

July 2015

The New Constitution of Russia: Main Principles and Features

Ninel S. Krylova

Please take a moment to share how this work helps you [through this survey](#). Your feedback will be important as we plan further development of our repository.

Follow this and additional works at: <http://ideaexchange.uakron.edu/akronlawreview>



Part of the [International Law Commons](#)

Recommended Citation

Krylova, Ninel S. (1994) "The New Constitution of Russia: Main Principles and Features," *Akron Law Review*: Vol. 27 : Iss. 3 , Article 4.

Available at: <http://ideaexchange.uakron.edu/akronlawreview/vol27/iss3/4>

This Article is brought to you for free and open access by Akron Law Journals at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Review by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.

THE NEW CONSTITUTION OF RUSSIA: MAIN PRINCIPLES AND FEATURES

by

Dr. Ninel S. Krylova*

On December 12, 1993, the new Constitution of Russia was approved by the people who voted for it at the referendum. This Constitution will replace an old one which was adopted in 1978, when Russia was one of the Republics of the USSR.¹ In 1991, the new state—the Russian Federation—emerged. The transformation of the state has begun a process of transformation of the Constitution. The old Constitution has been amended more than three hundred times.² It was full of contradictions. It was quite obvious that the new country needed a new Constitution.

The new Constitution consists of one hundred thirty-seven (137) articles.³ It is impossible to describe all of them in detail. However, there are some provisions which are crucial for the future constitutional development of the country. The new Constitution should be the Bridge to Democracy. In the words of President Yeltsin, it is a touchstone in Russia's transition from totalitarian dictatorship to democracy.

Even the first words of the Constitution show how great the desire of the people is to depart from the long period of isolation and to become part of the world community.⁴ The Constitution is opened with the preamble which contains the following statement: "We . . . the multinational people of the Russian Federation. . . , recognizing ourselves as part of the world community, . . . adopt the Constitution of the Russian Federation."⁵

Proclaiming Russia as the part of the world community, the Constitution declares that "Russia shall be a democratic . . . rule-of-law state."⁶ Rule of Law is one of the fundamentals of the new constitutional system. This general declaration is disclosed in more detail in other articles of the Constitution, especially those dealing with human rights.⁷

The Chapter 2 "Rights and Liberties of Man and Citizen" is the best part of the Constitution.⁸ It embraces forty-seven (47) articles (almost one-third of the whole text).⁹ There are some provisions in the new Constitution which show very clearly how deep the break is from the Communist and Soviet past.

* Doctor of Law, Leading Research Associate, Institute of State and Law of the Academy of Sciences of Russia.

¹ See KONST. RSFR (repealed 1993).

² See *id.*

³ See KONST. RFR, available in LEXIS, Nexis library, CURRNT file.

⁴ *Id.* pmbl.

⁵ *Id.*

⁶ *Id.* art. 1.

⁷ See *id.* ch. 1.

⁸ *Id.*

It is well known that many rights and liberties, which are common for the most democratic societies, were denied to the people of the Soviet Union. For example, the individual could be stripped of his citizenship; there was no freedom of movement; there was no ban for the state to use forced labor; and unlawful methods were applied to the convicted in the process of the interrogation, etc. At the present time, the provisions of the new Constitution on human rights are consistent with those which exist in any democratic society.¹⁰ The Constitution laid down: "Human beings and their rights and liberties are the supreme values."¹¹ This provision is one of the fundamentals of the new constitutional system. It is a very important declaration for a country where a human being has never been the supreme value.

Now, it is stipulated in the Constitution that a citizen of the Russian Federation may not be stripped of citizenship or of the right to change it.¹² It is laid down also that everyone shall be free to leave the boundaries of the state as well as to have the right to freely return into the country.¹³ According to the new Constitution, everyone shall have the right to life.¹⁴

It is worth mentioning that the new Russian Constitution embodied some of the constitutional principles, which were well-known to the constitutional practice of many democratic countries but which have never been recognized in the USSR. Let us take, for example, the famous constitutional principle—Habeas Corpus. There is no written constitution in Great Britain. However, it has a Habeas Corpus Act, which was adopted some centuries ago. Now, this principle is incorporated in the new constitution of Russia. According to the Art. 22, "Arresting persons, taking them into custody and keeping them in custody are permitted only on the basis of a court decision. A person may not be subjected to detention for more than 48 hours before a court decision is rendered."¹⁵ The other generally accepted principle of any democratic constitutional system is the so-called presumption of innocence. However, this principle was never recognized in the Soviet Union.¹⁶ At the present time, this principle is incorporated in the text of the Constitution.¹⁷ According to Article 49, "Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the procedures stipulated by the law and established by the verdict of a court of law."¹⁸

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* art. 2.

¹² *Id.* art. 6.

¹³ *Id.* art. 27.

¹⁴ *Id.* art. 20.

¹⁵ *Id.* art. 22.

¹⁶ See KONST. RSFSF (repealed 1993).

¹⁷ KONST. RFR art. 49, available in LEXIS, Nexis library, CURRNT file.

