

Constitutional Legislation Developments in the Russian Federation for Sustainable Development Goals

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ABSTRACT

The improvement of constitutional legislation at the national level is impossible without taking into account the progressive transformations in the international system that predetermine progress in solving the political problems of our time. Democracy as a non-alternative political regime and the rule of law as the principle of social organization guarantee the legitimacy of decisions of the public authority of the state as long as the level of legal culture of the people allows remaining within the legal framework, updating the interpretation of formal requirements of the constitutional law. The historical context of the modernization of the legal foundations of the state system affects legal awareness only to the extent that changes in the law give rise to progressive practices of protection of the fundamental human rights and freedoms. Many ambitious political projects and current reforms have not been properly developed due to the fact that the practical results of the modernization of the constitutional system strongly contradicted the picture of social justice that formed the ideological basis for the humanitarian policy. Preserving legal traditions while updating the interpretation of the provisions of constitutional acts in the practice of constitutional justice can contribute to the achievement of sustainable development goals to a much greater extent than those changes in the text of constitutional acts that carry the risks of political instability and violation of human rights.

Keywords: constitution, changes, legitimacy, principles, human rights, democracy

The Resolution of the General Assembly of the United Nations “Transforming Our World: The 2030 Agenda for Sustainable Development” dated September 25, 2015¹ adopted the Sustainable Development Goals (paragraph 59). Since then, special attention of the world community has been paid to the eradication of poverty, non-discrimination and protection of the natural environment. According to the Sustainable Development Goals, the priority task of the United Nations is to eradicate poverty and hunger (Goals 1 and 2, respectively). Political leaders of the world community declare their determination “to create conditions for sustainable, inclusive and progressive economic growth, universal prosperity and decent work for everybody with account of different levels of national development and opportunities” (paragraph 3), and the legislative bodies of the Russian Federation reaffirm their commitment to Sustainable Development Goals². It is generally recognized that poverty, hunger and discrimination (including economic one) accompanying extreme poverty, impede the enjoyment of fundamental human rights and freedoms and negatively affect the quality of democracy³.

Historical experience demonstrates the special influence of the state law on ideas about social justice. For example, the Great Charter of 1215 allows “ascertaining the generally recognized statement that law forms and teaches the society”⁴. The Great Charter emerges “as a result of resistance to arbitrariness on the part of the monarch, as an attempt to put the king in a certain legal framework. Subsequently, the provisions of the Great Charter greatly influenced *the development* (our italics — V. K., G. A.) of such human rights as the right to life and the right to freedom, as well as many procedural guarantees which, in their turn, played an important role in shaping the concept of the rule of law”⁵. In the context of the present humanitarian problems reflected in the fundamental documents of the United Nations, the improvement of the Russian constitutional legislation is to be carried out with account of the progres-

¹ A/RES/70/1. [Electronic resource]. URL: <https://undocs.org/A/RES/70/1> (accessed on: 06.01.2020).

² On the results of the parliament hearings of “The post-2015 UN Development Agenda” — practical aspects of implementation: Resolution of the Council of Federation of the Federal Assembly of the Russian Federation dd. March 2, 2016 No. 95-SF.

³ O’Cinneide C. Democracy, Rights and the Constitution — New Directions in the Human Rights Era // Current Legal Problems, Vol. 57, Iss. 1, 2004. Pp. 175–211.

⁴ *Khatunov S. Yu.* Magna Carta and Treaty of Henry Bracton “On the Laws and Customs of England” // *Lex russica* (Russian law). 2012. Volume 71. No 1. P. 26.

⁵ *Temirbekov Zh.* Magna Carta — as the Conceptual Predecessor of the Rule of Law Concept in the Middle Ages // *Law and State*. No. 2 (67) 2015. Pp. 89–92.

sive foreign experience in solving the problems of poverty and economic discrimination that persist in the Russian society.

