

Russian Constitutional Law

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By

Elena A. Kremyanskaya, Tamara O. Kuznetsova
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P U B L I S H I N G

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This book first published 2014

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

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ISBN (10): 1-4438-6394-7, ISBN (13): 978-1-4438-6394-0

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ACKNOWLEDGEMENTS

The authors are very grateful for the support provided to the team by MGIMO-University and namely to the Rector of MGIMO-University **Prof. Anatoly Torkunov**, the Vice Rector of MGIMO-University **Dr. Artem Malgin** and the Dean of the International Law Faculty, MGIMO-University **Prof. Gennady Tolstopyatenko**

FOREWORD

The book—“*Russian Constitutional Law*”, prepared by Russian constitutionalists is one of the first works of this type, written in English. It is construed as a full course on Russian Constitutional Law, combining both Russian and western academic approaches.

It is indicative that this book was written in the year of the *20th Jubilee of the Russian Constitution*. The authors of this first edition provide a profound review of the main institutes of Russian Constitutional Law, giving the reader an understanding of the functioning of state power in Russia, and also providing the basics and main principles of the Russian Constitution, specifics of Human Rights regulations, characteristics of the three branches of state power: the legislative, the executive and the judiciary, and the performance of self-government in Russia. Legal rules and regulations are clarified by examples from Russian history.

Inevitably, the advantage of this book is that the authors are analyzing the latest changes in Russian Constitutional Law, making readers acquainted with innovations in the formation of the Russian Parliament, the new regulations on the Accounts Chamber, and updates in the legislation of the Government.

There is no doubt that this research will be useful for all readers interested in the Russian Constitution, Russian political studies, Russian legislation, the government and traditions, and especially those representing an academic environment or foreign state bodies and international organizations, who are willing to build stable and productive relations with the Russian Federation.

**Chairman of the State Duma Committee
on Constitutional Legislation and State Development**

Dr. Vladimir Pligin

CHAPTER ONE

THE CONSTITUTIONAL LAW OF RUSSIA

1. The Subject, Method and System of Constitutional Law in Russia and its Place in the System of National Law

The term “Constitutional Law” is generally used in three ways: as a branch of law, the corresponding branch of science and as an academic discipline.

As the *branch of law* Constitutional Law commonly refers to the legal regulations (sub-branches and institutions), subject to certain terms of public relations covered by the Constitutional law branch.

The *branch of science* is the whole complex of knowledge (doctrines, teachings, theories, beliefs, hypotheses, etc.) in relevant fields of law, history, prospects of relations within the branch, the improvement of legislation and other sources of legal regulation, etc.

The *academic discipline* is usually based on the existing branch of law and represents the aggregate of knowledge on the existing rules of regulations, and the state of science.

The main defining criteria for any branch of law are an independent *subject and a specific method of legal regulation*. The subjects of any branch of law are certain groups of public relations, governed by the rule of the industry. According to the dominant approach to understanding, the subject matter of constitutional law (sometimes named as the "*object of the constitutional and legal regulation*") in Russia, as in any country, governs *two main components of public relations*:

- 1) related to the *individual's legal status* and its relationship with the state and civil society;
- 2) related to the *organization of the state* and the *operation of public authorities*.

From the second half of the twentieth century there has been a tendency to expand the subject of constitutional and legal regulation. This regulation has spread to various institutions of civil society (associations, political parties, trade unions, churches, etc.) through which people

integrate into society and which are often a kind of mediator in the relationship between the individual and the state. This trend is also visible in Russia, although there is no detailed regulation of the political, social, economic and cultural aspects of society at the level of the constitutional law.

Like any *branch of law*, constitutional law affects social relations by a variety of *legal methods* and means (order, permission, prohibition, etc.). The distinguishing feature of the method of constitutional law is *its imperative character*.

Thus, the constitutional law of Russia is the leading branch of the Russian law, the body of law that reinforces the foundations of the legal and regulatory status of individuals, and the economic, political, social and cultural life of the community, the organization and functioning of the state of public administration.

The constitutional law is at the heart of the entire legal system in Russia, based on the norms of the constitutional branch operating the Russian state and society; the constitutional norms underlie the development of sectoral branches.

The system of any branch of law constitutes the components of the branches' rule of law, combined in institutions, sub-institutes and sub-sectors.

Describing the system of constitutional law in Russia, it should be noted, *first*, that in contrast to the "*binary*" sectors (civil–civil procedure, criminal law–criminal procedure, administrative law–the administrative process, etc.) in constitutional law it is difficult to distinguish purely substantive constitutional law and constitutional process, although of course, there are the procedural rules in constitutional law. These regulations govern the dynamics of the legislative process, the electoral process, the referendum procedure, etc.

Secondly, the system of constitutional law, in contrast to other sectors of the national legal systems (civil, administrative, criminal, labour, land, etc.), is difficult to divide into the general and particular (special). Usually the system of constitutional rights directly includes its constituent sub-sectors and institutions. In this case, there is no clear boundary between the sub-sectors and institutions (sub-institutions): in particular, it is difficult to relate to the scope and content of government institutions, on the one hand, and sub-parliamentary law and electoral law–the institution of the head of state–on the other.

