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<https://doi.org/10.26881/gsp.2020.4.09>

2020 Amendments to the Russian Constitution – Change of the Constitution or Its Collapse?

Introduction

The constitution is supreme law and, when enacted, it is intended not only to be legally perfect, but also to be relevant for long decades and remain in line with the social, political and legal realities of the time. Changes in social life inevitably lead to changes in constitutional provisions. Even an unchanging text of a constitution, which has been in force for decades, inevitably changes by virtue of the power exercised by the institutions applying the constitution. This is why, through the power exercised by the institutions applying and interpreting its provisions, i.e. courts, the constitution – an act of direct application – remains relevant over several centuries, as in the case of the US Constitution of 1787, the formal amendment of which is particularly complex. Without the power of the US Supreme Court to interpret the provisions of the Constitution, its articles would not breathe the spirit of the twenty-first century.

Thus, change of the constitution is an inevitable process in order for the constitution to remain relevant supreme law, responsive to changing realities.¹ Rejection of the possibility of changing it would leave nothing but the mere hope that a new constitutional act should be adopted periodically, which would deny the essence of the constitution as stable supreme law, consolidating society.²

The way in which constitutional changes can take place is twofold. The constitution can be changed in the formal way provided for in the constitution itself – through constitutional amendments, involving participants of the political process – or in an informal way – through legal interpretation by institutions vested with the powers of constitutional review, that is, constitutional courts (tribunals or councils) or courts

¹ Amendments to the constitution and their consequences are currently a topical subject matter in the scholarly field of constitutional law, which is analyzed in outstanding works such as R. Albert's *Constitutional Amendments: Making, Breaking, and Changing Constitutions*, Oxford University Press 2019.

² More on different aspects of longevity and endurance of the constitution see: Z. Elkins, T. Ginsburg, J. Melton, *The Endurance of National Constitutions*, Cambridge University Press 2009.

of general competence.³ The way the constitution changes is determined by the constitutional provisions themselves, the national legal system based on a particular tradition of law, and the decision by drafters of the text of the constitution to choose a centralized, dispersed (diffuse) or mixed constitutional review system. Moreover, constitutional review institution may become a barrier preventing the constitution from being changed in a way that is incompatible with its principles and provisions.

Changes to the constitution resulting from the decisions of courts interpreting constitutional provisions often lie in complicated legal texts; the result of the interpretation of constitutional provisions is not always immediately obvious. When the decisions of constitutional review institutions interpreting the norms and principles of the constitution are assessed, discussions often arise as to the limits of their competence in interpreting and reinterpreting the provisions of the constitution, and whether the constitutional court, in adopting its decisions, is indeed guided solely by the requirements of the constitution and is independent of the influence of political stakeholders.

Where the formal way of changing the constitution through adopting constitutional amendments in parliament (or by referendum) is chosen, this process is obvious from its very beginning – from the moment when the right of initiative to amend the constitution is exercised; but, at the same time, this process remains indefinite and unclear for some time, as evidenced by the amendments proposed in 2020 to the 1993 Constitution of the Russian Federation (hereinafter also referred to as the Russian Constitution or the Constitution).

The 2020 amendments to the Russian Constitution also raise other important questions: where the limits lie to formal constitutional changes; whether two different constitutional documents may appear in a single constitutional text; and whether the constitution can protect itself against foreign matter that apparently destroys its original constitutional idea and denies the spirit of the constitution.

Adopted by the Russian Parliament and signed by the President of the Russian Federation (hereinafter also referred to as the President of Russia or the President), the Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority⁴ (hereinafter also referred to as the Law on Amendment to the Constitution), substantially amending the provisions of the 1993 Constitution, (with latest amendments in 2019⁵) entered into force on 4 July 2020 upon approval in an “all-Russian vote.”⁶

³ For more on the role and functions of the constitutional review see: M. Safjan, “The Constitutional Court as a positive legislator” [in:] *New Millennium Constitutionalism: Paradigms of Reality and Changes*, NJHAR Publishes 2013, pp. 409–428.

⁴ <http://publication.pravo.gov.ru/Document/View/0001202003140001>; <http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102768718&backlink=1&&nd=102693962> (accessed: 2020.08.01).

⁵ The 1993 Constitution of the Russian Federation with amendments of 2019, <http://konstitucija.ru/1993/15/> (accessed: 2020.08.01).

⁶ In 2020, amendments to the 1993 Russian Constitution were adopted by the Russian Parliament, signed by the President, and assessed by the Constitutional Court of the Russian Federation. They were adopted through a postponed nationwide vote (“all-Russian vote”) on 1 July 2020 and came into force on 4 July 2020. The official text of the 1993 Russian Constitution with amendments of 2020,

The 2020 amendments to the Russian Constitution provide a unique opportunity to observe not only the formal way of adopting constitutional amendments, but also to analyze the opinion of the institution interpreting the provisions of the Constitution – the Constitutional Court of the Russian Federation (hereinafter also referred to as the Constitutional Court), which had already given an assessment of not only this process, but also the content of the proposed amendments. Therefore, this article focuses on the assessment and process of the constitutional amendments referred to above.

I. The 2020 amendments to the Russian Constitution as a sudden, albeit expected, initiative by the President of Russia

The launch of amendments to the Constitution was announced by the President of Russia on 15 January 2020 and left even the Russian public, who had seen many things, astonished. On the same day, the President of the Russian Federation set up a broad working group for preparing constitutional amendments,⁷ including not only politicians and lawyers, but also a wide circle of members of the public,⁸ thereby seeking to give the appearance of public approval for the sudden constitutional amendments. This working group started its work immediately on 17 January 2020. It is not infrequent that authoritarian regimes seek to create quasi-democratic institutions to give the illusion of public support for their proposed undemocratic initiatives. Possibly, there was the intention thereby to give the initiative of constitutional amendments an image of wider authorship. The draft amendments were submitted to the State Duma on 20 January and were unanimously adopted in a first reading on 23 January. Thus, the launch of the constitutional amendments was remarkably rapid.

I.1. Constitutional requirements to amend the Russian Constitution

Before assessing the proposals of the President of the Russian Federation to amend the Constitution and the way they were treated by the Constitutional Court of the Russian Federation, it is pertinent to take note of some original particularities related to the amendment of the 1993 Constitution of the Russian Federation. In accordance with the provisions of art. 136 of chapter 9 of the Constitution, amendments to articles contained in chapters 3 to 8 of the Constitution are adopted according to the rules fixed for the adoption of federal constitutional laws⁹ and come into force after they have been approved by the bodies of legislative power of not less than two-thirds

<http://konstitucija.ru/1993/16> (accessed: 2020.08.01).