¹⁸ *Id.*

There are other provisions in the Constitution which will guarantee an individual the proper protection during prosecution and trial.¹⁹ First of all, it is laid down by the new Constitution that "No one may be subjected to torture."²⁰ "No one is obliged to testify against himself or herself, his or her spouse or close relatives."²¹ It is well known that in the legal practice in the USSR it happened rather often that a person was forced to give such evidence. Now, nobody will be forced to do that.

It is a common practice in any democratic country that any person has access to legal counsel (defense attorney) from the very moment of his detention. It was not possible in the USSR. The new Constitution provides such a right to an individual.²² Every person who has been detained, taken into custody or charged with a crime shall have the right to legal counsel from the moment of, respectively, detention or indictment.²³

As a whole, there are nine articles in the new Constitution (from Art. 48 to Art. 56) which guarantee a person his right during the prosecution or trial.²⁴ It is laid down by the Constitution that the rights stipulated in these articles shall not be subject to any restrictions.²⁵

It is necessary to say some words about those provisions of the Chapter dealing with human rights which are essential taking into consideration the sad (even tragic) experience during the past Communist period.²⁶ The individuals are given some new rights unknown to the Soviet constitutional law. One of them is the right to privacy.²⁷

It was a common practice in the USSR when the authorities gathered information about the people. No consent for that was required. Now, it is forbidden by the Constitution to gather, use or disseminate information regarding the private life of any private person without his (her) consent.²⁸ More than that, the authorities shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties.²⁹

As far as the relationships between the people and the government are concerned, it is worth mentioning those provisions of the new Constitution which make it necessary

¹⁹ *Id.*

²⁰ *Id.* art. 21.

²¹ *Id.* art. 51.

²² *Id.* art. 48.

²³ *Id.*

²⁴ *See id.* arts. 48-56.

²⁵ *Id.* art. 56.

²⁶ *See id.* ch. 2.

²⁷ *Id.* art. 23.

²⁸ *Id.* art. 24.

²⁹ *Id.*

for the authorities to inform people about the environment.³⁰ According to the Art. 42, everyone shall have the right to a reliable information about the environmental conditions.³¹ The concealment by officials of facts and circumstances posing hazards to human life and health shall involve liability in accordance with law.³² The Soviet authorities were never obliged to give such information to the public. There is no need to speak about the importance of such kind of provisions in the country which suffered the tragic events at Chernoble. At that time, the authorities did not tell the people all the truth.

Guaranteeing the people wide democratic rights and liberties, the Constitution stipulates at the same time that in conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate bodies concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.³³ Such kind of a declaration is very essential for the country which wishes to be a part of the world community.

Now, I would like to turn to those fundamental provisions of the new Constitution which are supposed to create the necessary preconditions for the proper democratic functioning of the whole system. From that point of view, it is possible to classify them in three groups.

The first group of provisions is aimed at creating favorable preconditions for the functioning of the economic system. They are crucial for any democratic reform. The most important of these is the recognition of private property. According to Art. 8, private property shall be recognized and shall enjoy equal protection with any other forms of property (state, municipal, etc.).³⁴ More than that, there is a separate article in the Constitution about the recognition of the private property on land.³⁵ The Constitution declares support for competition as well as freedom of economic activity.³⁶ It means that the economic system will work on quite a different constitutional basis than that which existed in the previous period. There was no freedom of economic activity, no competition and no private property.

The second group of fundamental provisions are those which will provide the necessary constitutional basis for creating the real democratic political system in the country. Without them, no democratic system is possible. First of all, the new Consti-

³⁰ See *id.* arts. 41-42.

³¹ *Id.* art. 42.

³² *Id.* art. 41.

³³ *Id.* art. 46.

³⁴ *Id.* art. 8.

³⁵ *Id.* art. 9.

³⁶ *Id.* art. 8.

tution stipulates ideological diversity as one of the fundamentals of the constitutional system.³⁷ According to Art. 13, ideological plurality shall be recognized in the Russian Federation.³⁸ No ideology may be instituted as a state-sponsored or mandatory ideology.³⁹ Political plurality and the multi-party system shall be recognized in the country.⁴⁰ Public associations shall be equal before the law.⁴¹ The Constitution proclaims the right to freedom of thought and speech.⁴² Censorship is prohibited.

There is no need to explain how important the new fundamental provisions are in the country which had a long history of one-party rule, which knew only one officially recognized ideology (that of Marxism-Leninism) and which has never enjoyed free dialog between the people.

The third group of fundamental provisions is concerned with creating the necessary constitutional preconditions for proper functioning of the democratic system of government. The most important of them is the principle of Separation of Powers. It is stipulated by the new Constitution that "State authority in the Russian Federation is exercised on the basis of separation between legislative, executive and judicial branches."⁴³

The significance of such a proclamation is quite understandable. The legal rules which determine the relationships between central bodies of government lies at the core of any constitutional system.