The system of any branch is expressed in its internal structure, caused by the connections that exist between its norms, determine the basis for

differentiation and integration in certain legal education, possessing the features and elements of the system and the structure of the regulations.

The following elements are contributing to the system of constitutional law:

- The foundations of the Constitutional system;
- The basis of the legal status of a person and citizen;
- The federal structure of the state;
- The system of government and a system of local government.

2. Constitutional Development of Russia

Constitutionalism in Russia appeared later than in other countries. It was quite a long period of development, characterized by contradictions, stages of formation, and the full revival of basic ideas and principles.

The constitutional development of the country should not only be associated with the adoption and change of formal constitutions. It must be analyzed, and the formation of (approval) constitutional ideas and principles, the adoption of acts of constitutional supreme bodies of state power, etc., should be taken into account.

For this reason, the history of Russian constitutionalism can be divided into three periods:

- 1) *Pre-Soviet* (to October 1917);
- 2) *Soviet* (from October 1917 until the second half of the 1980s); and
- 3) *Post-Soviet* (current).

There was no Constitution in Russia before the October revolution. But there was a range of acts that can be described as constitutional.

If we proceed from the position that the constitution is the act of the State in which are fixed the political system, the system of state bodies, their powers and the way of forming, territorial division and the organization of relations between the centre and the regions, and the foundations of the legal status of citizens, then in the Russian Empire in the early twentieth century acts were adopted that without exaggeration can be called the first, although unwritten, constitution of Russia.

The Imperial manifesto of October 17, 1905 “*On improvement of public order*”, designed by Witte first proclaimed “unshakeable foundations on the basis of a valid civil integrity, freedom of conscience, expressions, assembly and association”. Second, it made the rules, according to which “no law could not take effect without the approval of the State Duma”. Thus, the monarch limited his power in favour of the State Duma, which gave legislative functions and transformed it into the highest legislative body of the state.

The decree of December 11, 1905, “to amend the provisions of the State Duma elections”, was in contrast to the provisions of the State Duma elections in 1905, increasing the number from three curiae (landowning, urban and peasant) to four (working) and enlarging the number of voters in the urban curia. At the same time, the elections to the Duma were not universal, for the number of voters excluded women, soldiers on active duty, a number of ethnic minorities and young people up to 25 years, as well as nomads. The elections were two-staged, and for the workers and peasants three- and four-staged. In total the new system elected 524 deputies from 53 provinces of the European part of Russia—488 deputies and 36—from national regions in accordance with local conditions and customs.

At the beginning of 1906 the Manifesto “*About change the establishment of the State Council, and reviewing the founding of the State Duma*” was adopted. This document defined the procedure for the establishing and election of members of the State Council, as well as the internal structure and competence of the State Duma. The result was a new Russian parliament, consisting of two equal chambers: the State Duma and the Council of State. The State Council consisted of 98 members, with 50 members elected from the provincial zemstvo, six from the Orthodox Church and the Academy of Sciences and universities, and twelve from the exchange committee of Commerce and Manufactures.

One more decree was issued in March 1906 which was called “*On the provisional rules of associations and unions*”. The ideas of the Manifesto of October 17, 1905 were developed in this document, and it was the first act in the history of the Russian Empire which admitted various activities of political entities, including the opposition.

In 1906 the State Duma accepted the basic laws of the Russian empire, perceived by the scientific community not as the Constitution, but, as the acts of differing legal force as compared to ordinary law. At least, until the revolution of 1917 a number of scientists, state and public men in Russia regarded these basic laws as the constitution in whole or in part. In the 1920s the famous Russian scientist V. N. Durdenevsky, called them the “very moderate constitution of an individualistic type with elements of imitation of the texts of Prussia and Japan”.

After the February Revolution of 1917 a special committee was formed to draft the basic laws of the Provisional Government. The purpose of the committee was not only the development of the Constitution, but also its judicial protection. At the first meeting of the Committee on October 11, 1917 the estimated program was issued. Number 16 of the program was called the “Revision of the Constitution. Guarantees of the Constitution”. At

the next meeting, on October 14, 1917, the second part of this issue was clarified, and was called the “*Legal guarantee of the Constitution*”.

The October Revolution of 1917 did not allow the realization of these intentions, and the first Russian constitution was adopted in Soviet times.

From the first day of its existence, the Soviet state issued a series of acts of a constitutional nature. These were: the Decree on Peace, the Decree on Land, the Decree on Court and others, the Appeal of the Petrograd Military Revolutionary Committee “to the Citizens of Russia” and the Appeal of the II Congress of Soviets “To workers, soldiers and peasants”. An important legal act, which was almost entirely included into the first Soviet Constitution, was the Declaration of the Rights of Working and Exploited People, adopted by the III All-Russian Congress of Soviets on January 25, 1918.