⁷ Распоряжение “О рабочей группе по подготовке предложений о внесении поправок в Конституцию Российской Федерации,” <http://kremlin.ru/events/president/news/62589> (accessed: 2020.08.01).

⁸ The working group set up by the President of the Russian Federation consisted of 75 members.

⁹ The Federal Law on the amendments to the Constitution of the Russian Federation was adopted on 4 March 1998, <http://www.kremlin.ru/acts/bank/12084> (accessed: 2020.08.01).

of the subjects of the Russian Federation. The procedure for the adoption of federal constitutional laws is governed by art. 108(2) of the Constitution, according to which a federal constitutional law is considered to be adopted if it is approved by not less than three-fourths of the total number of the members of the Federation Council and not less than two-thirds of the total number of the deputies of the State Duma. An adopted federal constitutional law must be signed by the President of the Russian Federation within fourteen days and must be made public.

Consequently, in order to amend the provisions of articles contained in chapters 3 to 8 of the Russian Constitution, which concern the organization of the Russian Federation and the functioning of public authorities, such an initiative must receive the approval of the Federal Assembly (Russian Parliament), which consists of the State Duma and the Federation Council,¹⁰ and such an adopted law on constitutional amendments must be signed by the President of the Russian Federation, and it comes into force after it has been approved by the bodies of legislative power of not less than two-thirds of the subjects of the Russian Federation.¹¹

According to the provisions of art. 135(1) of chapter 9 of the Constitution, the Russian Parliament – the Federal Assembly – may not revise the provisions of chapters 1, 2, and 9 of the Constitution. The amendment of the provisions of these chapters requires not only a particularly strong approval by both chambers of the Russian Parliament (three-fifths of the total number of members of both chambers), but also requires convening a Constitutional Assembly (art. 135(2) of the Constitution), which either confirms the invariability of the provisions of the Constitution or drafts a new Constitution of the Russian Federation, which must be adopted by the Constitutional Assembly by two-thirds of the total number of its members or must be submitted to a nationwide vote (referendum). In the event that a new constitution is put to a nationwide vote, it is deemed to be adopted if, on the condition that over half of the electorate participated in the referendum, over half of the voters who came to the polls supported it (art. 135(3) of the Constitution). Thus, a new constitution of the Russian Federation must be drawn up in order to amend the provisions of chapters 1, 2 and 9 of the Russian Constitution.

This complex and, in principle, impossible procedure for amending chapters 1, 2, and 9 of the Constitution not only reflects the identity of the Constitution, but was intended to be the guarantor of the democratic foundations consolidated in chapters 1 and 2 of the 1993 Russian Constitution. The drafters of the 1993 Russian Constitution formulated the constitutional doctrine concerning the invariability of the provisions

¹⁰ According to art. 94 and art. 95 of the 1993 Russian Constitution, the representative and legislative body (Parliament) of the Russian Federation is called the Federal Assembly. It consists of two chambers – the Federation Council and the State Duma <http://konstitucija.ru/1993/15/>; <http://konstitucija.ru/1993/16> (accessed: 2020.08.01).

¹¹ It should also be noted that the provisions of art. 137 of chapter 9 of the Russian Constitution provide for a specific procedure for amending art. 65 of chapter 3 (Federal Structure) of the Constitution, according to which the provisions on amending art. 65 are also governed by a special federal constitutional law <http://konstitucija.ru/1993/15/>; <http://konstitucija.ru/1993/16> (accessed: 2020.08.01).

of the Constitution in order to protect the essential constitutional provisions, consolidating the foundations of the constitutional system (chapter 1) and constitutional rights and freedoms (chapter 2) against amendments. These chapters lay down the democratic foundations for the Republic of Russia, which have unfortunately not been implemented, as the Russian political system has taken the path of authoritarianism, and the sole rule of President Vladimir Putin, instead of the Constitution, has become the basis of the Russian political system.

I.2. Overstepping the requirements to amend the Constitution

At the beginning of 2020, however, few expected that the President of the Russian Federation, having recourse to the powers conferred on him by art. 134 of the Constitution of the Russian Federation,¹² would initiate constitutional amendments early in 2020, by submitting the draft Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority” to the State Duma on 20 January 2020.¹³ This was the case because, following the regular undemocratic election of the President of Russia in 2018, there was still a long time left until the end of his second and, in accordance with art. 81(1) (as amended in 2008) of the Constitution, his last six-year term of office expiring in 2024. While it was speculated that the President of the Russian Federation could consider possibilities for finding ways of staying at the top of Russian power in a formally legal manner, there were doubts that he would venture to propose an amendment to art. 81(3) of the Constitution, lifting the restriction on the number of terms of office of the President of the Russian Federation (that one and the same person may not be elected as the President of the Russian Federation for more than two consecutive terms). The original provisions of art. 81(1) of the 1993 Constitution of the Russian Federation, which provided for a four-year term of office of the President of the Russian Federation, were once amended in 2008 and established a six-year term of office.¹⁴ The draft Law on Amendment to the Constitution, submitted to the State Duma by the President of Russia on 20 January 2020, did not propose an amendment to art. 81(1) of the Constitution. Neither was such an amendment reflected in the amendments to the Constitution adopted by the State Duma in the first reading. In the draft Law on Amendment to the Constitution, the President of Rus-

¹² In accordance with the provisions of art. 134 of the 1993 Constitution of the Russian Federation, the right of initiative to amend the provisions of the Constitution is also granted to the President of Russia <http://konstitucija.ru/1993/15/>; <http://konstitucija.ru/1993/16/> (accessed: 2020.08.01).

¹³ Проект закона Российской Федерации о поправке к Конституции Российской Федерации “О совершенствовании регулирования отдельных вопросов организации публичной власти,” <http://kremlin.ru/acts/news/62617>; <http://kremlin.ru/events/president/news/62589> (accessed: 2020.08.01).

¹⁴ Art. 81(1) of the Constitution was amended upon the adoption by the Russian Parliament of the Law of 30 December 2008 on amending the length of office of the President of the Russian Federation and the length of office of the State Duma. This amendment to the Constitution came into force on 31 December 2008.

sia proposed a broad set of amendments to various other provisions of the Constitution, thereby opening a Pandora's Box for a number of additional initiatives to amend the Constitution. The before-mentioned working group for preparing constitutional amendments, set up by the President of Russia, was actively engaged in this process. Some of the ideas of the members of this working group were reflected in the draft law on amending the provisions of the Constitution as adopted in the second reading (10 March 2020) and the third reading (11 March 2020), which already contained the provisions amending art. 81 of the Constitution and setting it out in a new wording, making it possible for the President of the Russian Federation in office to stand in an election for two additional six-year terms.¹⁵ The possibility for the President in office at the time when the constitutional amendments came into force to stand again in an election for the President of the Russian Federation is provided for in art. 3 of the Law on Amendment to the Constitution,¹⁶ which concerns the entry into force of the new amendments to the Constitution.

