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[A flawed constitution](#)



Contrary to popular belief, the problem of Russian democracy lies not as much in non-compliance with the constitution but, rather, in the fact that its provisions are very vague in sections that refer to democratic mechanisms and the protection of human rights. The Russian constitution was written in a hurry and for the president's convenience. That is, more precisely, for the convenience of Boris Yeltsin. And this act served him faithfully: even when his ratings were extremely low, the constitution gave him every opportunity to ignore the Parliament. Moreover, when his popularity and actual incapacity hit rock bottom, he was nevertheless able to successfully transfer the power to his successor, chosen within a narrow circle of people. Although the successor was not well-known around Russia until his appointment as prime minister, he nevertheless won the elections and formed a regime based on his personal power in subsequent years. Still, everything seems to have been in compliance with the current Russian constitution.

The basic law of ambiguity

One excellent example showing the imperfection of the current constitution as a whole is the famous third paragraph of Article 81: *'One and the same person may not hold the office of the President of the Russian Federation for more than two consecutive terms.'* The practical meaning of this restriction is completely unclear: after all, the same person can be elected president as many times as s/he wants, the main thing is to

take a break for one term after every two terms. As a result, this restriction is fictitious and, as such, meaningless.

Another example which demonstrates the ambiguity of the current constitution is connected with the misadventures of regional authorities in Russia. On the basis of the same legal act, governors in Russia were either appointed by the President, or elected by the inhabitants of the region, then elected by regional parliaments upon the president's proposal, and now supposedly elected again by the residents, albeit with impassable filters for anyone unwanted by the authorities. Well, what is the actual mechanism that the constitution lays down for the election and formation of regional authorities then? The answer is that this might probably be any mechanism that is convenient for the Kremlin at a particular moment. Meanwhile, if the mechanisms for the election of governors were described in the constitution in detail, all the above-mentioned manipulations would not be so easy to carry out (if at all) and, consequently, it would be very difficult for the president to usurp all the power in the country.

Moreover, the country has seen changes in the rules guiding the formation of the Duma: at first, a half of the MPs were elected by districts and the other half were elected on the basis of party lists. Then all MPs were elected from party lists, whereas now it is the fifty-fifty rule again. How is this possible within the framework of the same constitution?

A separate and extremely sad story is the actual destruction of municipal government that we have witnessed in recent years. The eighth chapter of the current constitution, which regulates this sphere, contains a set of highly abstract statements that, if desired, can be interpreted in a variety of ways, also as an opportunity to deprive the population of the right to exert direct influence on various aspects of local governance.

Let us look at the real-life practice. 'Local governance is carried out in urban and rural settlements as well as other territories, taking into account the historical and other local traditions. The structure of local government bodies is determined independently by the residents.' This is a provision of the first paragraph of Article 131 of Russia's Constitution. This provision gives rise to the following question: how should historical and other traditions be taken into account and by whom? What kind of traditions are meant here? And, finally, how can the residents independently determine the structure of local government bodies in a situation where there are federal and regional laws that strictly regulate the organisation of local government? It turns out that, contrary to the constitution, it is certainly not the population of a particular municipality that independently determines the form and structure of its local government bodies. Rather, these decisions are adopted by another branch of government, i.e. the regional and federation-level legislatures.

Can the residents of a municipality protect themselves from the ongoing deprivation of constitutional rights? Theoretically, such a possibility exists, but it is impossible to implement in practice.

And this is exactly the main defect of the current constitution: it does not offer any mechanisms to ensure direct protection of rights and freedoms for the people, nor does it offer any guarantees that the authorities could not adjust in their favour by adopting new laws in a fast-track procedure. Freedom of speech, freedom of conscience, freedom of rallies and assemblies – all these wonderful principles are proclaimed in the constitution but their practical exercise by citizens is regulated not by the basic law but, instead, by constantly changing legislation, which contradicts not only the spirit but even the letter of the constitution.

Towards a new constitution

The American Constitution was written with a view to create broad opportunities to control and restrict the central government, while in Russia everything is the other way around: the constitution was based on the presumption that the executive power personified by the president is ideal and righteous. Perhaps this is the main problem of the constitution and its congenital defect, which created the ground for the usurpation of power and the actual substitution of democracy by its imitation, at all levels. The immense presidential prerogatives and guarantees of the presidential power are enshrined in the constitution with thoroughness that deserves to be applied elsewhere, whereas all other matters are given away to whoever will interpret the constitution.

The current Russian constitution has showed its inability to protect the democratic system in the country and

the rights and freedoms enshrined in it. To believe that a return to the constitutional norms will solve all problems is a mistake because, as mentioned earlier, many of the constitutional provisions are highly ambiguous and unsteady and, as such, they can be reinterpreted in any way, at any time. Sooner or later, Russia will have to think about a new constitution and write it with consideration for the sad experience of application of the current basic law. Any rule set out in the new constitution should be reviewed critically, taking into account the possibility of distortion or profanation. Any provision of the constitution should be considered exactly from the perspective of possible abuses in its application. This fundamental rule must be applied in the work on the new basic law. In developed Western democracies, there are traditions and customs that ensure that human rights and freedoms can be exercised also in cases not directly prescribed in the constitution and existing laws or not sufficiently clearly defined in the legislation. Unfortunately, all traditions and customs of power structures in Russia are authoritarian and they lead only to the suppression of human rights and freedoms. Therefore, any written law should be as detailed and unambiguous as possible, especially in its key points, and it should be written so that, through this act, the citizens receive the maximum range of freedoms, rights and guarantees whereas the competencies of the state and authorities should be limited and delineated as precisely and as decisively as possible.

Any constitutional restrictions must be unconditional. Any norm should be spelled out so that it cannot be interpreted in different ways (especially in opposite ways): if a citizen can serve as president twice, it should be clearly stated that this refers to two terms of office throughout the person's life, otherwise the phrase 'in a row' creates an opportunity for a person to stay in power for a long time, limited only by natural causes. Such a person would pause after each two presidential terms and then take up the post again. If the structure of local authorities is determined by the local population, the law must clearly state that no higher-level authority may interfere and it should not interfere. If it is written that citizens of the Russian Federation have the right to peaceful assembly, without weapons, the right to hold meetings, rallies and demonstrations, marches and pickets, then this right must be absolute and should not be constrained by any other legal acts. And this should be the case in every other situation.

'Write briefly and unclearly' was the Napoleon's instruction for the authors of the constitution, describing his expectations towards the act. In Russia's situation, the appeal to the authors of the new constitution should be completely different: 'make sure to write in the most detailed and concrete way possible, and minimise the flexibility in the interpretation of the written text, ensuring that citizens have more mechanisms than the state to protect their rights.

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