



Russian Policy Alert #4

The interrupted script: How corona thwarts Putin's plan to change the constitution

Fast tracking the president's constitutional changes

The year 2020 was set to bolster Putin's leadership of Russia's politics but the spread of the COVID-19 pandemic interfered with the Kremlin's script. In his January 15, 2020, address to the Federal Assembly, Russia's president Vladimir Putin surprised many by announcing sweeping constitutional changes. Putin, who previously indicated he would keep the country's founding law intact, set a process in motion that would enable him to remain at the top indefinitely.

Putin's amendments were put on fast track, but the virus spread faster. It reached Russia before the so-called all-Russian vote had happened. This was supposed to be the culmination of the process of constitutional changes. On March 25, 2020, Putin announced that, in the light of the virus, the all-Russian vote could not take place on April 22 and postponed it to a later date to be determined depending on the epidemic situation in the country.

In demonstration of his enforcement powers Putin rushed his amendments through both chambers of the parliament, the regional parliaments, and the Constitutional Court. An understanding that his popular support may be waning was likely behind the haste. What started as a fail-proof political project is now an uncertain race against a natural calamity. Whenever the vote will take place it will be happening in a post-crisis Russia and the government's effectiveness in fighting the pandemic will surely be factored into the voters' decisions.

Now, Putin's biggest project - to ensure his option to stay in power beyond 2024, when his last presidential term should come to an end - is hanging in the air. However, it was Putin's own idea to put the amendments to a vote by all Russia's people as a final stage in the process of constitutional changes, although there is no prescription in any law that that is necessary. The proposed amendments to Chapters 3-8 of the Constitution of the Russian Federation do not concern the fundamentals of the Constitution and shall come into force after their approval by the bodies of legislative power and by not less than two thirds of the constituent parts of the Russian Federation.¹ No referendum or other vote by the people of Russia is needed. Nevertheless, a public vote apparently has symbolic importance for Putin in order to legitimize his crucial interference with the constitution, as announced in his speech of January 15, 2020:

"...considering that the proposed amendments concern substantial changes in the political system and the work of the executive, legislative, and judicial branches, I believe it necessary to hold a vote of Russian citizens on the entire package of the proposed amendments to the Constitution of the Russian Federation. The final decision must be made only on the basis of its results."²

Legal framework of the all-Russia vote

Indeed, such a vote does not have any constitutional status, legal form or procedure even if it is inherently identical to a referendum. The Federal Constitutional Law No. 5-FKZ of 28 June 2004 defines a referendum as "a national vote of citizens of the Russian Federation who have the right to

¹ See the Chapter 136 of the Constitution of the Russian Federation: <http://constitution.kremlin.ru>

² Presidential Address to the Federal Assembly, January 15, 2020: <http://en.kremlin.ru/events/president/news/62582>

participate in the referendum on issues of national importance.”³ This is exactly the reason why President Putin proposed holding a vote by Russian citizens in his speech. However, the state authorities avoided calling it a referendum and following the procedure laid out by the law on referendum.⁴

Instead, a new legal framework for the national vote was created. It is based on article 2 of the law on amendment to the Russian Federation Constitution from March 14, 2020,⁵ the President’s Executive Order On Setting a Date for a Nationwide Vote on Amendments to the Constitution of the Russian Federation from March 17, 2020,⁶ as well as the Procedure for an all-Russia vote on approving amendments to the Constitution of the Russian Federation adopted by the Central Election Commission of the Russian Federation (CEC) on March 20, 2020.⁷

This framework was created hurriedly, and as a result is far from perfect. Among other issues, it lacks detailed regulations for campaigning, preparation, voting, and vote counting. The whole framework and procedure of the vote is set up in a way which makes it rather a symbolic act of approval of the president’s changes than a real decision of the people.

The devil is in the details

Firstly, the question put to the national vote and formulated in the President’s Executive Order “Do you approve the amendments to the Constitution of the Russian Federation?” makes differentiation between various unrelated amendments completely impossible. The amendments include social issues, history, organization of public authority, supremacy of national over international law, as well as resetting the number of terms of the incumbent president to zero once the amendments enter into force. However, the people can agree or disagree only with the whole package, which certainly cannot reflect the real position of the people on the different changes.

Secondly, participation threshold is not a condition for recognition of the results, undermining the idea that broad participation is a crucial element of the acceptance of the constitutional changes. The legislation states that, if more than half of the citizens who took part in the all-Russia vote voted for the amendments, it will be enough to consider them approved. Such important amendments to the constitution do need genuine broad support of the people to ensure the future legitimacy of the new features of the political system.

Thirdly, the absence of detailed regulations for campaigning procedures provides room for maneuver for state authorities to create a positive image of the amendments of the constitution and prevents

³ The Federal Constitutional Law No. 5-FKZ of 28 June 2004 on the referendum:

<http://pravo.gov.ru/proxy/ips/?docbody=&nd=102087594>

⁴ Andrei Buzin assumes that the initiators of the amendments refused to hold a referendum because it is a rather long procedure and they were not confident in a sufficient turnout at the referendum. See: Humiliated and zeroed. The expert of “Golos” on how the Russians were deprived of the real referendum on the Constitution, in: The Insider (in Russian), March 25 2020, <https://theins.ru/opinions/208673>

⁵ The Law of the Russian Federation on introducing an amendment to the Constitution of the Russian Federation, On Improving the Regulation of Certain Aspects of the Organisation and Functioning of Public Authority, March 14, 2020:

<http://static.kremlin.ru/media/events/files/ru/2fZyaW9dqV1AAEuvMfATCKONAcAbTdCa.pdf>