Thus, on 11 March 2020, the Federal Assembly (Russian Parliament) – the Federation Council and the State Duma – almost unanimously approved the Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority,”¹⁷ initiated by the President of Russia. By 14 March 2020, the constitutional amendments were supported by the legislative authorities of 85 subjects of the Russian Federation,¹⁸ and, on the same day (14 March 2020), the President of the Russian Federation signed the Law on Amendment to the Constitution.¹⁹ On 14 March 2020, urgently and, thus, on the same day, he applied to the Constitutional Court of the Russian Federation for the conclusion on whether the provisions of art. 1 and art. 2 of the Law on Amendment to the Constitution and the procedure for the entry into force of this law are in conformity with the provisions of chapters 1, 2, and 9 of the Constitution.²⁰ The application to

¹⁵ The amendment to art. 81 of the Constitution, making it possible for President Putin to stand in election for two further six-year terms of office, was proposed by Valentina Tereshkova, a member of State Duma, who is widely known to the public.

¹⁶ The Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority,” <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

¹⁷ *Ibidem*.

¹⁸ <http://kremlin.ru/acts/news/62988> (accessed: 2020.08.01).

¹⁹ *Ibidem*; <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

²⁰ The inquiry “On the conformity of the provisions of the Law of the Russian Federation on Amendment to the Constitution of the Russian Federation, ‘On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority,’ which have not yet come into force, with chapters 1, 2 and 9 of the Constitution of the Russian Federation, as well as the conformity of the procedure for the entry into force of art. 1 of said Law with the Constitution of the Russian Federation” (Запрос “О соответствии главам 1, 2 и 9 Конституции Российской Федерации не вступивших в силу положений Закона Российской Федерации о поправке к Конституции Российской Федерации ‘О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти’ и о соответствии Конституции Российской Федерации порядка вступления в силу статьи 1 указанного Закона”), <http://kremlin.ru/acts/news/62989> (accessed: 2020.08.01).

the Constitutional Court, as a condition for the entry into force of art. 1 and art. 2 of the Law on Amendment to the Constitution, was also provided for in art. 3 of the Law on Amendment to the Constitution.²¹

The Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority”, which was initiated by the President of Russia and was approved by the Russian Parliament, consists of three articles,²² which enter into force under a different and complicated procedure.

Article 3 of the Law on Amendment to the Constitution regulates the procedure for the entry into force of this law and, in accordance with its provisions, this law enters into force upon its official publication (after it is adopted by the Russian Parliament – the Federal Assembly, which consists of the State Duma and the Federation Council – and after it is also approved by the legislative authorities of two-thirds of the subjects of the Russian Federation and is signed by the President of the Russian Federation). The entry into force of art. 1 of the Law on Amendment to the Constitution, which concerns amendments to specific articles of the Constitution, and art. 2 of the Law on Amendment to the Constitution, which contains the provisions on the “all-Russian vote” and its procedure, is also linked to the conclusion of the Constitutional Court on the conformity of the provisions of art. 1 and art. 2 of the said law (including the conformity of the procedure provided for in this law for its entry into force) with chapters 1, 2 and 9 of the Constitution. If the conclusion of the Constitutional Court is favorable, art. 2 of the Law on Amendment to the Constitution, which provides for the “all-Russian vote” and its procedure, also enters into force. Meanwhile, as provided for in art. 3(5) of the Law on Amendment to the Constitution, if over half of the total number of those taking part in the “all-Russian vote” support the new constitutional amendments (provisions of art. 1), the Law on Amendment to the Constitution comes into force in full (together with art. 1 thereof) from the moment of the official publication of the results of the “all-Russian vote”.

Having received a favorable opinion from the Constitutional Court of the Russian Federation,²³ on 17 March 2020, the President of Russia signed the order setting the date of 22 April 2020 for the “all-Russian vote” on approving the Law on Amendment to the Constitution²⁴ (these powers of the President were provided for by the Law on

²¹ <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

²² It should be noted that the initial Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority”, submitted by the President of Russia to the State Duma on 20 January 2020, contained only two articles, <http://kremlin.ru/acts/news/62617> (accessed: 2020.08.01).

²³ Following an inquiry filed by the President of Russia on 14 March 2020 concerning the conformity of the Law on Amendment to the Constitution with chapters 1, 2, and 9 of the Russian Constitution, on 16 March 2020, the Constitutional Court of the Russian Federation adopted a conclusion finding no inconsistency of the said law with the Constitution, <http://doc.ksrf.ru/decision/KSRFDecision459904.pdf> (accessed: 2020.08.01).

²⁴ Указ “О назначении общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации,” <http://kremlin.ru/acts/news/63003>; <http://www.pravo.gov.ru/> (accessed: 2020.08.01).

Amendment to the Constitution). Due to the consequences of the pandemic, however, the vote was postponed by a presidential decree issued on 25 March 2020.²⁵ The new presidential decree was issued on 1 June 2020 and 1 July 2020 was set for the “all-Russian voting.”²⁶

As regards the procedure for the entry into force of the Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority”, which was initiated by the President of Russia and adopted by the Russian Parliament, in terms of its conformity with the provisions (concerning constitutional amendments and alteration to the Constitution) of chapter 9 of the 1993 Russian Constitution, it is important to note that such a differentiated procedure for amending the Constitution is not provided for in this chapter of the Constitution, nor is such a vote as an “all-Russian vote”²⁷ or the role of the Constitutional Court in determining the entry into force of certain constitutional amendments provided for there either.

The amendments to the Constitution initiated by the President of Russia can be divided into certain groups: the amendments, which have already been partially discussed, concerning the institution of the President and the strengthening of his powers; the powers of other state authorities; the composition and powers of the Constitutional Court; human rights provisions on the development of social guarantees; family life; ideological provisions; and the relationship between constitutional law and international law, etc. Thus, not only the vast number and scope, but also the content of the changes, suggest that this is not a mere alteration of individual constitutional provisions, but the emergence of new autonomous constitutional content within the framework of the former Constitution.

