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# 'Impeachment,' Russian Style

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## PERSPECTIVE

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# 'Impeachment,' Russian Style

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Complexities in the process of ousting the president from office do not excuse presidential irresponsibility. Rather, the existence of such a procedure and the threat of its implementation should force the president to keep his actions in line with the Russian Constitution, the laws of the state and social mores.

Unfortunately, the existing Constitution of the Russian Federation excessively complicates the process of forcing the president to take responsibility for his actions by making the removal of the president nearly unfeasible for the legislative branch, and hence for the electorate. The practical inapplicability of the existing impeachment mechanism has allowed the current president to behave with arrogance and impunity. The absence of a credible punitive mechanism actually encouraged his repeated attempts to act at his own discretion, with no reference to the constitution or the laws of the Russian Federation.

The first paragraph of Article 93 of the current constitution states that the president of the Russian Federation "can be removed from office by the Federation Council only on the basis of a charge of treason or commission of some other grave crime, filed by the State Duma, and confirmed by a ruling of the Supreme Court of the Russian Federation that the [president's] actions contain the elements of a crime, and a ruling by the Constitutional Court of the Russian Federation that the established procedure for filing the charge has been observed."

Thus, the process of removing the president from office involves four institutions: the two chambers of the Federal Assembly, the Federation Council and the Duma, and the two highest organs of the Judicial Branch, the Constitutional Court and the Supreme Court.

Under the constitution, the chief characteristic of the process of removing the president from office is its improper conflation of two factors which ought to remain separate: the chief executive's political obligation to the electorate and his obligation to abide by the law. The threat of political responsibility was deliberately diluted in the draft of the constitution favored by Yel'tsin, which became the current constitution. It exists to the degree that the legislative branch must initiate and conduct the proceedings as well as render final judgment. Yet this aspect loses all meaning when the only possible grounds for removal are high crimes and grave criminal offenses. This confusion of legal responsibility and political enforcement and the nearly insurmountable procedural hurdles ensure that removing the president is almost impossible.

A better version of the procedure would allow for the removal of the president on political grounds and would omit the Supreme Court from the process, allowing it to conduct a trial only in the case of presidential criminal wrongdoing. It is important to note that the draft constitution prepared by the Constitutional Commission (1990-1993) of the (then) Congress of Peoples Deputies contained a far more satisfactory procedure. Article 96 of the draft allowed the president to be removed for deliberate gross violation of the constitution or for a deliberate criminal offense. The removal of the president from office for deliberate gross violation of the constitution would have institutionalized the notion of political responsibility. Boris N. Yel'tsin rejected that draft in the fall of 1993.

This existing ouster process is needlessly complicated by its procedural requirements. According to Article 93 of the current constitution, the decision of the State Duma to bring charges against the president and the decision of the Federation Council to deprive him of his office "must be adopted by a vote of two-thirds of the total number [of

members] of each chamber on the initiative of at least one-third of deputies of the State Duma and provided there is a ruling by a special commission formed by the State Duma."

This procedure is defined by Article 93 and the fourth paragraph of Article 109 of the Constitution of the Russian Federation, the federal constitutional law "On the Constitutional Court of the Russian Federation" (Chapter 15, Articles 107-110), the Rules of Order of the State Duma (Chapter 22, Articles 176-180), as well as the Statute on the Special Commission of the State Duma regarding the evaluation of the procedural correctness and proper grounds of charges leveled against the president. This statute was ratified by a resolution of the State Duma on 19 June 1998. Together these documents determine the procedure for impeaching and trying the president, a process which can be presented simply by three stages:

### **The Indictment**

1. The Duma Deputies make a preliminary assessment that the president committed treason or another serious crime. The initiative is formulated by no less than one-third of the deputies in the Duma. The motion to indict the president contains specific references describing the criminal character of the president's actions and includes an evidentiary or explanatory section about the president's involvement in the given crime.
2. The Duma adopts a resolution on the formation of a Special Commission of the State Duma for the evaluation of the proper procedure and grounds for the charges leveled against the president. The Duma elects the chairman of the committee, his deputy, and 13 commission members. The composition of the commission is formulated with a view to having equal representation of factions and groups of deputies. The motion to indict the president is sent for evaluation to the special commission.
3. The commission hears the testimony of officials and eyewitnesses, considers the relevant documentation and reaches conclusions regarding the questions of procedural correctness and grounds for the motion to indict. The resolution on the motion to indict

the president is supported by the majority of commission members. The voting is conducted by roll call. Within one week, the resolution is forwarded to the Council of the State Duma, which enters the matter onto the agenda.