⁶ April 22 – the vote on amendments to the Constitution, March 17, 2020:

<http://en.kremlin.ru/acts/news/63003>

⁷ The Central Election Commission approved the procedure for all-Russia voting, March 20, 2020:

<http://www.cikrf.ru/eng/news/cec/45966/>

the opposition from any critical campaigning. The legal vacuum around campaigning has created unequal conditions for different parties and compromises broad public discussion on the amendments. Thus, it cannot be expected that after such a campaign the opinion of the people will be adequately reflected in the results. The information provided by the CEC, where celebrities talk about the need to protect the Russian language, Russia's sovereignty, and call on people to vote for the amendments, has already proven the partisan character of the campaign.⁸

The conditions for postponing the vote are also not specified in the new legislation. This makes the decision of President Putin to delay the vote, while understandable in view of the rapidly spreading pandemic, questionable from the legal perspective.⁹ It seems as though President Putin still believed that voting would be possible almost until the end of March.

Hope despite facts

The pandemic turned out to be a black swan in Putin's script and forced him to abandon, at least for now, the smooth and unopposed process of amending the constitution and securing his starring role in Russia's future.

When the president announced the amendments and proposed the vote in the middle of January, the coronavirus was already widespread in China, but its consequences for other countries were not yet clear; indeed, in Russia no cases of infection had been officially recorded at that time.

The Russian government reacted very quickly to developments in China: the prime minister Mikhail Mishustin instructed the preparation of a plan for the prevention and control of Coronavirus on January 27¹⁰ and the Russian-Chinese border was closed already on January 31. However, on the same day, the first two cases of coronavirus infection in Russia were identified in the Ural and Far East regions of the country – both were Chinese citizens. In the next few weeks, the government took further measures to prevent the epidemic: it started to control and restrict flight connections with China and EU countries and publicized an official low number of cases for a long time.

The risk posed by the virus may well have been difficult to assess in January, when the president started the constitutional changes, but, by March 17, the day when President Putin signed the executive order and set the date for the all-Russia vote for April 22, the situation with the pandemic was quite clear. The virus continued to spread rapidly around the world and many countries already introduced mandatory quarantine, lockdown or a state of emergency. On March 11, the World Health Organization (WHO) recognized the outbreak of the virus as a pandemic. However, the official number of cases of coronavirus infection in Russia remained suspiciously low and the planned all-Russia vote could be one of the reasons why the authorities downplayed the real number of cases. The constitutional amendments were already approved by both chambers of the national parliament, the regional parliaments and the Constitutional Court, but they have not come into force, as they do not yet have the approval of the people.

⁸ Golos: CEC is campaigning for constitutional amendments (in Russian), March 31, 2020: <http://www.golosinfo.org/articles/144196>

⁹ A critical overview of the legislation see: Arkadi Lubarev: Preparatory stage of the campaign for the all-Russia voting on amendments to the Constitution of the Russian Federation (in Russian), <https://www.golosinfo.org/articles/144187>

¹⁰ Meeting on Prevention and Control of Coronavirus Infection (in Russian), January 27, 2020: <http://government.ru/news/38850/>



Taking the inescapable decision

Most probably, Putin understood the risk of the virus, but the constitutional changes and the people's legitimization had for him much greater importance, and that's why he tried to get the amendments approved as soon as possible before the virus spread across the whole country. At a meeting with the head of the CEC Ella Pamfilova on March 17, 2020, Putin said: "bearing in mind the difficult epidemiological situation in the world, one way or another, which, although not as acute as in other countries, nevertheless affects our country, we will hold this vote only if this situation allows such activities."¹¹ But still he instructed Pamfilova to continue preparations for the vote and to ensure the highest level of compliance.

However, in his March 25 address to the people, Putin announced the postponement of the vote to a later date. The president finally accepted that countering the virus takes priority over the urgent adoption of the constitutional amendments. With that, the coronavirus nullified the process of the constitutional changes, relegating them from the highest priority of the state to a secondary event which will be held once the authorities manage to stop the disease. For now, it is not the vote that will define the future of Russia, but how effectively the president and government manage the crisis. Coronavirus has created new criteria determining how people will vote on the constitutional changes: how fast the state gets the epidemic under control, how low the mortality rate is, and how quickly the economy recovers after the crisis.

Given the fact that Russian society is already polarized regarding the approval of the constitutional amendments (as a recent survey¹² shows), the president and the government need not only to convince the people why the proposed amendments should be approved, but also to demonstrate their effectiveness in the fight against the epidemic. Once the crisis is over and a new date for the all-Russia vote is set, it will be a truly symbolic vote about the future of Russia's political system. It will not go as planned by President Putin; it will, instead, be the people's judgment of his handling of one of the biggest crises in modern history. For now, the outcome seems to be very open.

Author:

Alena Epifanova

German Council on Foreign Relations (DGAP)

This text is part of a series of EPDE Policy Alerts on election processes in the Russian Federation. It focuses on legal framework, performance of election management bodies and positions of main political actors. Please feel free to forward and share our analysis.

EPDE is financially supported by the European Union and the Federal Foreign Office of Germany. The opinions expressed here do not necessarily reflect the opinions of the donors.

www.epde.org

¹¹ Meeting with Ella Pamfilova, Chairman of the CEC (in Russian), March 17, 2020:

<http://kremlin.ru/events/president/news/63004>

¹² All-Russia voting on constitutional amendments (in Russian), March 27, 2020:

<https://www.levada.ru/2020/03/27/obshherossijskoe-golosovanie-po-popravkam-v-konstitutsiyu/>