This raises the legitimate question as to whether such an alteration of the Constitution does not change the nature of the Constitution and whether it is compatible or in conflict with the Constitution.

²⁵ Указ “О переносе даты общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации,” <http://kremlin.ru/events/president/news/63066>, <http://www.pravo.gov.ru/> (accessed: 2020.08.01).

²⁶ <http://kremlin.ru/events/president/news/63443> (accessed: 2020.08.01).

²⁷ It should be noted that a comparison of the constitutional criterion of the “all-Russian vote”, as provided for in the amendments to the Constitution, and the constitutional criterion of the “nationwide vote”, referred to in art. 135 of chapter 9 of the 1993 Constitution, shows an evident difference: the “all-Russian vote” does not require that over half of all the voters support the constitutional amendments on the condition that over half of the electorate participate in the vote, as provided for under the requirements of the “nationwide vote”. The new “all-Russian vote” requires only a majority of votes cast by those taking part in the vote. Moreover, analyzing this issue in its conclusion of 16 March 2020, the Constitutional Court of the Russian Federation, in a very unconvincing way, explains such a difference in terms of the free choice of voters to take part in such a vote, <http://doc.ksrf.ru/decision/KSRFDecision459904.pdf> (accessed: 2020.08.01).

II. Politics and the Constitutional Court. Crossing the line

The formal amendment of a constitution – the initiation and adoption of constitutional amendments – is a political process, and control over this process can be entrusted to the constitutional court. Such control, however, can be exercised effectively only by a constitutional review institution independent of the political process.²⁸

A constitutional court that gives way to pressure exercised by politicians and abandons its judicial independence does not fulfil its role as the guardian of the constitution; it rather becomes an instrument for approving political decisions.²⁹ Unfortunately, this can be applicable to the Constitutional Court of the Russian Federation after it delivered its 19 March 2014 Judgment No 6-П/2014, giving an appraisal of the constitutionality of the International Treaty between the Russian Federation and the Republic of Crimea on the Admission of the Republic of Crimea into the Russian Federation and the Creation of New Subjects in the Composition of the Russian Federation.³⁰

The amendments to the Constitution of the Russian Federation, provided for in art. 1 of the Law on Amendment to the Constitution, are substantial and concern various areas of constitutional law; therefore, they could be properly overviewed only in a much broader academic piece of work. This article deals only with some of the provisions amending the Russian Constitution that are addressed in the conclusion of the Constitutional Court of the Russian Federation of 16 March 2020,³¹ in particular those that can be considered to fundamentally change the previously formulated constitutional doctrine.

First of all, it is also important to discuss those provisions of the Law on Amendment to the Constitution of the Russian Federation “On Improving the Regulation of Specific Issues in the Organization and Functioning of Public Authority” that concern the Constitutional Court itself and that had to be assessed by the Constitutional Court.

The provisions of art. 3(2) and (3) of the Law on Amendment to the Constitution, which are related to the entry into force of this law, provide for the power of the Presi-

²⁸ More on the mission of judiciary in the democracy see: A. Barak, *The Judge in a Democracy*, Princeton University Press 2006.

²⁹ T. Birmontiene, “Avoiding Political Influence on Constitutional Courts – Is this mission Possible?” [in:] *Current Constitutional Issues. A jubilee Book on the 40th Anniversary of Scientific work of Professor Boguslaw Banaszak*, C.H. Beck 2017, pp. 3–23.

³⁰ Judgment No 6-П/2014 of the Constitutional Court of the Russian Federation of 19 March 2014 on the constitutionality of the International Treaty between the Russian Federation and the Republic of Crimea on the Admission of the Republic of Crimea into the Russian Federation and the Creation of New Subjects in the Composition of the Russian Federation pending its entry into force, <http://doc.ksrf.ru/decision/KSRFDecision155662.pdf> (accessed: 2020.08.01). For more on this issue see: T. Birmontiene, “On the Constitutionality of Amendments to the Constitution” [in:] *Estudos em Homenagem ao Coselheiro Presidente Rui Moura Ramos*, Tribunal Constitucional (Portugal) 2016, vol. II, pp. 245–270; T. Бірмонтієнє, “Невидими поправки до конституції: рол конституційного суду” [in:] *Visnyk Konstytucyjnoho Sudu Ukrainy* 2016, no. 4–5 pp. 223–238.

³¹ The conclusion of the Constitutional Court of the Russian Federation of 16 March 2020, <http://doc.ksrf.ru/decision/KSRFDecision459904.pdf> (accessed: 2020.08.01).

dent of Russia to apply to the Constitutional Court for a conclusion as to whether the provisions of the said law are in conformity with chapters 1, 2, and 9 of the Constitution. The Constitutional Court, thus, is given the previously un-envisaged competence to assess in advance the constitutionality of amendments to the Constitution in this particular case. In addition, in connection with amending art. 125 of the Constitution, art. 1 of the Law on Amendment to the Constitution provides, among other things, for the new functions of the Constitutional Court to carry out the preliminary review³² of the constitutionality of some legal acts that have not yet come into force – laws that have been vetoed by the President of the Russian Federation but that have gained no support for the presidential veto in the Parliament. Before signing such laws, the President of Russia will have the possibility of applying to the Constitutional Court for the assessment of their compliance with the Constitution.³³ This function of initiating the *a priori* verification of constitutionality, as well as some of the other constitutional amendments provided for in art. 1 of the Law on Amendment to the Constitution, strengthen the already broad – “super-presidential” – powers of the President of Russia. Under the provisions of art. 125(2) of the 1993 Constitution on the powers of the Constitutional Court, the *a priori* verification of constitutionality was limited to international treaties of the Russian Federation that have not come into force.³⁴

As mentioned before, art. 3(2) of the Law on Amendment to the Constitution provides that, when the Law on Amendment to the Constitution comes into force (i.e. art. 3 thereof), the President of Russia applies to the Constitutional Court with an inquiry for a conclusion on the conformity of the provisions (i.e. art. 1 and art. 2) of the Law on Amendment to the Constitution, which have not yet come into force, with chapters 1, 2, and 9 of the Constitution, as well as on the conformity of the procedure for the entry into force of art. 1 of said law with the Constitution. The fact that art. 1 of the Law on Amendment to the Constitution is singled out in terms of constitutional verification of its entry into force is not coincidental; as has already been mentioned, the procedure for the entry into force of the said law (art. 1 and art. 2 thereof) is not consistent with the provisions of chapter 9 of the Russian Constitution. Article 3(3) of this law also provides that the above-mentioned inquiry must be examined by the Constitutional Court within seven days.