The concept of the transition of the Russian Federation to sustainable development (approved by the Decree of the President of the Russian Federation dd. April 1, 1996, No. 440) is basically devoted to the ecological aspect of structural transformations in the economy and only to some extent reflects the contemporary understanding of the problem of sustainable development. The attempts to solve acute social problems in detachment from the fundamental foundations of the citizens' participation in the state governance seem futile. Changing the basic law of the country is possible and even necessary in the cases where social progress requires normative transformation; however, the world experience has shown that the practice of amending constitutional acts does not always reflect the real interests of the people. For example, the Eighteenth Amendment to the US Constitution was adopted on December 18, 1917 (entered into force on January 16, 1919. See *Dillon v. Gloss*, 256 U.S. 368, 376 (1921)) under the influence of anti-alcohol movement activists; however, life showed the inconsistency of such regulation, and the twenty first amendment to the US Constitution adopted on February 20, 1933 annulled the dry law. Changing the constitution of a developed democratic state is always dictated by the desire of the political class to show concern for the people stating those ideals of justice that will predetermine social progress, but such efforts are sometimes futile and unsuccessful. Success in improving constitutional legislation seems to us to be based on the understanding of the historical experience that has led to the institutionalization of specific legal realities. Underestimation of political risks and inattention to the praxeological aspects of constitutional legislation can lead to legal errors preventing sustainable development.

The constitutional legal order in Russia is developing under the influence of the transformation of traditional European institutions, such as the European Court of Human Rights, its activities aimed at protecting a complex of humanitarian values in creation of a common policy of the member states of the Council of Europe⁶. The politicization of international law has a direct impact on the execution of decisions of the European Court of Human Rights. In the complicated foreign policy situation "a significant factor of instability and uncertainty is the undermining of the traditional international order, including geopolitical tensions and the renunciation of international coordination"⁷. Against the alarming background of the international agenda the Russian Federation still has a difficult economic situation: "The real disposable income of the population has been declining for the fifth year in a row. The population with an income below the subsistence minimum remains at a level close to 20 million people"⁸. In these conditions, there are calls from different sides to change the Constitution of the Russian Federation of 1993 in order to ensure greater stability and justice of the country's socio-political field.

The Russian mechanism of constitutional and legal protection of human rights centers around the political figure of the President of the Russian Federation. In accordance with paragraph 2 of Art. 80 of the 1993 Constitution of the Russian Federation the President of the Russian Federation is the guarantor of the Constitution, human and civil rights and freedoms. In his speech dedicated to the twentieth anniversary of the 1993 Constitution of the Russian Federation President of the Russian Federation V. V. Putin noted that "the tough and firm position of the Constitutional Court on upholding the constitutional foundations of our state is the pillar of Russia, because the erosion and shattering of the basic law means a forerunner to the erosion and shattering of the state itself ... one needs to care with respect to the basic law"⁹.

In his article "Live Constitution of Development" Chairman of the State Duma of the Federal Assembly of the Russian Federation V. V. Volodin noted that "we are not talking about changing and revising the basic provisions of the constitution" and suggested that "the State Duma should at least participate in consultations when appointing members of the government", and such a procedure does require "amending the constitution"¹⁰. The problem of modernization of the 1993 Constitution of the Russian Federation is being actively discussed. In the fair opinion of S. A. Zenkin, "in the conditions of the existing political realities the rigidity of the legal constructs of reforming the constitution is nominal"¹¹, since

⁶ Cali B. International Human Rights Law: One Purpose or Many? Reflections on Macklem's. The Sovereignty of Human Rights // *Jerusalem Review of Legal Studies*, Vol. 15, Iss. 1, June 2017. Pp. 77–88.

⁷ Mau V. A., Abramov A. E., Apevalova E. A., et al. *Russian Economy in 2018. Trends and Prospects*. Moscow, 2019. Volume 40. P. 20.

⁸ *Ibid.* P. 26.

⁹ Putin V. V. The constitution must be stable [Electronic resource]. URL: <https://tass.ru/politika/828204> (accessed on: 06.01.2020).