On July 10, 1918 the all-Russian Congress of Soviets as the supreme body of the new government approved the Basic Law, which laid down the principles of the organization of the Soviet government, the form of government, the territorial structure and the relations of power and the people, and state symbols. This was essentially the first formal constitution in the history of Russia, presented in a single legal act.

The Constitution of the Russian Federation was adopted by the V all-Russian Congress of Soviets, which opened on July 4, 1918 at the Bolshoi Theatre in Moscow. 1164 delegates came to the Congress. At the final meeting the Congress heard a report on the draft of the Constitution and the draft was approved.

The first Constitution included six sections, 17 chapters and 90 articles.

From the point of view of formal constitutionalism, the Constitution of 1918 certainly had all the features of the Basic Act: it was approved by an elective authority, the proclaimed republican form of government, i.e. the federal government (Clause 1 of Chapter 1 of Section I); it established a procedure for the formation of representative bodies through the electoral system (Section IV). For the first time, workers were assigned some of the political and socio-economic rights (Chapter 5): equal rights regardless of race and nationality.

In 1919, during the Civil War, the Central Executive Committee of the RSFSR with the participation of representatives of the Soviet Republic issued a Decree “On the Unification of the Soviet republics: Russia, Ukraine, Latvia, Lithuania and Belarus to fight with global imperialism”.

In January 1923, the Presidium of the Central Executive Committee of the USSR formed six committees to prepare the future Constitution. In the summer of 1923 the session of the CEC approved and enacted the Constitution. Final approval was given at the II Congress of Soviets in

January 1924. The Supreme authority was proclaimed the Congress of Soviets.

On January 31, 1924 the II Congress of Soviets of the USSR ratified the Constitution.

Analysis of the main parts of the Constitution shows that the main meaning of the Constitution of the USSR in 1924 was the constitutional recognition of the USSR and the division of the authority of the Union and Republics of the Union. The Constitution of the USSR in 1924 consisted of two sections: the Declaration on the Establishment of the USSR and the Treaty establishing the USSR.

The Declaration reflected the principles of voluntariness and equality in the Union Republics of the USSR. Each Union Republic reserved the right to withdraw from the USSR.

The second part of the Constitution was an agreement on the formation of the Soviet Union and included the *following chapters*:

Chapter 1: The jurisdiction of the supreme authorities of the Union of Soviet Socialist Republics;

Chapter 2: The sovereignty of the Union Republics and the federal citizenship;

Chapter 3: The Congress of Soviets of the Union of Soviet Socialist Republics;

Chapter 4: On the Central Executive Committee of the Union of Soviet Socialist Republics;

Chapter 5: The Presidium of the Central Executive Committee of the Union of Soviet Socialist Republics;

Chapter 6: The Council of People's Commissars of the Union of Soviet Socialist Republics;

Chapter 7: On the Supreme Court of the Union of Soviet Socialist Republics;

Chapter 8: About People's Commissariat of the Union of Soviet Socialist Republics;

Chapter 9: On the Joint State Political Administration;

Chapter 10: On the Republics of the Union

Chapter 11: On the state emblem, the flag and the capital of the Union of Soviet Socialist Republics.

The content analysis shows the basic law—the Constitution of the Soviet Union in 1924 is unlike any other Soviet constitution. It has no characteristics of the social order; there is no chapter on the rights and responsibilities of citizens, suffrage, local authorities and government. All this is reflected in the Republics' constitutions, which were adopted some time later, and included in the new Constitution of the RSFSR in 1925.

The Constitution of the Russian Federation was approved on May 11, 1992. The Constitution of the USSR in 1924 and the Republics' constitutions, including the Constitution of the Russian Federation in 1925, as a complement to each other, formed a single Soviet Constitution.

On February 6, 1935 the Constitutional Commission was formed to draft a new Constitution of the USSR. The Resolution reads: to amend the Constitution of the Union of Soviet Socialist Republics in the direction of:

- a) the further democratization of the electoral system by replacing not quite equal elections to equal, multistage to direct, open to closed; and
- b) to clarify the social and economic fabric of the Constitution in the sense of the Constitution in line with the present relation of class forces in the USSR (the creation of a new socialist industry, the defeat of the kulaks, the victory of the collective farm system, the adoption of socialist property as the foundation of the Soviet society, etc.).

In the autumn of 1935, the CEC of the USSR created a Constitutional Commission, chaired by I. V. Stalin and twelve sub-committees. Those who participated included (among others) Andrey Vyshinsky, Andrey Zdanov, Maksim Litvinov, Kliment Voroshilov, Vyacheslav Molotov, Lasar Kaganovich and Nikolai Bukharin.

On June 12, 1936 the draft of the Constitution was published and discussed in six months at all levels—from the assembly of workers in enterprises to the Republican Congress. The discussion was attended by more than half of the adult population, and the Commission received 154 thousand suggestions, corrections and additions.