Even though the time limit of seven days for giving a reasoned conclusion by the Constitutional Court on such wide-ranging constitutional amendments as proposed in the Law on Amendment to the Constitution was apparently unreasonably short, the

³² See more on the arguments in favor or against preliminary constitutional review: A. Rytel-Warzocho, “*A priori* constitutional review – pros and cons in the lights of doctrinal opinions and practical experience” [in:] *The Concepts of Democracy as Developed by Constitutional Justice. XXII International Congress on European and Comparative Constitutional Law, Vilnius, 4–5 October 2019*, eds R. Arnold, I. Daneliene, Vilnius 2020, pp. 410 *et seq.*

³³ The provisions of art. 1 of the Law on Amendment to the Constitution amending art. 107 of the Constitution and setting it out in a new wording, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

³⁴ The provisions of art. 125 of the 1993 Constitution of the Russian Federation, <http://konstitucija.ru/1993/16/> (accessed: 2020.08.01).

Constitutional Court adopted the conclusion within an even shorter period. The President of Russia applied with the inquiry to the Constitutional Court on 14 March 2020, and the Constitutional Court gave its conclusion on 16 March 2020.³⁵ In the conclusion itself, the Constitutional Court stresses that it is based on legal arguments;³⁶ however, both the apparent hastiness with which it was adopted and its content testify to the fact that the Russian Constitutional Court turned itself into a political institution,³⁷ which it had already become upon adopting its judgment of 19 March 2014,³⁸ providing the justification for the annexation of Crimea.

The Law on Amendment to the Constitution initiated by the President of Russia affected the guarantees of the independence of the judiciary, including the Constitutional Court. The provisions of the said law provide for the procedure for terminating the powers of judges, under which the President of the Russian Federation may present a submission to the Federation Council to terminate the powers of the president and judges of the Constitutional Court and the president and judges of the Supreme Court.³⁹ There were no such provisions previously established in the Russian Constitution. This attests to the fact that the already illusory principle of judicial independence has been further undermined. The provisions of the constitutional amendments providing for a reduction in the composition of the Constitutional Court (from 19 judges as established under art. 125(1) of the 1993 Constitution) to 11 judges, by amending art. 125 of the Constitution,⁴⁰ also attest to a restriction on the activity of judges of the Constitutional Court, who had, indeed, already lost their independence. It is likely

³⁵ The conclusion of the Constitutional Court of the Russian Federation of 16 March 2020, <http://doc.ksrf.ru/decision/KSRFDecision459904.pdf> (accessed: 2020.08.01).

³⁶ *Ibidem*, par. 1.

³⁷ Only rare rulings by the Constitutional Court of the Russian Federation or, to be more precise, separate opinions, recall the former judicial nature of the Russian Constitutional Court. It should be noted that the conclusion of 16 March 2020 was adopted by the Constitutional Court sitting without Judge Konstantin Aranovskiy. It can be understood that this is not accidental. In the case in which the judgment of 19 January 2019 was adopted, Judge Aranovskiy gave a separate opinion in which he disagreed with and sharply criticized the provisions of the said judgment of the Constitutional Court. This judgment, in his view, unfoundedly identified the state of Russia with the former Soviet Union, which had carried out acts of brutal repression; in his view, the Russian Federation cannot be the successor to the Soviet Russia, <http://doc.ksrf.ru/decision/KSRFDecision442846.pdf> (accessed: 2020.08.01). It can be considered that such an opinion by the said judge could also have led the President of Russia to propose, together with the new constitutional amendments, a reduction in the composition of the judges of the Constitutional Court (from 19 to 11), as well as to propose that, by art. 1 of the draft Law on Amendment to the Constitution initiated by the President of Russia, art. 67 be supplemented with par. 1, underlining that the Russian Federation is the successor to the Soviet Union, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

³⁸ The judgment of the Constitutional Court of the Russian Federation of 19 March 2014, <http://doc.ksrf.ru/decision/KSRFDecision155662.pdf> (accessed: 2020.08.01).

³⁹ The provisions of art. 1 of the Law on Amendment to the Constitution amending art. 83 and art. 102 of the Constitution, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

⁴⁰ The provisions of art. 1 of the Law on Amendment to the Constitution amending art. 125 of the Constitution, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

that the inevitable criticism from international institutions had probably determined that the provisions of art. 3(7) of the Law on Amendment to the Constitution in its final version⁴¹ included the provisions, which were not in the initial draft law presented by the President of Russia, stipulating that the judges of the Constitutional Court who are in office at the time of the entry into force of art. 1 of the Law on Amendment to the Constitution will continue to perform their duties until the expiry of their powers on the grounds provided for under the Federal Law on the Constitutional Court,⁴² and new judges will not be appointed if there are 11 or more judges of the Constitutional Court. Thus, when deciding on the provisions of the Law on Amendment to the Constitution, the Constitutional Court of the Russian Federation also decided on its own fate.

Much discussion has also been generated as a result of the provisions of art. 1 (and art. 3) of the Law on Amendment to the Constitution, which not only strengthen the powers of the President of Russia by introducing amendments to art. 80, art. 82, art. 83, art. 92, and art. 93 of the Constitution,⁴³ but also raise additional burdensome requirements for candidates for the post of the President of the Russian Federation. The amendments to art. 81 of the Constitution impose the requirement for a candidate to be permanently resident in the Russian Federation for not less than 25 years (the current provision of art. 81(2) of the Constitution provides for a period of 10 years), as well as introducing a new requirement that such a candidate may not hold (including in the past) citizenship of another state or a permit or another document granting the right of permanent residence in a foreign state. There were no such requirements in the provisions of art. 81 of the 1993 Russian Constitution⁴⁴ that was currently in force.

Unlike the requirements imposed with respect to a candidate for the post of the President of Russia, the prohibition on persons in public office holding the citizenship of another state or a document allowing permanent residence in another state is not applied retroactively.

⁴¹ The provisions of art. 3(7) of the Law on Amendment to the Constitution, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

⁴² Article 3(7) of the Law on Amendment to the Constitution, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01); the Federal Law of the Russian Federation on the Constitutional Court of the Russian Federation of 21 July 1994 (with amendments), <http://kremlin.ru/acts/bank/6650/page/8> (accessed: 2020.08.01).