¹⁰ Volodin V. V. Living constitution of development // *Parliamentary newspaper*. 17.07.2019 [Electronic resource] URL: <https://www.pnp.ru/politics/zhivaya-konstituciya-razvitiya.html> (accessed on: 05.01.2020).

¹¹ Zenkin S. A. Modernization of the Constitution of the Russian Federation: Normative Model and Practice // *Lex russica (Russian law)*. 2018. No. 11 (144). Pp. 40–62. DOI: 10.17803/1729-5920.2018.144.11.040-062. P. 54.

certain political forces have a constitutional majority in the Federal Assembly of the Russian Federation. Some scientists mistakenly believe that “there is a serious problem of the legitimacy of the current constitution”¹², while others reasonably analyze “some trends” of improving the basic law of the Russian Federation¹³. We seem to be facing a major task of preserving the traditional legitimacy of the 1993 Constitution of the Russian Federation by modernizing the effective practices of its interpretation and application for progressive humanization of administrative practices.

The 1993 Constitution of the Russian Federation is a landmark historical document that marked the final transition of Russia to the democratic form of governance and a rule-of-law state. After the collapse of the USSR, the Russian Federation had to rebuild its own statehood, as the romantic expectations from the political transformations were quickly replaced with the gloomy economic and political post-Soviet realities of the 1990s. Solving the problem of creating a basic law meeting the challenges of that time required the mobilization of almost all the intellectual and administrative resources of the country that existed at that time.

From 1990 till 1993 the Russian Federation had the Constitutional Commission: a permanent body of the Congress of People’s Deputies of the Russian Federation for the preparation of the draft new Constitution of Russia. However, for a number of political reasons, these efforts failed to lead to the development of the text of the basic law that would meet all the interests of the Russian society. The working commission to finalize the draft Constitution of the Russian Federation was formed by the Decree of the President of the Russian Federation dated May 12, 1993 No. 660 “On Measures to Complete the Preparation of the New Constitution of the Russian Federation”. In accordance with the Decree of the President of the Russian Federation dated June 2, 1993 No. 840 “On the Procedure for the Work of the Constitutional Conference”, from June 5 to June 16, 1993 plenary sessions of the Constitutional Conference were held in the Marble Hall of the Kremlin, and a broad public discussion of constitutional drafts was initiated. During the sessions of the groups of representatives, the working commission and expert groups of the Constitutional Conference, it was decided to develop a text of the constitution that meets all the requirements of the rule-of-law state. The Public and State Chambers of the Constitutional Conference, as well as the Commission of Constitutional Arbitration began work.

More than 800 deputies participated in the Constitutional Conference. It comprised the most reputed Russian lawyers; the authors of the constitution drafts were S. S. Alekseev and S. M. Shakhrai, the first mayor of St. Petersburg A. A. Sobchak also worked on the basic law. He later wrote: “The greatest objections in the draft of the Constitutional Commission are caused by the continuity and inter-relatedness with the previous Soviet constitutions both in the structure of the draft and in the presentation of the material. One of the most significant shortcomings is the expansion of the subject of constitutional jurisdiction. The Constitution is the main law of the state. But the draft proclaims it to be the fundamental law of the state and society. We are not in the rank of the Lord, the society has lived, lives and will live according to its own laws which are not akin to legal ones, but just have a legal character”¹⁴.

As a result of the work of the Constitutional Conference, a new unified draft of the Constitution of Russia ready for publication was developed only by November 8, 1993. Suffice it to recall the events of September — October 1993 in Moscow related with the termination of the work of the Congress of People’s Deputies and the Supreme Soviet of the Russian Federation in order to understand the political situation in which the text of the constitution was worked on. However, despite all the political difficulties, the basic law was adopted based on the results of the nation-wide voting held on December 12, 1993. In 1993 the draft constitution was supported by more than 58% of those who took part in the voting, about 33 million citizens of Russia. The legitimacy of the document can raise no doubts, and this was the main result of the work of the Constitutional Conference. At the same time, the subsequent changes in the text of the basic law may challenge the legitimacy of the new wording of the document. The adoption of amendments to the constitution is always fraught with political risks. Provided that the new provisions of the basic law reflect the idea of justice and comply with the international law¹⁵, there is still the problem of the correlation between the authority of the original text and later amendments, since it is obvious that the procedure of adopting a constitutional act differs significantly from the procedure of amending the text of the document.

