

Boston University

OpenBU

<http://open.bu.edu>

Institute for the Study of Conflict, Ideology and Policy

Perspective

1995-09

Constitution Hinders Legislative Process

<https://hdl.handle.net/2144/3519>

"Downloaded from OpenBU. Boston University's institutional repository."

PERSPECTIVE

Volume 6, No 1 (September-October 1995)

Constitution Hinders Legislative Process

By OLEG RUMYANTSEV

President, Russian Constitutional Reform Fund

Since the so-called "adoption" of the Russian Federation's Constitution during the 1993 referendum, its very contents justifiably have been called into question because of a multitude of flaws concerning the articles that regulate the legislative process. These flaws impede everyday parliamentary work sufficiently for Duma deputies to complain often that this Constitution makes it "impossible even to live!"(1)

The present analysis examines the relevant Constitutional articles and the prescribed steps of the legislative process.

1. Introduction of a draft bill for parliamentary examination. Article 104 of the Constitution unjustifiably restricts the range of subjects allowed under the *right of legislative initiative*. This right, under Article 104, is vested in "the President of the Russian Federation, the Federation Council, the members of the Federation Council, the deputies of the State Duma, the government of the Russian Federation, and the legislative (that is, representative) organs of the Russian Federation components. This right also belongs to the Russian Federation Constitutional Court, the Russian Federation Supreme Court, and to the Superior Arbitration Court of Legislative Enactment."(2)

The list of those authorized to introduce legislation excludes the permanent house committees, weakening their constitutional legal status. There is a difference between the introduction of legislation by deputies who happen to be members of a committee, and the introduction of legislation by the committee itself. Also absent from the list is the

Plenipotentiary for Human Rights, an omission that limits the ombudsman and weakens parliamentary control over the observance of individual rights and freedoms. Also excluded is the Russian Federation General Prosecutor, who is authorized only to serve a highly specialized role in the judicial system (i.e. to support charges brought by the State). The failure to grant him the right of legislative initiative does nothing to strengthen the prosecutor's ability to fight crime.

2. According to the Russian Federation Constitution, legislation regarding the introduction or cancellation of taxes, exemptions from their payment, the issuance of government loans, changes in governmental financial obligations, and other legislation anticipating expenses to be covered by the federal budget may be introduced "only in the presence of final decisions by the government of the Russian Federation."⁽³⁾ It appears, however, that the Constitution does not obligate the government even to present its final decisions, or provide specifications on how to present them and the time required. This conspicuous omission caused some members of the State Duma Legislative and Judicial-Legal Reform Committee to propose an amendment to Article 104, Section 3, adding the following paragraph:

[The government's] decision will be presented by the chairman of the government of the Russian Federation within one month's time after the proposed legislation has been moved. After the prescribed time has elapsed, the proposed legislation may proceed in the absence of the government's decision.⁽⁴⁾

This amendment would eliminate excuses frequently used by the government to block legislation with bureaucratic delays.

3. Federal Laws are passed by the State Duma with a majority of votes from the *total number of deputies* of the State Duma unless stipulated otherwise in the Constitution of the Russian Federation.

The lack of definition of the term "*total number of deputies*", (5) caused great difficulties when the Duma first began its work. The actual total referred to in this term was unclear--whether it was the number of deputies actually elected or something else [e.g., all deputies whether elected or nominated, as may be the case in the Federation Council -- ed.] The author, in the Constitutional Commission of the Russian Federation's Congress of Peoples' Deputies (1990-1993), had proposed that Duma acts should be passed "by a majority of votes from elected deputies in each house with the exception of cases stipulated by the Constitution." (6)

This matter was raised in the State Duma's special inquiry submitted to the Russian Federation Constitutional Court. On April 12, 1995, the Constitutional Court resolved to define the term "total number of deputies." It ruled that, according to the Constitution, it is the 450 deputies in the State Duma and the 178 members of the Federation Council, respectively, as established by Article 95 (Sections 2 and 3). The Court deemed the State Duma's interpretation as failing to guarantee the people's representation in the Federal Assembly and as interfering with the constitutional provisions regarding the organization of the two chambers of Parliament and the legislative process.(7) [Presumably the Court felt that the Duma should not define matters pertaining to organization and voting in the Federation Council -- ed.]

