residence abroad, as well as deposit their financial assets in Russia (a proposed ban on holding real estate abroad was ultimately abandoned as it would affect too many members of the Russian elite). Thus a choice has to be made between the service to the state and security of assets (and personal safety) of members of the elite and their relatives. The purpose of the new laws might equally be to ‘renew’ or rejuvenate the elite, by making promotion available to its younger generations (closed career paths have been frequently criticised as proof of the ‘fossilization’ of the Putin’s regime).

The other important objective of the reform is the propaganda value – to increase the President’s popularity rating and obtain public legitimacy for final consolidation of authoritarian rule in Russia. The reform as such is a response to the increasingly evident public demand for change, and the envisaged ‘welfare package’ aims to address the growing protest potential and expectation of more social justice. The reform is also being portrayed as an achievement of the entire nation. The appointment of the task force for constitutional reform and the holding of a ‘nationwide vote’ on the amendments is intended to convince citizens that they are the real authors of the Constitution and ‘owners’ of the state (the same state where the public feel the growing chasm between the corrupt authorities and the people). The objective is to establish nationwide legitimacy of the new wording of the Constitution, but also of the political system it heralds. It is just as important to eliminate the public ill-feeling as it is to prevent a major increase in tensions and conflict among the ruling elite. A possible worsening of Russia’s economic problems due to the global recession, coupled with growing and unchecked rivalry among the elite and increasing public frustration, could endanger the regime in the final phase of its consolidation.

In order to attain these two goals the government is using the rhetoric that highlights the contrast between dynamic ‘stability’ and controlled change, and the chaos of liberal
democracy and ‘colour revolutions’. Putin’s version of ‘stability’, which is frequently compared with Brezhnev’s ‘thriving stagnation’ and perceived as unable to create modernisation impulses, is portrayed by the state propaganda as a thoughtfully pursued evolutionary strategy, in contrast to the ‘wild nineties’. As the President explained in his January address, the Constitution of 1993 was adopted in special circumstances, during a grave political crisis, and thus is not entirely suited to the country’s needs today. According to him, the constitutional reform should guarantee that Russia does not revert to a time of instability. It is also intended to consolidate the Russian society; the narrative about national unity aims to reinforce the political mandate of the authorities.

‘Nationwide vote’ – unconstitutional test of support for Putin

The forced constitutional change, as well as Putin’s regime as such, is to be legitimised by the ‘nationwide vote’ scheduled for April. The changes adopted by members of parliament will take effect promptly, if a minimum of half of the voters support it (there is no minimum turnout requirement). This is intended to be a de facto test to prove support for Putin and cement the political gains of ‘Putinism’. Despite there being no provision for this procedure in the Russian Constitution (see below), it is being carefully prepared by the Kremlin and publicised in the media.

The authorities are taking a twofold approach. On one hand, there is a clear determination to ensure the highest turnout possible, more for image purposes than for formal reasons. All possible means are being employed to induce the public to vote. The traditional methods of increasing turnout are attractive lotteries, concerts, and fairs organised on polling day. The authorities also plan to facilitate voting at home and in the workplace, including early and Internet voting. All of these ‘facilities’ allow broad potential for faking the results. An awareness and propaganda campaign is also underway. The independent media outlets have reported that the Presidential Administration has drawn up guidelines on how to manipulate the public moods through tailoring the form and content of the message to the profiles of particular voter groups. The message is based on assurances that due to the reform the Putin’s era achievements will be preserved (they include the nation’s sovereignty, order and stability, welfare policy). To stress the special importance of voting on the reform, the polling day (Wednesday 22 April) has been declared a day off work.

On the other hand, the authorities’ aim is to gain complete control over the result of the vote. According to media reports, deputy heads of Russian regions in charge of domestic policy were provided with guidelines from the Presidential Administration on the desired result, which is a 60% turnout and 70% of votes cast in favour of the constitutional amendments. This means that the entire ‘administrative resource’ at regional level will be deployed to implement those guidelines. As announcements made by the authorities indicate, there will be no independent observation of voting; only ‘civic chambers’ – the central and regional advisory bodies, which are fully controlled by the executive – will have the right to register observers.

Up to now, the Russian people have expressed a moderately favourable view or ambivalence towards the constitutional reform. Research by the independent Levada Centre pollster shows that 47% of Russians think that the amendments are primarily in
Putin’s interest and are intended to give him more influence and allow him to stay in power after 2024; 44% believe that they will make the state function more efficiently in the people’s interest.[13] In February 2020, 25% of respondents stated that they would vote in favour of the amendments, 10% were against, 23% said they did not intend to vote, and 37% said they intended to vote but did not say how they would vote.[14]

Controversy surrounding the constitutional reform

There is both legal and political controversy surrounding the manner in which the reform is conducted. Although officially this is not adoption of a new Constitution (according to Putin, the ‘potential of the current Constitution has not been exhausted’) the changes to the political-institutional system are so far-reaching that many groups (non-systemic opposition, independent lawyers) have stated openly that this is de facto a new Constitution. Moreover, large number of amendments referring to different constitutional chapters have been placed in a single bill, entitled ‘Amendment of the Russian Constitution’ and voted en bloc, which violates Russian law.