⁴³ *Inter alia*, the provisions of art. 1 of the Law on Amendment to the Constitution, while strengthening the powers of the President of the Russian Federation, amend the first paragraph of art. 110 of the Constitution, by providing that the executive power in the Russian Federation is exercised by the Government under the general direction of the President of the Russian Federation. It should be noted that the office of Prime Minister is retained, but his/her role in directing the Government is undermined by the amendments, leaving the functions of the Prime Minister (Chairman of the Government) to organize the work of the Government and to execute the orders of the President of the Russian Federation. The powers of the President of Russia are also strengthened by the amendments granting him the right to form the State Council of the Russian Federation – a newly formed state institution, whose participation in the implementation of state power was not previously provided for in the provisions of the Constitution, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

⁴⁴ The 1993 Constitution of the Russian Federation (including the amendments of 2019), <http://konstitucija.ru/1993/15/> (accessed: 2020.08.01).

The provisions of chapter 1 of the 1993 Russian Constitution, which, as has already been mentioned, could not be amended by the Law on Amendment to the Constitution and against which the conformity of the Law on Amendment to the Constitution had to be examined by the Constitutional Court, are rather liberal in relation to dual (multiple) citizenship. The provisions of art. 62(1) and (2) of the Constitution provide that a citizen of the Russian Federation may have citizenship of a foreign state (dual citizenship) in cases established under federal law or an international agreement of the Russian Federation; the possession of foreign citizenship by a citizen of the Russian Federation does not derogate his or her rights and freedoms, nor does it remove his or her obligations stipulated by citizenship of the Russian Federation. Thus, the 1993 Constitution defines the institution of dual citizenship in a rather liberal manner.

The Constitutional Court of the Russian Federation had to investigate the constitutional justice case (judgment of 22 June 2010)⁴⁵ concerning a restriction on the rights of a Russian citizen to be appointed as a member of a territorial electoral commission, with the right to a decisive vote, due to the fact that he or she had the right of permanent residence in a foreign country.⁴⁶ In this case, the Russian Constitutional Court formulated a broad doctrine stating, *inter alia*, that the Constitution does not give rise to restrictions on Russian citizens, *inter alia*, to move abroad for residence, nor to obtain the status of a permanent resident, and declared such a legal regulation restricting the rights of a citizen to be contrary to the Constitution, *inter alia*, art. 19(1) of chapter 2 of the Constitution, which consolidates the principle of the equality of persons, as well as art. 55(3) of chapter 2 of the Constitution, which prohibits unjustified restrictions on the rights of persons.

In its conclusion of 16 March 2020, the Constitutional Court put forward the argument that the said non-conformity with the Constitution in the above-mentioned case is applicable only with respect to federal law and, therefore, it cannot be regarded as a limitation on establishing such a legal regulation in the context of amending the Constitution; however, this did not answer the question that had to be answered by the Constitutional Court – whether the proposed constitutional amendments comply with, *inter alia*, chapter 2 of the Constitution, which contains the above-indicated provisions of the Constitution (art. 19 and art. 55), and whether the newly introduced prohibition is in conflict with these provisions based on the doctrine formulated by the Constitutional Court in its judgment of 22 June 2010.

In the above-mentioned case, the compatibility of the provisions of the law with the provisions of art. 62 of the Constitution was not examined, as the person had no citizenship of another state. It can be assumed that, in this case, the Russian Constitutional Court at that time would also have taken note of the judgment of 27 April 2010 of the Grand Chamber of the European Court of Human Rights in the case of *Tānase*

⁴⁵ The judgment of the Constitutional Court of the Russian Federation of 22 June 2010, <https://rg.ru/2010/07/07/postanovlenie-ks-dok.html> (accessed: 2020.08.01).

⁴⁶ It should be noted that, in this case, the citizen of the Russian Federation had a document confirming the right of permanent residence in the Republic of Lithuania.

v Moldova,⁴⁷ in which the Court formulated the criteria prohibiting the imposition of such bans on the electoral right that result in the requirement for a person elected to the parliament to initiate a procedure for renouncing the other nationality before the validation of his/her election as a member of the parliament. The current Russian Constitutional Court has not demonstrated such carefulness and, providing this as an additional justification for the new constitutional amendments, pointed out that a citizen of the Russian Federation always has the opportunity to renounce foreign citizenship or a document enabling him or her to reside permanently in a foreign country. An analogous argument is made by the Constitutional Court regarding the new prohibition, introduced by art. 1 of the Law on Amendment to the Constitution, on the President of the Russian Federation and Russian citizens in public office holding accounts in foreign banks and keeping funds in these accounts.⁴⁸ The Constitutional Court did not even attempt to further clarify the conformity of such a prohibition with the provisions of art. 35 of chapter 1 of the Constitution, which protects the right to private property.

By amending the provisions of art. 81 of the Constitution, art. 1 of the Law on Amendment to the Constitution prevents one and the same person from standing for election as the President of the Russian Federation for more than two six-year terms of office, while the provision that such a limitation applies if a person is elected for two consecutive terms of office is abandoned. However, as it has already been pointed out, the reservation is in parallel made that, although such a requirement also applies to a person who previously held or is holding the office of the President of the Russian Federation, the previous or current term served by such a person in this office is discounted – the President in office at the time of the entry into force of the Law on Amendment to the Constitution may stand in an election for two six-year terms. Article 3 of the Law on Amendment to the Constitution, which regulates the procedure for the entry into force of the constitutional amendments, virtually repeats the possibility for the President in office taking part in future presidential elections and standing in election for two further six-year terms of office. This additional guarantee envisaged for the President in office could lead to the question why it is necessary to additionally provide for such a requirement in the procedure for the entry into force of the new constitutional amendments. It can be assumed that this was done to circumvent the reasoning of the strict constitutional doctrine formulated by the Constitutional Court in its judgment of 5 November 1998.⁴⁹

⁴⁷ The judgment of the Grand Chamber of the European Court of Human Rights of 27 April 2010 in the case of *Tănase v Moldova*, application no. 7(08).

⁴⁸ Notably, the argument, provided in the conclusion of the Constitutional Court of 16 March 2020, that the citizens of the Russian Federation holding or seeking public office become vulnerable if they hold accounts and keep money in foreign banks located outside the Russian Federation, sounds like one from the texts of the Soviet period (the duty of persons holding public office to declare is replaced with a prohibition).

⁴⁹ The judgment of the Constitutional Court of the Russian Federation of 5 November 1998, <http://www.szrf.ru/szrf/doc.phtml?nb=100&issid=1001998046000&docid=1461> (accessed: 2020.08.01).