In the final version *the Constitution of 1936* was composed of 13 chapters and 146 articles. They are:

- Chapter I: Social Order;
- Chapter II: State Order;
- Chapter III: Highest Governmental Authorities of the USSR;
- Chapter IV: Higher Bodies of State of the Republics;
- Chapter V: Bodies of Government of the Union of Soviet Socialist Republics;
- Chapter VI: Bodies of the Republics;
- Chapter VII: Highest Governmental Bodies of the Autonomous Soviet Socialist Republics;
- Chapter VIII: Local Authorities;
- Chapter IX: Courts and Prosecutors;
- Chapter X: Fundamental Rights and Duties of Citizens;
- Chapter XI: The Electoral System;

Chapter XII: The State Emblem, the Flag and the Capital;
Chapter XIII: The Order of the Amending to the Constitution.

The Constitution repealed restrictions on voting and added universal direct suffrage and the right to work to rights guaranteed by the previous constitution. In addition, the Constitution recognized collective social and economic rights including the rights to work, rest and leisure, health protection, care in old age and sickness, housing, education, and cultural benefits. The Constitution also provided for the direct election of all Government bodies and their reorganization into a single, uniform system.

The 1936 Constitution replaced the Congress of Soviets of the Soviet Union and its Central Executive Committee by the Supreme Soviet of the Union of Soviet Socialist Republics. Like its predecessor, the Supreme Soviet contained two chambers: the Soviet of the Union and the Soviet of Nationalities. The Constitution empowered the Supreme Soviet to elect commissions, which performed most of the Supreme Soviet's work. As under the former Constitution, the Presidium of the Supreme Soviet exercised the full powers of the Supreme Soviet between sessions and had the right to interpret laws. The Chairman of the Presidium of the Supreme Soviet became the titular head of state. The Sovnarkom (after 1946 known as the Council of Ministers) continued to act as the executive arm of the Government.

For the first time, the role of the Communist Party was clearly defined. Article 126 stated that the party was “a vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organizations of the working people, both public and state”. This provision was used to justify banning all other parties from functioning in the Soviet Union.

Of the three Soviet constitutions, the 1936 Constitution survived for the longest period. It was amended regularly, but replaced in 1977.

As the researchers note, for the time the USSR Constitution of 1936 formally was *one the most democratic constitution in Europe*. How far its provisions have been implemented in political practice, however, is another question.

During 1937 the Constitutions of the Union Republics were adopted, based on the Constitution of the Soviet Union of 1936. The Constitution of the Russian Federation was approved at the XVII All-Russian Congress of Soviets on January 21, 1937.

At the Seventh (Special) Session of the Supreme Soviet of the Union of Soviet Socialist Republics' Ninth Convocation on October 7, 1977, the third and last Soviet Constitution was unanimously adopted.

The preamble stated that “the aims of the dictatorship of the proletariat having been fulfilled, the Soviet state has become the state of the whole people”. Compared with previous constitutions, the Constitution of 1977 extended the bounds of the constitutional regulation of society. The first chapter defined the leading role of the Communist Party of the Soviet Union.

The 1977 Constitution was long and detailed. It included 9 sections, 21 chapters and 174 articles.

The structure of the Constitution at the time of adoption (7 October 1977) was:

Preamble

Section 1: Foundations of the Social Structure and Policy of the USSR;

Chapter 1: The Political System;

Chapter 2: The Economic System;

Chapter 3: Social Development and Culture;

Chapter 4: Foreign Policy;

Chapter 5: Defence of the Socialist Fatherland.

Section 2: The State and Identity;

Chapter 6: Soviet Citizenship. Equality of Citizens;

Chapter 7: Fundamental Rights, Freedoms and Responsibilities of Citizens of the USSR.

Section 3: National and State Structure of the USSR;

Chapter 8: The USSR–Union State;

Chapter 9: Federal Soviet Socialist Republic;

Chapter 10: Autonomous Soviet Socialist Republic;

Chapter 11: Autonomous Region and Autonomous Territory.

Section 4: Soviets and the Order of their Election;

Chapter 12: System and Principles of the Soviets;

Chapter 13: The Electoral System;

Chapter 14: People's Deputy.

Section 5: Supreme Bodies of State Power and Administration of the USSR;

Chapter 15: The Supreme Soviet of the USSR;

Chapter 16: The Council of Ministers.

Section 6: Base for the Construction of State Power and Administration in Union Republics;

Chapter 17: Supreme Bodies of State Power and of the Federal Republic;

Chapter 18: Supreme Bodies of State Power and the Administration of the Autonomous Republic;

Chapter 19: Local Authorities and Management.

Section 7: Justice, Arbitration, and the Prosecutor's Supervision;

Chapter 20: Court and Arbitration;

Chapter 21: Prosecutors.

Section 8: Coat of Arms, Flag, Anthem and the Soviet Capital.

Section 9: The Constitution of the USSR and the Procedure for Amendments.

The Soviet Constitution included a series of civil and political rights. Among these were the rights to freedom of speech, freedom of press, and freedom of assembly and the right to religious belief and worship. In addition, the Constitution provided for freedom of artistic work, protection of the family, inviolability of the person and home, and the right to privacy. Among these were the rights to work, rest and leisure, health protection, care in old age and sickness, housing, education, and cultural benefits.