Under the current Constitution, chapter 1 (The Fundamentals of the Constitutional System), chapter II (Human and Civil Rights and Freedoms) and chapter IX (Constitutional Amendments and Amendments to the Constitution) can be amended only by adopting a new Constitution. The authorities decided to circumvent this rule by inserting a range of major amendments in chapter III (federal structure) although, due to their letter and spirit, they belong in chapters I and II.

Regardless of how it is defined (whether it is a new Constitution or amendment of the current one) the procedure devised by the authorities for passing amendments is a breach of rules provided for in chapter IX. Adoption of a new Constitution requires a Constitutional Assembly to be convened (which has never been done and no relevant law has ever been adopted), and then – optionally - a referendum to be held. A minimum turnout of 50% of registered voters is required for the result of the referendum to be valid. An alternative procedure (amending the existing Constitution) requires approval of both houses of parliament (with qualified majority of 2/3 of the Duma and 3/4 of the Federation Council) and 2/3 of regional parliaments. However, none of these procedures envisages a ‘nationwide vote’ (up till now this term did not exist in Russian law) as a requirement for the approved amendments to take effect. This populist initiative is therefore an ostentatious demonstration of the absolute primacy of the Kremlin’s political interests over the written law. In light of the gravity of the problem, this is a kind of precedent, because in the past, while treating the law in an increasingly instrumental fashion, the authorities have at least attempted to maintain a semblance of proper legal compliance. There are also many legitimate concerns surrounding the specially devised procedure for organising the nationwide vote, which is much less transparent than the election or referendum procedures. Together with the lack of minimum turnout requirement, this may be proof of the Kremlin’s fear that the vote result will not be favourable. Despite the huge number and diversity of amendments, the people will be voting in favour of or against the entire package, as did the parliament.
Therefore, approval of amendments concerning social welfare or great power ideology will automatically mean approval of non-democratic changes to the political system.

The political controversy concerns the haste with which the amendments have been adopted (see Annex) despite Putin’s promise that the reform would be prepared carefully and after extensive public debate. The ‘special operation’ regime is not only ill-suited to the gravity of constitutional reform; it significantly undermines its legitimising function. The make-up of the task force, the way they worked on the reform, as well as the number and diversity of the amendments (many of them should not be included in the Constitution because they are too specific or opportunistic), definitively compromise both the reform and the Constitution as such. The latter has been consistently losing public trust over recent years: 30% of Russians are of the opinion that the Constitution does not play a major role in the state (up from 17% in 2015). The percentage of respondents who think that it protects civil rights and freedoms fell from 48% to 27% in the years 2015–2020. [15]

**Outlook**

To date, Putin has repeatedly denied plans to extend his presidential rule beyond 2024, citing the Constitution, which explicitly requires him to leave office that year (at the end of his second consecutive term). However, a carefully orchestrated spectacle that occurred on 10 March in the State Duma gave the Kremlin considerably more room for manoeuvre with respect to the possible political scenarios. This was probably deemed necessary due to uncertainty as to how the social, political, and economic situation would develop in the next few years. This particular kind of ‘special operation’ was an ostentatious manifestation of how power in Russia has been personalised, and of the disregard for the law and state institutions. Presently, it seems that it was intended primarily to curb speculation about the scenario for succession of power, which, in the long term, could significantly increase tension among the elite and weaken the position of the ‘outgoing’ President. This in turn could destabilise the authoritarian system, carefully built in Russia for two decades.

Putin thus manifested full control over the political process and the priority of his arbitrary will in re-forming the foundations of the state legal system. The ‘reset’ of the past presidential terms, allowing him to run in the next election, still does not determine which scenario will eventually be chosen. This decision could be made in the next four years and will be dictated by how the domestic situation and Russia’s international situation develops, and also by the President’s state of health.