In the judgment of 5 November 1998, the Constitutional Court dealt with the question of whether, at the time of the entry into force of the Constitution of the Russian Federation in 1993, Boris Yeltsin, who was then holding the office of the President of the Russian Federation, could be re-elected as President upon the end of his second term of office; and also whether his term of office as President served before the entry into force of the Constitution could be discounted and whether this would not prejudice the rule of two consecutive terms of office of the President, as set out in art. 81(3) of the Constitution. In this judgment, interpreting the provisions of art. 81(3) of the Constitution, the Constitutional Court formulated the strict imperative that two consecutive presidential terms constitute a constitutional limit, which cannot be exceeded. This constitutional imperative was also substantiated by the Constitutional Court with the fact that the transitional provisions prior to the entry into force of the 1993 Constitution, in recognition of the term of office served by President Yeltsin at that time, did not make an exception that this term of office, which had started before the entry into force of the Constitution, could be discounted from the application of art. 81(3) of the Constitution. Therefore, at the time of adopting the 1993 Constitution of the Russian Federation, there was no such reservation as provided for in art. 3(6) of the Law on Amendment to the Constitution.⁵⁰ This became the main argument in the conclusion of the Constitutional Court of 16 March 2020 in order to justify the exception, provided for in art. 1 and art. 3 of the Law on Amendment to the Constitution, for the President in office to stand for election as President for two more six-year terms of office.

The strict imperative, indicated by the Constitutional Court in its judgment of 5 November 1998, that two consecutive presidential terms constitute a constitutional limit, which cannot be exceeded, was left without a proper response in the conclusion of 16 March 2020. The Constitutional Court tried to undermine this imperative by stating that it was not formulated in connection with the interpretation of the provisions of chapters 1 and 2 of the Constitution⁵¹ (art. 81 is in chapter 4 of the Constitution). Thus, denying the formulated constitutional imperative, which could not be overstepped, the Constitutional Court justified the amendment to art. 81 of the Constitution, enabling a person to stand in presidential election even for four terms of office.

The content of one of the proposed amendments to the Constitution, raising doubts regarding its conformity with the articles of chapter 1 of the Constitution, was assessed by the Constitutional Court not for the first time. In its judgment of 14 July 2015,⁵² the Constitutional Court of the Russian Federation decided on the relationship between the Constitution and an international treaty, as well as on the binding nature of the execution of judgments given by the European Court of Human Rights, and con-

⁵⁰ Art. 3(6) of the Law on Amendment to the Constitution, <http://publication.pravo.gov.ru/Document/View/0001202003140001> (accessed: 2020.08.01).

⁵¹ The judgment of the Constitutional Court of the Russian Federation of 19 March 2014 (6.2), <http://doc.ksrf.ru/decision/KSRFDecision155662.pdf> (accessed: 2020.08.01).

⁵² The judgment of the Constitutional Court of the Russian Federation of 14 July 2015, <http://doc.ksrf.ru/decision/KSRFDecision201896.pdf> (accessed: 2020.08.01).

cluded that the final decision on the execution of a judgment of the European Court of Human Rights is taken by the Russian Constitutional Court, following an assessment of the compliance of such a decision with the Constitution.⁵³ Consequently, the provisions of art. 1 of the Law on Amendment to the Constitution whereby art. 79(1) of the Constitution is amended, to the effect that decisions adopted by international institutions operating under international treaties are not applicable in cases where these decisions contain interpretation divergent with the Constitution of the Russian Federation, in principle, constitute a transposition of the decision formulated in the judgment of 14 July 2015 into the provisions of the Constitution. The above-mentioned provisions correlate with the amendments proposed to art. 125 of the Constitution, according to which the Constitutional Court has the powers, in this respect, to assess the possibility of enforcing decisions adopted by international institutions (including foreign courts, foreign and international arbitration).⁵⁴ According to the Constitutional Court, such amendments to art. 79 and art. 125 of the Constitution are consistent with the provisions of art. 15(4) of chapter 1 of the Constitution, under which the universally recognized norms of international law and international treaties of the Russian Federation are a component part of the legal system of the Russian Federation and, if an international treaty of the Russian Federation provides for other rules than those envisaged by law, the rules of the international treaty are applied.

In the conclusion of 16 March 2020, it is explained that the power assigned to the Constitutional Court to decide on the non-enforcement of decisions of international

⁵³ This judgment of the Constitutional Court also determined the amendment (14 December 2015) of the provisions of art. 3 of the Federal Law on the Constitutional Court of the Russian Federation, regulating the competence of the Constitutional Court, <http://kremlin.ru/acts/bank/6650/page/8> (accessed: 2020.08.01).

⁵⁴ Art. 125 of the Constitution was supplemented with provisions on the extended powers of the Constitutional Court to assess constitutionality of legal acts *a priori*, and also to resolve the issues of the enforceability of decisions of interstate bodies (this competence was developed in the previous decisions of the Constitutional Court:

“1251. Constitutional Court of the Russian Federation:

- a) at the request of the President of the Russian Federation, checks the constitutionality of draft laws of the Russian Federation on amendments to the Constitution of the Russian Federation, draft federal constitutional laws and federal laws, as well as those adopted in the manner prescribed by parts 2 and 3 of article 107 and part 2 of article 108 of the Constitution of the Russian Federation, laws prior to their signing by the President of the Russian Federation;
 - b) in the manner prescribed by federal constitutional law, resolves the issue of the possibility of enforcing decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation, contrary to the Constitution of the Russian Federation, as well as the possibility of enforcing a decision of a foreign or international (interstate) court, a foreign or international arbitration court (arbitration) imposing obligations on the Russian Federation, if this decision contradicts the foundations of the public order of the Russian Federation;
 - c) at the request of the President of the Russian Federation in the manner prescribed by the federal constitutional law, verifies the constitutionality of the laws of the subject of the Russian Federation prior to their promulgation by the highest official of the subject of the Russian Federation (the head of the supreme executive body of state power of the subject of the Russian Federation;”
- <http://konstitucija.ru/1993/16/> (accessed: 2020.08.01).

institutions (a certain mechanism for implementing decisions of international courts) is aimed at finding an acceptable way to implement such decisions and ensure the supremacy of the Constitution in the national legal system. It would be difficult to agree that the non-enforcement of a decision of an international or foreign court is an acceptable way of implementing the obligations deriving from an international treaty, particularly in view of the lack of independence and the political nature of the Russian Constitutional Court and in the light of instances of such practice.⁵⁵

Certain other newly introduced amendments to the Constitution, which did not receive a proper reasoned analysis in the conclusion of the Constitutional Court, also raise considerable doubts.