The Soviet Constitution outlined limitations on political rights. Article 6 effectively eliminated partisan opposition and division within Government by granting to the Communist Party of the Soviet Union the power to lead and guide society. Article 39 enabled the Government to prohibit any activities it considered detrimental by stating that "Enjoyment of the rights and freedoms of citizens must not be to the detriment of the interests of society or the state". The constitution provided a "freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda". It prohibited the incitement of hatred or hostility on religious grounds.

The Constitution also failed to provide political and judicial mechanisms for the protection of rights. Thus, the Constitution lacked explicit guarantees protecting the rights of the people. The Supreme Court had no power to ensure that constitutional rights were observed by legislation or respected by the rest of the Government.

At its Extraordinary Session of April 12, 1978, the Supreme Soviet of the Russian SFSR adopted a new republican Constitution, to replace the previous Russian Constitution of 1937. The new Constitution initially consisted of a Preamble and 185 articles, and was prepared as part of the whole project of adjusting all 15 republican Constitutions to the new Constitution of the Soviet Union of October 1977. It was the fourth Constitution of the Russian SFSR. The Constitution was amended several times. It lost its legal force by the referendum of December 12, 1993.

Until 1989 amendments were made to the Constitution of the Russian Federation (RSFSR). The need to amend the Constitution of the Russian Federation only arose for the first time in 1988-1989 due to the need to

bring Russia's Basic Law in accordance with the Constitution of the USSR.

On June 16, 1990, an amendment establishing a multi-party system in the Russian Federation was adopted. Unlike federal law the new version of Article 6 of the Constitution of the Russian Federation did not mention the Communist Party of the Soviet Union. On December 15, 1990 the Declaration of State Sovereignty of the Russian Federation was included in the Constitution Preamble and Article 1.

On December 9, 1992, further revisions were made to the Constitution. The reference to the Soviet Union was removed from the Preamble.

In 1991-1993 there was a political crisis in the Russian Federation.

At the I Congress of People's Deputies (June 22, 1990) the Constitutional Commission was formed, chaired by B. N. Yeltsin to prepare the text of the new Constitution. The Commission included representatives of all Republics, territories, regions, and the national autonomy of the Russian Federation.

In May 1993 a draft Constitution approved by the Supreme Council was published. Putting forward the idea of parliamentarianism, the authors of the Constitution insisted on the leading role of Parliament in the system of higher government authorities.

At the same time on May 12, 1993 the Russian President issued Decree № 660 "On measures to finalize the new Constitution of the Russian Federation", convened in order to complete the drafting of the Constitution in Moscow. The Constitutional Council was intended as a broad forum, combining the highest representation of all public authorities, and the public. The Constitutional Council thus actually received, although a number of invited members of the Constitutional Commission of People's Deputies, as well as political parties participating in its work were not accepted. On June 24, 1993 the Supreme Council refused to cooperate with the Constitutional Conference.

Since the autumn of 1993 a constitutional crisis entered into a new phase. The legislative and the executive had its own draft constitution and its own view of the process of its adoption. The agreement was not possible.

The constitutional crisis reached a tipping point on September 21, 1993, when President Boris Yeltsin purported to dissolve the country's legislature (the Congress of People's Deputies and its Supreme Soviet) by Decree 1400, although the President did not have the power to dissolve the parliament according to the current Constitution.

A temporary Decree, until the adoption of the Constitution, was introduced in the Regulations of the federal government for a transitional

period, prepared on the basis of the draft constitution, and approved by the Constitutional Conference on July 12, 1993. The provisions on the elections of deputies of the State Duma deputies was legally enforced

The State Duma elections were scheduled for December 11-12. The activities of the Constitutional Court were suspended.

The constitutional crisis immediately escalated into a constitutional war. On the same day, the Supreme Soviet Presidium, referring to Article 1216 of the Constitution, announced the immediate termination of the powers of President Boris Yeltsin, and the President's powers were transferred to the Vice-president A. V. Rutskoi. The Supreme Council praised the actions of the President as a coup. The Constitutional Court, recognizing the presidential decree as unconstitutional, called for the resignation of the President from office.

Attempts to reach agreement were unsuccessful, and the crisis was to generate social unrest and military actions. Supporters of the President organized a blockade of the Council House, and supporters of the Supreme Council attempted to seize the Moscow City Hall building, one of the military headquarters, and the TV centre "Ostankino". This led to bloodshed (mostly on 2 and 3 October) and the intervention of the army, when a few tanks shelled the Council House building. There was a state of emergency in Moscow.

The 1993 Constitution was adopted by referendum.

A national vote on the draft of the new Constitution was attended by 58 million 187 thousand and 755 registered voters, or 54.8%. A total of 32 million 937 thousand and 630 voters, or 58.4% of the voters who took part, voted for the adoption of the Constitution. This meant that the Constitution was adopted. The Constitution entered into force on December 25, 1993.