¹² Bondarev A. V. On the need to change the Russian constitution // *Young Scientist*. 2019. No. 21. Pp. 319–321. [Electronic resource] URL <https://moluch.ru/archive/259/59683/> (accessed on: 28.11.2019).

¹³ *Ovsepyan Zh. I. Changes to the Constitution of the Russian Federation: Some Trends // Russian law: Education, Practice, Science*. 2014. No. 2 (83). Pp. 79–83.

¹⁴ *Sobchak A. A. Russia without despotism and despots [Electronic resource]*. URL: <http://sobchak.org/site/112.html> (accessed on: 05.01.2020).

¹⁵ *Tasioulas J. Human Rights, Legitimacy, and International Law // The American Journal of Jurisprudence*, Vol. 58, Iss. 1, June 2013. Pp. 1–25.

In the course of the work on the draft constitution, normative structures and a system of public institutions responsible for their implementation were created. B. S. Ebzeev, a judge emeritus of the Constitutional Court of the Russian Federation, notes that the working group for the finalization of the draft new constitution made a decisive contribution to the creation of the text of the constitution¹⁶. The working group was managed by S. A. Filatov who summed up the work of the Constitutional Conference with account of certain historical experience in his article “Does Russia Live by the Constitution?” 15 years later noting that: “On the basis of the Constitution, the country managed to go through a most difficult period of large-scale, truly revolutionary transformations. It managed to go through and not to plunge into the chaos of endless conflicts of regions, authorities, ideologies. To go through without collapsing the society, without losing its statehood. In the constitution we got the legal foundation that ensured the political, economic, social integrity of Russia”¹⁷. The Constitutional Conference elaborated an effective mechanism of state and legal regulation; however, it took a long legislative work to adopt federal constitutional laws in order to fully achieve the potential of the basic law.

The work of the Constitutional Court of the Russian Federation had a significant impact on the understanding and application of the provisions of the constitution. Professor M. V. Baglay who headed the Constitutional Court from 1997 till 2003 precisely defined the principles of work that make it possible to successfully maintain the constitutional rule of law in Russia: “The Constitutional Court is out of politics — this is known. In the sense that the judges of the Constitutional Court are not engaged in political activities. Nobody belongs to political parties, and there are no political discussions, political approaches, considerations of expediency in our work. Legal criteria only”¹⁸. The authority of the Constitutional Court of the Russian Federation, its right to official interpretation of the constitution predetermines the need for the direct participation of judges of the Constitutional Court of the Russian Federation in the process of modernizing the constitutional legislation and its application in order to protect human rights and freedoms, as well as to counteract threats to sustainable development. The modernization of Russian democracy necessitates the activity of the leaders of the professional legal community in improving the constitutional legislation in view of the fact that the sustainable development of the Russian Federation as a leading world power, a permanent member of the UN Security Council, largely depends on the rationality of legislative decisions.

The 1993 Constitution of the Russian Federation as a live document of direct action changed gradually. A system was developed for introducing amendments to the constitution through special federal laws on amendments to the Constitution of the Russian Federation. For example, the law dated December 30, 2008 No. 6-FKZ “On Changing the Term of Office of the President of the Russian Federation and the State Duma” increased the term of office of the President to six years, and the State Duma to five years; the law dated December 30, 2008 No. 7-FKZ “On Supervisory Powers of the State Duma regarding the Government of the Russian Federation” obliged the Government of the Russian Federation to submit reports to the State Duma on the results of its activities. The law dated February 5, 2014 No. 2-FKZ “On the Supreme Court of the Russian Federation and the Prosecutor’s Office of the Russian Federation” provided the grounds for the changes in the judicial system; the law dated July 21, 2014 No. 11-FKZ “On the Council of the Federation of the Federal Assembly of the Russian Federation” determined the powers of the President of the Russian Federation to participate in the formation of the upper house of the parliament.