4. There are problems with the Constitutional definition of the time required for the passage of laws through the upper house. Federal laws passed by the State Duma are transferred within five days to the Federation Council for consideration. A federal law is considered approved by the Federation Council if an affirmative vote is given by more than half of the total number of members of that house, or if, within 14 days, the bill has not been examined by the Federation Council (Article 105, Sections 3 and 4).

The upper house has proposed amendments to Sections 3 and 4 of Article 105 of the Constitution stipulating an increase in the time allowed for passage of legislation (already adopted by the State Duma) in the Federation Council and in the presidential administration. The reason for the proposed amendments is the irregular work schedule

which renders the Federation Council unable to cope with its legislative workload within the time allotted by the Constitution. However, the amendment was not supported by the State Duma.

The Federation Council asked the Constitutional Court whether the 14-day period for consideration and approval of federal laws in the upper house applies to the federal laws listed in Article 106 of the RF Constitution [e.g., the federal budget, federal taxes and levies, ratification and denunciation of international treaties, etc. -- ed.].

On March 23, 1995, the Constitutional Court held that: "The consideration of a federal law in accordance with Article 106 of the Constitution remains the obligatory duty of the Federation Council. Such consideration must comply with Section 4, Article 105 of the Constitution, and must start no later than 14 days after a law is transferred to the upper house. If the Federation Council, in the course of 14 days, does not complete its consideration of a federal law adopted by the state Duma, that, according to Article 106, is subject to obligatory consideration by the Federation Council, this law will not be considered adopted. Its consideration must be continued at the following session of the Federation Council until a decision has been reached regarding either its adoption or its rejection."(8)

5. The Federation Council very frequently violates the time limit established for simple federal laws. Moreover, time limits were never established by the Constitution in relation to Federal constitutional laws (Article 108, Section 2).

The absence of such limits proves handy for the upper house which could prolong and postpone its consideration of laws for an unlimited period of time. For instance, on July 7, 1995, the State Duma adopted an important federal constitutional law "Regarding Referenda in the Russian Federation." This law was placed before the Federation Council three times for consideration, but because there was no quorum it was never reviewed and was left for consideration in the fall of 1995.

6. The Adoption of House Resolutions. The Constitution allows the State Duma jurisdiction only on seven issues listed in Article 103. As a result, even the consolidation of the work schedules of the lower house of the Federal Assembly, formulated as a resolution, may be considered unconstitutional. It is noteworthy that the Constitution allows the lower house to adopt only two kinds of acts: laws and resolutions. This is clearly insufficient. The project of the Constitutional Commission stipulated that "laws of the Russian Federation, including basic legislation, resolutions, decrees, declarations, and addresses," should also be considered as acts of the federal parliament.(9)

7. Federal laws are sent to the President of the Russian Federation within five days of their adoption. The head of state should either sign and promulgate them or reject them within 14 days after the legislation reaches the Kremlin.

The obscurities in the "Yel'tsin Constitution" allowed the appearance of a new legal phenomenon in Russia: On May 10, the president sent back to Parliament several laws he had not read or considered. The former Duma sent to the Kremlin several laws it had adopted that had not been reviewed by the Federation Council within the time allotted. The President denied the Duma's petition that he should sign and promulgate the laws, explaining that all legislation should be reviewed first by the Federation Council before reaching the Kremlin. The lawyers in the Kremlin have invented a new term in the Russian legislative process; *returning a law without review*. This term differs in meaning from *turning down a law*, *the second reading of a law*, or *a right to veto*. The president has the power either to sign a law within two weeks after it reaches the Kremlin or to turn it down. There are no provisions in the Constitution that allow him to send a law back to the legislature without review. However, the Constitution is too ambiguous, thus providing the president with opportunities to ignore or circumvent its provisions. The president in presenting his new ruling to the Duma claimed that, according to the Constitution, he could not sign a law *prior* to its passage by the Federation Council.