Today there are three possible scenarios:

- Putin serves until 2024 and enters the next election. He would be able to run for a maximum of two terms, which means he would rule until 2036;
- early elections, at a time chosen over the next four years, and re-election of Putin. This scenario could be chosen if the President needed a clear reaffirmation of a mandate from the people before the current term ended. It would be natural to hold an election in 2020, due to the constitutional reform significantly expanding the powers of the head of
state. This would also reinforce the ‘new opening’ effect and help to legitimise the hyper-centralised model of rule (in this scenario Putin would rule until 2032);

- a presidential election in 2024 or before, in which Putin does not run (it is not clear what his position in the system would be). There are two arguments suggesting this scenario. The first is the extensive institutionalisation of Putin’s informal control over the system in the new version of the Constitution. It means that the impact of personal qualities and leadership style of his successor on the stability of the regime would be minimised. The second is firm guarantees of immunity for former Presidents. At the moment, the favourite among the possible candidates for president is the former Prime Minister, and former President, Dmitri Medvedev. This is due to his proven loyalty towards Putin and his recent appointment to the newly created and prominent position of deputy head of the Security Council.

In the context of the demonstratively singular importance of Putin’s will it is doubtful whether the Kremlin will guarantee public legitimacy for the constitutional amendments and wide support for the President. The ‘special operation’ undermined those aspects of constitutional reform that were intended to convince Russians that worthwhile changes were being made in the country. Although mass political protest cannot be expected, the Kremlin could come up against problems with respect to ensuring the appropriate turnout and desired results of the April vote. Large-scale vote rigging would be risky from the point of view of the authorities’ image and legitimacy of succession, regardless of its ultimate scenario. Combined with the serious concerns surrounding the constitutional reform procedure, this could be grounds for negating the legitimacy of the entire process in the future.

Annex. Timeline for constitutional reform (updated)

19 December 2019 – at an annual press conference, Putin describes the Constitution as a ‘living instrument’ that needs to be amended as society evolves. At the same time, he rules out the option of adopting a new Constitution, stipulating that constitutional reform needs to be prepared with care and extensive public debate.

15 January 2020 – Putin announces the constitutional reform and its main areas; he also announces that a reform task force will be set up, made of 75 people, including 11 lawyers, members of both houses of parliament, artists, sportspeople, and social activists.


23 January – first reading of the bill.

Up until 2 march – the task force collects proposals for amendments to the Constitution from members of federal and regional parliaments, local authorities and social organisations. The deadline for submission was repeatedly postponed due to the ‘large
number of proposals’ – in total the task force received more than 900 proposals for amendments.

13 February – Putin’s first meeting with the task force. The proposed amendments are presented and the President proceeds to reject or include them in the bill one by one, with a view to the second reading in the Duma.

26 February – Putin’s second meeting with the task force. Proposals are presented once more, and the President decides whether to reject them or include them in the bill.

2 March – Putin submits a package of presidential amendments to the bill. The bill also provides for the procedure for the nationwide vote on the constitutional reform.

10 March – Putin makes a speech in the Duma, and the house approves the essential amendment, which is a reset of the President’s terms of office (formally at the request of member of parliament Valentina Tereshkova).

10 March – second reading of the bill in the Duma.

11 March – third reading of the bill in the Duma.

11 March – the bill is passed by the Federation Council.

12 March – the bill is approved by two thirds of regional legislative assemblies.

14 March – the bill is signed by the President.

16 March – the Constitutional Court approves the amendments.

22 April (Lenin’s birthday) – nationwide vote on the constitutional reform.


[3] Послание Президента Федеральному Собранию, 15.01.2020, www.kremlin.ru. Putin’s words echo a view entrenched for centuries, that only rule with a firm hand (in the past: ‘Tsarist autocracy’) can preserve Russian’s territorial integrity and stability. Traditionally, this has been used to present an authoritarian model of power as the ‘natural’ model for the Russian state, along with all of the implications this has for state-citizens relations.


[5] In 2016, the Constitutional Court of the Russian Federation set a precedent, concluding it was impossible to execute judgment issued by the European Court of Human Rights in Strasbourg. In 2015 the CC was granted with the right to rule that it is impossible to carry out a decision of an international court if the decision contradicts the principle of prevalence of the norms set under the Constitution of the Russian Federation. For more information see S. Kardaś, Russia has refused to execute the European Court of Human Rights’ judgment, https://www.osw.waw.pl/en/publikacje/analyses/2016-04-20/russia-has-refused-to-execute-european-court-human-rights-judgment.

[6] This amendment was the most controversial, in light of the considerable secularism of Russian society. Е. Мухаметшина, С. Бочарова, Как будут вступать в силу путинские поправки к Конституции, Ведомости, 2.03.2020, www.vedomosti.ru.

Послание Президента Федеральному Собранию, op. cit.


ibidem.


For more information see В АП разработали план по обеспечению явки на голосовании по Конституции, 27.02.2020, www.svoboda.org.


Конституция и всенародное голосование, op. cit.

Е. Мухаметшина, А. Корня, Почти половина россиян уверены... op. cit.