CHAPTER TWO

THE CONSTITUTION OF RUSSIA

1. General Description of the Constitution 1993

The term "constitution" is derived from the Latin word «constitutio», which means the establishment or institution. That was the name of one of the decrees of the Roman emperors. In the modern world the constitution is the basic law, which has the highest legal force.

The Constitution of the Russian Federation—is a legal act, which has the highest legal force, fixing the basis of the constitutional system, the basis of the legal status of man and citizen, the federal structure, the system of bodies of state power and the principles of the organization of local self-government.

Legal features of the Constitution are signs that distinguish it from the acts of the current legislation.

The legal features of the Constitution include the constituent nature, legitimacy, highest legal force, stability, direct action, the base of the current legislation, and the reality.

The constituent character of the Constitution shows that its rules consolidate the foundations of the state and the social order and establish an institute, which is implemented through state power, and the principles of their establishment and functioning. In addition, the constitutional provisions govern the creation of all operating in the state of law in the hierarchy of the legal system.

The legitimacy of the Constitution is that it takes people (by referendum), or it is on behalf of the people (the representative body of the state—parliament or the same body, specially created for the adoption of the constitution—the constituent assembly), which belongs to the fullness of state power. The Russian Constitution, adopted by popular vote on December 12, 1993 can be called legitimate because it was approved by 58.4% of voters who participated in the voting.

The supremacy of the Constitution means its priority position in the system of laws and regulations in force in the territory of Russia. “*The*

laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation”—proclaims part 1 of Article 15 of the Constitution. The supremacy of the Constitution is shown not only in relation to the legislation to be adopted in the future, but also to the legislation adopted before the entry into force of the Constitution. Thus, in paragraph 2 of Section II of the Constitution of the Russian Federation it is stated that “the laws and other legal acts in force in the territory of the Russian Federation to the entry into force of this Constitution shall apply to the extent not contrary to the Constitution of the Russian Federation”. The *supremacy of the Constitution* takes on added significance in a federal state system of Russia, when the subjects of the Federation have their own constitution and its laws. Constitutions of the republics of the Russian Federation and other subjects’ regulations must not contradict the Federal Constitution (Part 1 of Art. 15 of the Constitution). The supremacy of the Constitution provides a special procedure of its adoption and change, giving the constitutional norms of higher force; enhanced legal protection of constitutional provisions.

The stability of the Constitution—the most important condition for regime legitimacy, stability of the legal system and the organization of the government, determines the relationship between the individual and the state. The stability of the Constitution depends on many factors (on the arrangement of social and political forces on the political arena of the country, the level of the political and legal culture of citizens from perfection provisions of the Constitution itself, etc.). Guarantee of the stability of the Constitution is a rigid procedure for review and constitutional amendments.

The Constitution of the Russian Federation has a direct action (Part 2 of Art. 15 of the Constitution). This means that the provisions of the Constitution of the Russian Federation shall have direct effect, that is, their implementation is not required as a condition of additional, specifying laws. However, many provisions of the Constitution of the Russian Federation, by the high level of generality of legal regulation, require additional regulation by the adoption of acts of the current legislation.

The problem of providing a direct effect of the Constitution of the Russian Federation in the administration of justice was allowed in the Resolution of the Plenum of the Supreme Court of October 31, 1995 “On some issues of application of the Constitution by the courts in the exercise of justice”, which states that the court decided the case, applying directly to the Russian Constitution, *in particular*:

- a) when a fixed rate of the Constitution provisions on the basis of its meaning, does not require further regulations and does not indicate

- the possibility of its application, subject to a federal law regulating the rights, freedoms, rights and duties of citizens and other provisions;
- b) when the Court concludes that the federal law in force in the territory of the Russian Federation is contrary to that enforced by the Constitution
 - c) when the court comes to the conclusion that a federal law passed after the entry into force of the Constitution, is in contradiction to relevant provisions of the Constitution;
 - d) when the law or other normative legal act adopted by the subject of the Russian Federation on the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, is contrary to the Constitution and federal law, which shall regulate the relationship before a court, is absent.

The reality of the Constitution means the relevant constitutional provisions (constitutional law) which consist in reality of social relations (actual Constitution). In other words, the Constitution should reflect the level of development reached by the social relations in the political, economic and social spheres, otherwise it would be a sham.

The reality of the Constitution demonstrates its feasibility and warranty provisions. For example, the ability of citizens, guided by the Constitution, and referring to it, to seek judicial protection of the rights and freedoms is an indicator of the reality of constitutional rules on the legal status of the individual.

The Constitution is the legal basis of the current legislation. This provision appears in the Constitution that the constitutional provisions serve as the starting point for all branches of Russian law. Thus, on the basis of the constitutional provisions, there is provision for freedom of economic activity, the equality of all forms of ownership and the development of civil law in Russia.