A bothersome tendency in today's Russia is that politicians are *interpreting* the law according to their own understanding rather than strictly following it. In 1993, Yel'tsin

relied on the so-called *special interpretation of the law* during his stand-off with Parliament. His interpretation then turned out to be a justification for breaking the law. Turning a blind eye to violations of the law perpetuates such trends. The precedents regarding personal interpretations of the Constitution only strengthen the tradition of totalitarian rule. Such readings of the law have prevented or delayed the passage of a number of important laws such as the law "On Common Principles of Organization of the Organs of State Power within the Federation Subjects," to which members of regional governments objected, and also the law concerning "The Moratorium On the Unilateral Reduction of the Black Sea Fleet," a legislation very much disliked by the federal government.

8. A bill voted into law needs to be signed by the President of the Russian Federation and subsequently promulgated. However, the Constitution does not offer a contingency plan if the president does not bother to sign the bill in time. It would be feasible in such cases for Parliament to proceed with promulgating the law as a part of the legislative process. Then if a law is not signed in due time, Parliament can rightfully take upon itself the final part of the legislative process by promulgating and enacting the law.

9. A special problem concerns the *standing orders* of the two chambers of Parliament. According to the Constitution, "every chamber adopts its own internal regulations and resolves all questions about its internal order of activity." (10) Alas, the standing order of the State Duma of the Federal Assembly is not a federal law according to the new Constitution. Thus, important issues concerning the relationship between the branches of power remain unresolved. Moreover, the Prime Minister and other members of the government are not required to respond to deputies' questions and inquiries; in addition, federal officers are not required to testify in hearings of parliamentary investigative commissions' or to present the required documents.

These rather important issues could have been resolved by the standing order, had it been a federal law as suggested by the Constitutional Commission in 1990-1993.

The work of the Parliamentary Commission on the Causes and Circumstances Concerning the Initiation of the Crisis in the Chechen Republic was sabotaged by a number of state administrative bodies and offices. As a result, the Commission proposed amendments to the Constitutional Federal Law on the status of deputies in the Federal Assembly and the standing order of the State Duma. (11)

10. The procedures prescribed by the Constitution for cases requiring a *qualified majority* are extremely complicated. Thus, a federal constitutional bill is considered voted into law if it is approved by a majority of no less than three-quarters of the total number of deputies in the Federation Council and no less than two-thirds of the total number of deputies to the State Duma (Article 108, Section 2). A Constitutional Assembly can be convened only after a proposal for a revision of Chapters 1, 2, and 9 of the Constitution is upheld by three-fifths of the total number of members of the Federation Council and deputies of the State Duma (Article 135, Section 2). The Russian Parliament has already experienced difficulties due to these procedures.

Let us examine striking examples concerning amendments to the Constitution and the adoption of the Federal Law "On the Formation of the Federation Council." On June 21, 1995, the State Duma adopted three sets of amendments affecting five articles of the Constitution. On July 4, 1995, however, the Federation Council, under pressure from its pro-Yel'tsin speaker, Vladimir Shumeiko, rejected these three major federal constitutional bills. In the three votes, 36-39% of Federation Council members voted for, 24-25% against, and 5-6% abstained.(12) The Kremlin's reasons for having members of the upper house appointed rather than elected in a popular vote became apparent. In this way, the heads of regional administrations who are loyal to the Kremlin (i.e., they report directly to Yel'tsin), are able to abort key decisions of the lower house even when they are outvoted in the upper house [since 51 percent of its membership is required to sustain a bill -- ed.]. According to the Constitution, the procedure for composing the Federation Council is established by a federal law (Article 96, Paragraph 2). During two years of work, the Federation Council was not able to adopt a law concerning its own composition. This was done by the State Duma instead, which labored constantly to

obtain the cooperation of the members of the upper house. Enormous efforts were needed after the bill had been passed in the State Duma to poll in writing the members of the Federation Council: Such an extraordinary procedure is stipulated in the standing order of the upper house. The minimum number required (90 senators) was reached. On August 11, however, President Yel'tsin vetoed the law for ostensibly "contradicting the Constitution of the Russian Federation and altering the constitutional status of the Federation Council."(13)

Paradoxically, the President at the same time ignored a basic provision of the Russian Federation Constitution concerning power belonging to the people. According to Article 3, Section 1, "the sole source of power in the Russian Federation is its multinational people." In the President's opinion, the inclusion of representatives of the Russian Federation's constituent regions into the upper house "limits the right of the administrative bodies of the constituents of the Russian Federation to appoint their representatives to the Federation Council." So the rights of the regional administrations are placed above the rights of the population of these regions.