4. The State Duma considers the motion to indict the president and the conclusions of the Special Commission. Two-thirds of the deputies, voting by secret ballot, accept the motion to indict the president on charges of treason or another grave offense for the purpose of removing him from office. Within five days, the Duma resolution is sent to the Federation Council. The motion to indict the president is sent to the Supreme Court for its judgment on the criminality of the president's actions. (It is important to note that according to Article 109 of the Constitution, the State Duma cannot be dissolved from the moment that charges are brought against the president.)

### **Court Findings**

5. The Supreme Court considers the motion and renders its judgment.

6. Within one month after the resolution is passed by the Duma, the Federation Council asks the Constitutional Court for approval of the procedure by which the charges were filed. The appeal, the text of the State Duma decision, the protocol or stenographic record of the Duma debate, and all the pertinent documents are sent to the Constitutional Court of the Russian Federation.

7. The Constitutional Court determines whether the indictment process observed the established procedure, and sends its conclusions to the Federation Council.

### **The Decision to Remove from Office**

8. The Federation Council considers the decision of the State Duma on bringing charges of treason or another grave offense against the president for the purpose of removing him from office, as well as the conclusions of the special commission of the State Duma, the Supreme Court of the Russian Federation, and the Constitutional Court of the Russian Federation.

9. The Federation Council has three months from the day that the Duma put forth the charges to vote on removing the president from office. If the Federation Council fails to come to a decision within that time period, then (in accordance with Article 93 of the constitution) the charges against the president are deemed to have been rejected.

Such is Russia's unique procedure. Once more, for the sake of comparison, it is useful to mention the draft produced by the Constitutional Commission (1990-1993). That version described a far more reasonable process: "Proceedings on the removal of the president from office are initiated by either chamber of the [then existing] Supreme Soviet (1) of the Russian Federation when a majority of all the deputies elected to that chamber vote in favor of a motion put forth by one-third of the chamber members. If the Constitutional Court of the Russian Federation finds that there are sufficient grounds for removing the president from office, then the other chamber can remove him from office by a majority vote with at least two-thirds of the deputies voting. The president of the Russian Federation has the right to be present and provide explanation at the sessions of the Supreme Soviet of the Russian Federation and the Constitutional Court of the Russian Federation which consider the question of his removal from office."

By mid-September, the current impeachment proceedings against Boris Yel'tsin had reached only as far as the first three steps of the initial state--the indictment. To be precise, the third step had not been completed--the Special Commission still has not submitted the text of its conclusions to the Council of the State Duma.

According to the 205 deputies who signed the resolution containing the substantiation of charges against the president, he committed acts that have the attributes of grave or particularly grave crimes. In accordance with Article 78 of the Criminal Code, some of these crimes have no statute of limitations, while others are prosecutable for up to 10 years.

Briefly stated, the legal case against the president consists of the following charges:

- In 1991, Yel'tsin committed state treason by preparing and signing the Belovezhskie accords, which dismantled the Soviet Union, impaired its security and territorial integrity, caused great material loss to the state, and claimed numerous lives.
- He organized a state coup in September-October 1993 and took an active part in its execution. These actions are not covered by the amnesty for the persons (2) who were prosecuted for participation in the preceding events pertaining to Presidential Decree Number 1400, "On Stage-by-Stage Constitutional Reform in the Russian Federation," which disbanded the Supreme Soviet on 21 September 1993.
- Yel'tsin exceeded his powers as president by issuing the decrees "On measures for restoring constitutionality and law and order on the territory of the Chechen Republic" and "On measures to curb the activities of armed formations on the territory of the Chechen Republic and in the zone of the Ossetian-Ingush conflict." (3) Both decrees were secret and, in effect, prevented the Federation Council from participating in the decision to use military force against Chechnya.
- While occupying the position of commander in chief of the Russian Armed Forces, Yel'tsin caused a substantial decline in the state's military preparedness and overall security. This can be considered a form of aiding foreign powers to the detriment of Russia's foreign security.
- The cumulative result of Yel'tsin's actions as president is the current socioeconomic crisis. It includes the destruction of the main branches of domestic industry, the ever-increasing polarization of wealth, a profound disruption in social security and protection, and a sharp decrease in the standard of living and the average life span. This substantiates the claim that he engaged in "deliberately inflicting on the group [Russia's inhabitants] conditions of life calculated to bring

about its physical destruction in whole or in part." (4) This crime is known as genocide.