2. Structure of the Constitution

The structure of the Constitution is adopted in its order, which establishes a certain system of homogeneous grouping of constitutional provisions in sections, chapters and the sequence of their location. On the basis of summarizing the constitutional norms in general sections, at the head is the unity of the subject matter, i.e., their connectedness and unity of social relations, which affect those rules.

In its structure, the *1993 Constitution* consists of a preamble and two sections. The *first section* consists of nine chapters and 137 articles:

1. The Fundamentals of the Constitutional System;
2. Rights and Freedoms of Man and Citizen;
3. The Federal Structure;
4. The President;
5. The Federal Assembly;
6. The Government of the Russian Federation;
7. Judicial Power and Prosecution Office;
8. Local Self-government;
9. Constitutional Amendments and Revision of the Constitution.

The second section is called “Final and Transitional Provisions”.

The Russian Constitution opens with the preamble, i.e. the prodrome preceding the text of the Constitution. The preamble has no legal status, but it is essential for understanding the meaning of the Constitution as a whole and its individual articles, as the introduction indicates the grounds and circumstances that triggered the publication of the Constitution and determines its content.

The *Preamble* states, first of all, that the Constitution was adopted by the multinational people of the Russian Federation, united by a common fate in our land, and emphasizes the particular importance of this act for the further development of the state and society.

The *Preamble to the Constitution* contains the six core objectives, the implementation of which is the main task of the state. They reflect the essence of whole constitutional reform in Russia.

They are as follows:

- The statement of rights and freedoms;
- The approval of civil peace and accord in the Russian Federation;
- To preserve the historically established state unity;
- The revival of the sovereign state of Russia;
- The approval of the inviolability of the democratic foundations of the Russian state;
- The well-being and prosperity of Russia.

These goals are the basis of all constitutional norms impregnating the content of the Constitution.

Section II of the Constitution, “the final and transitional provisions” is fixing the position on issues related to the introduction of a new Constitution, the fixed termination of the Constitution, and the Federal Treaty, the order of the application of laws and other legal acts in force before the entry into force of this Constitution, the grounds which continue to apply to the earlier formed bodies.

3. Amendments to the Constitution of the Russian Federation

Chapter nine of the Constitution of Russia establishes a special procedure for making changes to the text and revising its provisions.

More detailed procedural aspects are described in the Federal Law № 33-FZ “*On the procedure of adoption and entry into force of amendments to the Constitution of the Russian Federation*”, dated March 4, 1998. As explained by the decision of the Constitutional Court on October 31, 1995 № 12-P “*On the Interpretation of Article 136 of the Constitution of the Russian Federation*”, the change is to enact a special legal act—the Russian Federation Law on the amendment of the Constitution, and this same federal constitutional law was adopted by Parliament, but to enter into force it also required ratification by regional legislatures.

The Russian Constitution establishes *three procedures to change its text*:

- Amendments (chapters 3-8);
- The revision of the Constitution (chapters 1, 2 and 9); and
- A change in the text (Article 65).

According to Article 134 of the Constitution of Russia, suggestions for amendments and revision of the Constitution of the Russian Federation may be made by the President of the Russian Federation, the Federation Council, the State Duma of the Russian Federation, the legislative (representative) bodies of the subjects of the Russian Federation, as well as by a group of at least one-fifth of the members of the Federation Council and deputies of the State Duma.

In accordance with Article 136, the amendments to chapters 3-8 of the Constitution (the federal structure of the state (Articles 65-79), the President (Articles 80-93), the Parliament (Articles 94-109), the Government (Articles 110-117) the Judiciary Power (Articles 118-129) and local self-government (Articles 130-133)) are taken in the manner provided for the adoption of federal constitutional law, and shall take effect upon approval by the legislature—at least two-thirds of the subjects of the Russian Federation.

So they must be approved by a two-thirds majority of the Duma and a three-fourths vote of the members of the Federation Council (Paragraph 2 of Article 108). After this, the proposal for constitutional amendments is forwarded by the legislative (representative) bodies of subjects of the Russian Federation. Within the year, the proposal must be approved by the legislative (representative) bodies of at least two-thirds of the subjects of the Russian Federation. After the establishment of the review, within

seven days the Federation Council sends the law on the amendment of the Constitution to the President who, within fourteen days, signs and publishes it.

Article 135 of the Constitution states that the provisions of Chapters 1, 2 and 9 of the Constitution (the constitutional order (Articles 1-16), the rights and freedoms of man and citizen (Articles 17-64), as well as constitutional amendments and revision of the Constitution (Article 134-137)) cannot be reviewed by the Federal Assembly. However, if a proposal to revise the provisions of the Constitution of the chapters is supported by three-fifths of the members of the Federation Council and the State Duma, in accordance with federal constitutional law it shall be convened by the *Constitutional Assembly*.

According to the third part of Article 135, the Constitutional Assembly shall either confirm the immutability of the Constitution, or draft a new Constitution of Russia. The new draft Constitution of Russia can be adopted either by a two-thirds vote of the members of the Constitutional Assembly, or the popular vote. In the case of a referendum a new Constitution of Russia is considered adopted if more than half of the voters participating in the vote actually voted for it, providing that it was attended by more than half the voters.. Thus, a change to the fundamental provisions (of the constitutional system of Russia, as well as the rights and freedoms of man and citizen) cannot take place until the new Constitution is in force.