11. Finally, there remains the problem of constitutional regulation of the procedure for adopting constitutional amendments. In February 1995, the Council of the State Duma adopted a decision to direct an inquiry to the Constitutional Court about the way amendments may be introduced to the Constitution, whether as separate "Bills For Amending the Constitution" or as federal constitutional laws. The deputies resolved not to introduce amendments to the basic law until the Constitutional Court rules on the matter. The Constitutional Court, however, is in no rush to consider the Duma's inquiry. The President of the Russian Federation has greater leverage over it, and it is obvious that he is not interested in amending the Constitution.

* * * * *

Under a faulty Constitution, one inadvertently remembers the lines from the President's address to Parliament in February 1995: "respect of the law by society is enhanced only

when law is respected by the administration." (14) As long as the Russian administration has not demonstrated such respect, any talk about a constitutional order in Russia is, alas, premature.

Notes:

1. V. Isakov, "Constitution By Which It Is Impossible to Live," *Konstituatsionnyi Vestnik*, March-April 1994, p. 34.
2. The Constitution of the Russian Federation, Article 104, Section 1.
3. *Ibid.*, Article 104, Section 3.
4. "The Draft Law Regarding the Amendment of Article 104 of the Constitution of the Russian Federation," *The State Duma Legislative and Judicial-Legal Reform Committee Archives*, Moscow 1995.
5. See Russian Federation Constitution, Articles 103 (Section 3), 105 (Sections 2 and 5), 107 (Section 3), 108 (Section 2), 117 (Section 3), and 135 (Section 2).
6. Draft Constitution of the Russian Federation, Basic Provisions Adopted by the Sixth Congress of People's Deputies and Revised Draft Constitution, Approved by the Constitutional Commission, *Draft Constitution of the Russian Federation*, Collected Materials, Moscow 1992, p. 91.
7. The Resolution of the Russian Federation Constitutional Court on the Definition of Articles 103 (Section 3), 105 (Sections 2 & 5), 107 (Section 3), 108 (Section 2), 117 (Section 3), 135 (Section 2) of the Constitution of the Russian Federation, *The State Duma Legislative and Judicial-Legal Reform Committee Archives*, 12 April 1995, p. 5.
8. "The Resolution of the Russian Federation Constitutional Court on the Definition of Articles 105 (Section 4) and 106 of the Constitution of the Russian Federation," *The State Duma Legislative and Judicial-Legal Reform Committee Archives*, 23 April 1995, p. 4.
9. "Draft Constitution of the Russian Federation, Basic Provisions Adopted by the Sixth Congress of People's Deputies and Revised Draft Constitution, Approved by the Constitutional Commission," *Draft Constitution of the Russian Federation*, Collected Materials, Moscow 1992, p. 91.
10. *Op. cit.*, Article 101, Section 4.

11. The State Duma Parliamentary Commission on the Causes and Circumstances Around the Initiation of the Crisis in the Chechen Republic, *Conclusion. Resolutions and Proposals*, Moscow, 1995, pp. 44-45.
12. Results of the voting on Constitutional amendments, Federation Council, 4 July 1995.
13. Boris Yel'tsin's letter to the Speaker of the Russian Duma, Ivan Rybkin, *The State Duma Legislative and Judicial-Legal Reform Committee Archives*, Moscow, 11 August 1995.
14. Boris Yel'tsin's address to the Federal Assembly "On the Effectiveness of the State Power in the Russian Federation," Moscow, 16 February 1995, p. 112.

Copyright Boston University Trustees 1995

Unless otherwise indicated, all articles appearing in this journal have been commissioned especially for *Perspective*. This article was originally published at <http://www.bu.edu/iscip/vol6/Rumyantsev.html>.