The Constitutional Court did not make any appraisal of the fact that the proposed amendments to the Constitution fundamentally disrupt the framework of the Constitution itself. Organically linked to human rights, to which chapter 2 of the Constitution is devoted, the provisions concerning the proposed guarantees of social rights, health protection, the protection of the rights of the child, the institution of marriage, support for foreign compatriots, etc., under art. 1 of the Law on Amendment to the Constitution, are scattered throughout various other chapters of the Constitution, designated for other purposes. The same equally applies to the constitutional amendments linked to chapter 1 of the Constitution, which is devoted to the foundations of the constitutional system: such as the new provisions relating to the identity of the state, *inter alia*, establishing that the Russian Federation is the successor to the Soviet Union; the provisions concerning faith in God, which are not only inseparable from art. 14 of chapter 1 of the Constitution, stipulating the secular nature of the Russian Federation, but are also contrary to it; the relationship between the international and national legal systems (provisions of art. 15(4) of chapter 1 of the Constitution), etc.; all these provisions appear in chapters designated to govern other issues. The amendments contained in art. 1(4) to (7) of the Law on Amendment to the Constitution, strengthening the powers of the President of the Russian Federation and proposing the centralization of local self-government, also subvert the provisions of chapter 1 of the Constitution concerning the law-governed state (art. 1), the separation of state powers (art. 10 and art. 11), local self-government (art. 12), etc.

Thus, the entry into force of the 2020 amendments to the Russian Constitution⁵⁶ will inevitably raise questions concerning the altered nature of the Constitution, its integrity, and the compatibility of its provisions. Neither the conclusion given by the Russian Constitutional Court, nor the "all-Russian vote" carried out on 1 July 2020 will remove these doubts.

⁵⁵ *Inter alia*, the judgment of the Constitutional Court of the Russian Federation of 19 January 2017 (*Yukos Case*), http://www.ksrf.ru/en/Decision/Judgments/Documents/2017_January_19_1-P.pdf (accessed: 2020.08.01).

⁵⁶ The 1993 Constitution of the Russian Federation in the wording of 2020 entered into force on 4 July 2020, <http://konstitucija.ru/1993/16/> (accessed: 2020.08.01).

In lieu of conclusions

After the entry into force of the proposed constitutional amendments, the 1993 Constitution of the Russian Federation in its wording of 2020 will not only lose its structural integrity, but its new amendments will also compete or conflict with the foundations set out in chapters 1 and 2 (and also 9) of the Constitution. As the 1993 Constitution, while existing merely as a formal legal document, has long been not actually significant in the Russian Federation, this will not prevent the public from continuing to live with the illusion that the governance of Russia is based on the Constitution.

As a result, the academic field of comparative constitutional law will provide a forum for discussion on the constitution in a new form, the nature of constitutional amendments and their destructive role, the role of constitutional review institutions in the process of amending constitutions, and the political character of such an institution in an authoritarian state, etc.

Meanwhile, the Constitutional Court of the Russian Federation, each time when it decides constitutional disputes and inevitably invokes not so much the Constitution as the reasoning in the conclusion of 16 March 2020, will not only look for possibilities of justifying the contradictions existing in the constitutional text, but will also be uneasily awaiting the time when the Constitutional Court of Russia, restored on the democratic grounds of a state under the rule of law, declares the 2020 constitutional amendments, along with the arguments set out in its conclusion of 16 March 2020, contrary to the Constitution.

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Summary

Toma Birmontiene

2020 Amendments to the Russian Constitution – Change of the Constitution or Its Collapse?

The article is intended to examine the 2020 amendments to the Russian Constitution (1993), which not only substantially changed the constitutional structure of powers in Russia, but also led to a crisis in the identity of the Russian Constitution. The 2020 amendments to the Russian Constitution raise many important constitutional questions. The author analyzes, *inter alia*, the nature of constitutional amendments and their destructive role, the role of the constitutional review institution in the process of amending the constitution, the political character of such an institution in an authoritarian state, etc. The author presents the process of adopting the constitutional amendment initiated by the President of Russia, which was remarkably rapid. The 2020 amendments to the Russian Constitution provide also a unique opportunity to analyze the opinion of the Constitutional Court of the Russian Federation, which had already given its assessment of both this process and the content of the proposed amendments in the opinion of 16 March 2020, also in regard to amendments that concern the Constitutional Court itself and its independence. The 2020 amendments to the Russian Constitution, thus, inevitably raise questions concerning the altered nature of the Constitution, its integrity, and the compatibility of its provisions. Neither the conclusion given by the Russian Constitutional Court, nor the "all-Russian vote" carried out on 1 July 2020, will remove these doubts.

Keywords: Constitution, constitutional amendments, constitutional jurisprudence, constitutional law, Russian Constitutional amendments

Streszczenie

Toma Birmontiene

Nowelizacja Konstytucji Rosyjskiej z 2020 r. – zmiana konstytucji czy jej upadek?

Artykuł poświęcony został uchwalonej w 2020 r. z inicjatywy Prezydenta Rosji nowelizacji Konstytucji Rosji z 1993 r., która nie tylko w istotny sposób zmieniła konstytucyjną strukturę władz w Rosji, ale także doprowadziła do kryzysu tożsamości rosyjskiej Konstytucji. Wprowadzone zmiany wywołują wiele istotnych pytań konstytucyjnych. Autorka analizuje m.in. charakter zmian Konstytucji i ich destrukcyjną rolę, rolę organu kontroli konstytucyjności prawa w procesie nowelizacji konstytucji, czy polityczny charakter takiej instytucji w państwie autorytarnym. Autorka przedstawia również procedurę uchwalenia powyższej nowelizacji, która została przeprowadzona niezwykle szybko. Nowelizacja Konstytucji Rosyjskiej z 2020 r. stanowi także niepowtarzalną okazję do dokonania analizy opinii Sądu Konstytucyjnego Federacji Rosyjskiej, wydanej w dniu 16 marca 2020 r. Sąd Konstytucyjny odniósł się w niej zarówno do kwestii pro-

ceduralnych, jak i treści proponowanych zmian, także do poprawek dotyczących samego Sądu Konstytucyjnego i jego niezależności. Zmiany wprowadzone do rosyjskiej Konstytucji w 2020 r. nieuchronnie rodzą zatem pytania o nowy charakter Konstytucji, jej integralność i kompatybilność jej postanowień. Ani opinia rosyjskiego Sądu Konstytucyjnego, ani „ogólnorosyjskie głosowanie” przeprowadzone 1 lipca 2020 r. nie rozwiewają tych wątpliwości.

Słowa kluczowe: konstytucja, nowelizacja konstytucji, orzecznictwo konstytucyjne, prawo konstytucyjne, zmiany rosyjskiej Konstytucji