Over a quarter of a century, the need for further reforming the constitutional mechanisms of regulating the functioning of the state apparatus became obvious. In his article “Letter and Spirit of the Constitution” in October 2018 V. D. Zorkin, Chairman of the Constitutional Court of the Russian Federation, noted that “our constitution has shortcomings. These include the lack of a proper balance in the system of checks and balances, a bias in favor of the executive branch of power, insufficient clarity in the distribution of powers between the president and the government, in determining the status of the presidential administration and the powers of the prosecutor’s office”¹⁹. However, it is really important to learn to “live fully according to the constitution”, since “without solving this general task, Russia will fail to get its new high and lasting place in an increasingly complicated and by no means kind global world”²⁰.

¹⁶ Ebzeev B. S. Constitution, Power and Freedom in Russia: the Experience of Synthetic Research. M. : Prospekt, 2013. 336 p.

¹⁷ Filatov S. A. Does Russia Live Under the Constitution? // Znamya. No. 11. 2008. Pp. 115–121.

¹⁸ Internet conference of Chairman of the Constitutional Court of the Russian Federation M. V. Baglay “To the 10th Anniversary of the Constitution of the Russian Federation: Protection of Citizens’ Constitutional Rights and Freedoms”. January 29, 2003 [Electronic resource]. URL: <http://www.garweb.ru/conf/ks/20030129/> (accessed on: 06.01.2020).

¹⁹ Zorkin V. D. The Letter and Spirit of the Constitution // Russian newspaper. 09.10.2018. № 226 (7689).

²⁰ Ibid.

It should be admitted that without decisive and timely amendments to the 1993 Constitution of the Russian Federation it was impossible to ensure the reunification of Russia with Crimea, to protect the rights of Russian people living on the territory of the peninsula. The Constitution is an integral part of the national security system which guarantees a legal response to any illegitimate political decisions.

The progress in the protection of human rights became one of the most significant achievements in the implementation of the provisions of the 1993 Constitution of the Russian Federation. The constitutional norms allowed building the initially difficult relations between the Russian Federation and the Council of Europe. According to the well-grounded opinion of Professor S. M. Shakhrai, “the provision on the supremacy of the constitution is directly and clearly formulated in the basic law. The subordination of the norms of international treaties to the constitution itself and federal constitutional laws was enshrined.”²¹ At the same time, it is obvious that “full implementation of constitutional principles in life requires both compliance with formal procedures and the availability of proper political and legal culture, respect for the rule of law, uniform understanding of the ideas of the basic law by political elites and civil servants.”²² Undoubtedly fair is the thesis of S. M. Shakhrai about the initiatives aimed at changing the Constitution of the Russian Federation, which “have been and are not legal, but political, since the current basic law still has a significant potential. The constitutional norms do not have any direct prohibitions on political creativity, and therefore the consensus of the elites is sufficient to legalize the majority of the innovations in our social and political life”²³. At the same time, the fundamental role in building a modern rule-of-law state is played by the values having the consensus of the political class with other elites.

The constitutional system of the Russian Federation is substantially influenced by the crisis of the neoliberal model of the national economy²⁴. In conditions when the status of the subject of legal relations is determined by its economic viability, a significant part of strategic initiatives critical for national security and social justice do not get proper support. Since the citizens’ rights and freedoms are to remain in the center of the mechanism of constitutional regulation²⁵, guarantees of equality and social justice will determine the trend in the modernization of the constitutional law of the Russian Federation. In the context of traditional legitimacy it will be useful if it is the interpretation of the main law that predominantly changes while the changes in the text will be limited in the practice of rule-making, since the 1993 Constitution of the Russian Federation has become a kind of symbol of contemporary Russia.