According to Article 137 of the Constitution, changes to Article 65 of the Constitution of the Russian Federation, which determines the structure of the Russian Federation, shall be made on the basis of Federal Constitutional Law on admission to the Russian Federation and the creation of new subjects of the Russian Federation, and on changes in the constitutional and legal status of the Russian Federation. That is, on the occasion of the appearance of new subjects (as a result of any new territory to Russia and the elimination, consolidation or separation of the existing entities of the Russian Federation), or a change in its status (for example, the area of the Republic) to be adopted by the federal constitutional law that applies for a change in Article 65 of the Constitution.

For example, in the case of the entry into force of this law on the merger of regions, Article 65 ought to include the name of the newly-formed entity and delete names of suppressed subjects. The second part of Article 137 provides that in the case of a simple change of the name of the republic, territory, region, federal cities or autonomous regions, the new name of the Russian Federation shall be included in Article 65 of the Constitution of the Russian Federation. This action (the new name of

inclusion and exclusion of the former) is the Decree of the President of Russia without the participation of the Federal Assembly.

From 1993 to 2008, there were no serious amendments in the Constitution (Article 65 changed only in connection with the change of the name of several subjects of the Russian Federation).

The amendments of 2008, which were proposed in November 2008 and came into force on December 31, 2008, have become the first substantial amendments to the Constitution of Russia of 1993, have extended the terms of the President of Russia and the State Duma from four to six and five years respectively, and have also introduced a mandatory report of the Government in the State Duma.

4. Protection of the Constitution

The legal protection of the Constitution is a set of legal tools which ensures the implementation of all the established rules of the Constitution and adherence to constitutional legality.

In a broader sense, the legal protection of the Constitution is the creation of the necessary conditions for the development of appropriate safeguards, and the improvement of state-legal means and methods for the operation of the constitutional norms. The special value involves the use of specific constitutional and legal means to ensure the supremacy of the Constitution in the legal system.

The need for the legal protection of the Constitution is determined by its specific role in society. The Constitution defines the overriding principles of the society and the state. It applies to the whole system of social relations. In all the activities of the state bodies and public associations, each citizen must clearly meet the letter of the Constitution. The practical reality is equally important. It shows that there are cases of the violation of the Constitution, the adoption of acts inconsistent with it and the debate on its use. The rule of the Constitution as the highest attribute of a democratic state based on the principle of the separation of powers is the effective legal protection of the Constitution.

The legal protection of the Basic Law is carried by the relevant institutions. Together they represent a mechanism for the legal protection of the Constitution. First of all, such an institution is a special procedure for the preparation, adoption and amendment of the Constitution. It must meet two basic, interrelated requirements: first, the stability of the Constitution, and, second, the possibility to change it. This approach is designed to ensure the stability of the constitutional system and at the

same time, the dynamics of its development, taking into account possible changes in the society.

The next institute of legal protection of the Constitution—is its interpretation. It is a special kind of legal action. Constitutional interpretation—is the part of a common interpretation of the law. However, the interpretation of the Constitution is different: *first*, constitutional interpretation is a special kind of legal work of the highest judicial authority to evaluate the legislation and the protection of the Constitution, to ensure the implementation of all the norms of law, and to prevent all types of offences. *Secondly*, constitutional interpretation is a kind of legal activity with high legal rank. *Thirdly*, it is a kind of legal activity constitutional interpretation is of importance not only for law-making, but for all the right forms, including compliance, enforcement and the implementation of the legal provisions.

Institution of constitutional control plays central role in the legal protection of the Constitution. This is the most powerful and effective tool.

Constitutional control is verification, as well as constant monitoring to check the regulations in force in the Russian Federation for their compliance with the Constitution.

The method of protection is an act or system used by public authorities in the exercise of the legal protection of the Constitution. State protection is defined as one of the functions of public authorities. This function is not the exclusive jurisdiction of only one government agency. Its implementation involves all state agencies whose performance of their immediate tasks in any way exercises state protection. As the scope of a separate activity, state protection is a set of activities, functions and tasks of state bodies in the security of state protection. According to the text definition *state protection* is based on the totality of legal, organizational, security, technical and other measures.

According to Part 2 of Article 15 of the Constitution, public authorities, local governments, officials, citizens and their associations must comply with the Constitution and laws of the Russian Federation.

In the protection of the Constitution the entire system of state authorities responsible for this protection in various forms is involved. The main subjects of the legal protection of the Constitution are the President of the Russian Federation, the Constitutional Court of the Russian Federation, the Federal Assembly of the Russian Federation, the Government of the Russian Federation, the federal courts and the Prosecutor's Office. The President of the Russian Federation, who is the guarantor of the Constitution must observe and protect the right to suspend acts of the executive authorities of the Federation, contradicting the federal