These charges are very weighty and are based on important legal and societal considerations. However, there are other grounds that are perhaps even more convincing. The author testified before the Special Commission of the State Duma on 8 September 1998 and described Yel'tsin's most serious transgressions:

"The president of the Russian Federation, Boris Yel'tsin, organized a grave crime--a coup d'état. He usurped the power of the [then] Congress of Peoples Deputies to adopt a new constitution for Russia. (5)

While circumventing the (then) existing constituent assembly, the Congress of Peoples Deputies, whose duty it was to produce the legitimate draft of the constitution, the president prepared an alternative draft. Having thwarted the legitimate mode of adopting the constitution, he rammed his own draft through the system. The decrees concerning the convocation of the Constitutional Conference, Decree No. 1400 "On Stage-by-Stage Constitutional Reform in the Russian Federation," and the decree on holding the referendum on the constitution comprise the outstanding instances where the existing Basic Law was grossly violated. In fact, the president usurped the powers of the constituent assembly, since only the Congress had the power to adopt and amend a draft constitution.

As a result of presidential decrees, there arose an advisory body, the Constitutional Conference, which functioned despite the wishes of the Congress and the Supreme Soviet.(6) This body prepared the foundation for the usurpation of the constituent legislative bodies' powers. The referendum on the constitution represented another step in the usurpation. According to the law "On the Referendum of the RSFSR," which was in force at the time, a referendum could be held only on the basis of the constitution and the laws of the Russian Federation: however, the referendum was carried out under a presidential edict. The law on referenda insisted that the constitution could be accepted

by a referendum only by a majority of registered voters. Even if all the falsified ballots were included, only about one-third of the registered voters participated. Official election commissions were replaced by other election commissions that were created by presidential edict.

These actions testify to the fact that the president unlawfully seized the powers of the constituent legislative bodies by organizing an unconstitutional method of adopting the constitution. This illegal process served to legitimize the coup d'état perpetrated by the president on 21 September 1993. All the actions involved in the preparation and adoption of the existing constitution indicate that Yel'tsin organized criminal actions."

Despite all the evidence of Yel'tsin's wrongdoing, it is easy to imagine that the indictment procedure will falter with the Supreme Court decision because the Criminal Code of the Russian Federation--with all of its loopholes and opportunities to stall--becomes operative at that stage. Common sense and legal logic would suggest a different course, however: The Supreme Court should be considering the criminal case against the (former) president for the crimes that would have already led to his removal from office!

It is no accident that the State Duma is considering a draft amendment to the Russian Constitution which would exclude the Supreme Court from the process. The involvement of the Supreme Court is not necessary since the question of depriving the president of his office is very different from the question of his criminal wrongdoing. The draft law of the Russian Federation, "On Amendments to Articles 93,103,109,125 of the Constitution of the Russian Federation," which concerns a revision of the impeachment process, was on the Duma's agenda for the fall of this year.

The basic elements of the draft law propose the following changes:

- Removal of the list of legal grounds necessary for indictment procedures to begin.

- In connection with the above, exclusion of the Supreme Court from the process of depriving the president of office.
- Removal of the concept of "indictment" which has been inappropriately imported into these proceedings from criminal law and judicial procedure.

If adopted, the amendments would make the president answerable before the people, since the process of depriving the president of office would become accessible to the people through their elected representatives, the deputies of the State Duma and the Federation Council.

Under the existing constitution, the most serious hurdle to the functioning of the impeachment process is found in Article 93, with its list of possible grounds for initiating proceedings against the president. As mentioned before, those grounds are treason against the state or another grave criminal offense. It is obvious that the task of proving the president guilty of such acts is a hopeless enterprise, quite beyond the Duma's means since it has no special discovery or judicial powers.

According to the authors of the previous draft, the very existence of a more realistic procedure would exert substantial pressure on the president. If a new procedure were adopted, the State Duma and the Federation Council could decide to initiate proceedings to remove the president from office in view of a particular presidential action against the constitution and accepted mores. The legislative bodies would have the power to exercise a political and constitutional check upon the presidency.

Notes:

1 Prior to 1993, the Russian Congress of Peoples Deputies, on a rotating basis, sent a section of its members to form the two chambers of the more powerful Supreme Soviet. These legislative bodies were the predecessors of the current two chambers: The Duma and the Federation Council.--ed.

2 That is, those persons arrested for clashing with police at the Supreme Soviet and at Ostankino TV center.--ed.

3 The first decree signaled the start of the Chechen war in 1994. The second pulled the Russian military out of the zone about three years earlier. --ed.

4 The Convention on the Prevention and Punishment of the Crime of Genocide (1948).--ed.

5 Unfortunately, this aspect is missing from the deputies' charges against the president. I advised the commission to add this charge to its proceedings.

6 See note 1.

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