Characterizing the impact of the 1993 Constitution of the Russian Federation on the Russian society, S. S. Alekseev was undoubtedly right maintaining that “in any state the Constitution Day is one of the major holidays. Perhaps it is the constitution that contains our national idea so persistently sought”²⁶. Constitutional ideals and democracy in Russia are certain to develop for the country to conform to the principles of justice and equality, as well as the goals of sustainable development formulated at the international level. The principles of the state structure enshrined in the 1993 Constitution of the Russian Federation both enabled the state to get out of the political crisis and formed a solid foundation for sustainable development in Russia. Improvement of the mechanisms of the rule-of-law state directly depends on the political priorities that the governing bodies at various levels of public authority are guided by²⁷. It is obviously necessary to limit subjectivity in the application of the norms of the constitutional law²⁸, at the same time, it is the professional legal consciousness and legal culture of judges of the Constitutional Court of the Russian Federation that guarantees the legality, preservation of traditions and protection of human rights in Russia.

Improvement of the constitutional legislation must be carried out with account of the law enforcement practice of the European Court of Human Rights and the existing challenges to equality and justice faced

²¹ *Shakhrai S. M.* Changing the constitution is like breaking down the foundation // RIA Novosti. 14.08.2015. [Electronic resource] URL: <https://ria.ru/20150814/1183677399.html> (accessed on: 01/05/2020).

²² *Shahray S. M.* 25 Years of the Constitution of the Russian Federation: Implementation and Development of Constitutional Models // *Lex Russica (Russian law)*. 2018. № 11 (144). P. 14.

²³ *Shahray S. M.* Creative Potential of the Constitution of the Russian Federation // *Journal of Russian Law*. 2018. No. 12 (264). Pp. 33–39.

²⁴ *Kirilenko V. P., Alekseev G. V., Pacek M.* Natural Law and the Crisis of Liberal Legal Order // *Bulletin of St. Petersburg University. Law*. 2019. Volume 10. No. 1. Pp. 38–54.

²⁵ *Avakyan S. A.* Problems of Ensuring Constitutional Public-Political Rights and Freedoms of Citizens of the Russian Federation: New Realities // *Moscow University Herald. Iss. 11: Law*. 2017. № 1. Pp. 3–34.

²⁶ Alekseev’s law // *Rossiyskaya Gazeta*. 16.07.2009. Ural No. 0 (4954) [Electronic resource]. URL: <https://rg.ru/2009/07/16/reg-ural/alekseev.html> (accessed on: 01/05/2020).

²⁷ *Avakyan S. A.* Modernization of Public and Political Relationships and Constitutional Reformation: Issues and Prospects // *Constitutional and Municipal Law*. 2019. № 9. Pp. 3–6.

²⁸ *Avakyan S. A.* Government Relations: Existence Regularities, Regulation and Law Enforcement Subjectivism // *Constitutional and Municipal Law*. 2018. № 5. Pp. 3–11.

by everyone in the present international system. Achievement of sustainable development goals cannot be ensured without timely and legitimate political changes; however, one cannot stay in the legal field, constantly changing the norms of constitutional legislation without clearly explaining to the civil society how changes in the constitutional legislation will improve the lives of ordinary citizens. Any attempt to change the constitution has a symbolic meaning and requires a certain political caution, which, undoubtedly, does not preclude the need to bring the provisions of the sources of the constitutional law into line with the realities of life that affect the sovereignty and national interests of the Russian Federation.

Constitutional norms and principles are to remain not just formal criteria of the rule-of-law state, but they are meant to regulate social relations in essence, guaranteeing the fundamental status of a citizen in relations with the state. Unless the modernization of the constitutional legislation is aimed at finding realistic ways to solve the current problems of the implementation of fundamental human rights, sustainable development will inevitably be slowed down due to injustice generated by the imperfection of the law. In this context, the goals of sustainable development and the interests of effective protection of human rights in the Russian Federation dictate the need to exercise restraint in the issue of changing the constitutional legislation and require that the constitutional supervision bodies pay close attention primarily to ecological well-being, eradication of poverty and ensuring the welfare of households protecting their right to ownership.

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