For the first time in the constitutional history of the mankind, the principle of separation of powers was implemented in the Constitution of the United States of America.⁴⁴ It took the form of the system of checks and balances and guaranteed a proper division of powers between executive, legislative and judicial branches of government.⁴⁵ Later on, the principle of separation of powers became a generally recognized principle for most written constitutions.

In essence, this principle presupposes: (1) the existence of separate legislative, executive and judicial bodies of government; (2) certain kind of division of powers

³⁷ *Id.* art. 13.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* art. 23.

⁴³ *Id.* art. 10.

⁴⁴ *Id.* U.S. CONST. arts. I-III.

⁴⁵ *See id.*

between them; (3) some system of checks and balances. At the present time, this principle is the common rule for any democratic state.

However, this principle was never recognized in the totalitarian regime which existed in Russia for many decades. The official constitutional doctrine of the USSR denied even the existence of such a principle.⁴⁶

The legal recognition of the separation of powers was an evident demonstration of the break with the Soviet past.

According to Art. 11, the state power in the Russian Federation will be exercised by the President, the Federal Assembly, the Government and the Courts.⁴⁷

The President is the Head of the State.⁴⁸ He is elected for a term of four years, on the basis of a direct vote.⁴⁹ Like the President of the United State of America, he is not able to hold the office of the President for more than two terms in succession.⁵⁰

The Parliament—the Federal Assembly—consists of two houses—the Council of Federation and the State Duma.⁵¹ The Federal Assembly is the supreme representative and legislative body.⁵²

The Federal Council and the State Duma of the first convocation were elected for a two-year term. However, in the future the Council of Federation will consist of one hundred seventy-eight (178) deputies.⁵³ Each component part of the Federation will be represented by two deputies: one from the representative and one from the executive body.⁵⁴ The State Duma is an elected body.⁵⁵ It shall consist of four hundred fifty (450) deputies.⁵⁶ In the future, it will be elected for four years.⁵⁷

The system of government which was provided by the new Constitution is not a system of parliamentary (responsible) government. As in the system of parliamentary government, the resignation of the government results from a vote of no-confidence in the lower house of the Parliament. However, the government can also be dismissed by

⁴⁶ See KONST. RSFR (repealed 1993).

⁴⁷ KONST. RFR art. 11, available in LEXIS, Nexis library, CURRNT file.

⁴⁸ *Id.* art. 80.

⁴⁹ *Id.* art. 81.

⁵⁰ *Id.*

⁵¹ *Id.* art. 95.

⁵² *Id.* art. 107.

⁵³ *Id.* art. 95.

⁵⁴ *Id.*

⁵⁵ *Id.* art. 96.

⁵⁶ *Id.* art. 95.

⁵⁷ *Id.* art. 96.

the President. Dismissal of the government by the President is not possible in a system of parliamentary (responsible) government. For example, in Great Britain only the House of Commons has such a right. The government is responsible only to the lower house of Parliament.

At the same time, the system of government provided for by the new constitution is not a system of presidential government. The classic example of the presidential system of government is the United States of America. The President of the United States is the Head of State. At the same time, he is the head of government. In Russia, the President is the Head of State.⁵⁸ However, there is a separate office for the Head (Chairman) of the Government.⁵⁹ There is another difference. No system of parliamentary responsibility exists in the United States of America. There is no vote of confidence in Parliament. At the same time, the Congress cannot be dissolved by the President. There is no dissolution of Parliament.

The system of government provided for by the new Russian Constitution is similar to the mixed presidential and parliamentary regime, which was established in France by the Constitution of 1958.⁶⁰ Still, it is based on the principle of separation of powers and provides a certain system of checks and balances.⁶¹ Let us see it in more detail.

The most important powers of the President are the following: (1) the appointment of the Head of Government;⁶² (2) the appointment of the members of Government;⁶³ (3) the dismissal of the Government;⁶⁴ (4) the dissolution of the Parliament.⁶⁵

According to the new Constitution, the Russian President will appoint the Chairman of the Government subject to consent of the lower House of Parliament—the State Duma.⁶⁶ He also has a right to appoint and dismiss ministers if such a proposal is made by the Chairman of Government.⁶⁷

Let us compare this situation with that which exists in France. According to the French Constitution, it is the President who has the right to appoint the Head of the

⁵⁸ *Id.* art. 80.

⁵⁹ *Id.* art. 83(a).

⁶⁰ See FR. CONST. (1958).

⁶¹ See KONST. RFR ch. 4-7, available in LEXIS, Nexis library, CURRNT file.

⁶² *Id.* art. 83(a).

⁶³ *Id.*

⁶⁴ *Id.* art. 83(c).

⁶⁵ *Id.* art. 84(b).

⁶⁶ *Id.* art. 83(a).

⁶⁷ *Id.* art. 83(e).

Government, as well as to appoint and dismiss the ministers.⁶⁸ There is no need for him to get any consent of the Parliament.⁶⁹

It is quite clear that, in France, the real process of forming the government is determined by the party system as well as by the results of the parliamentary elections.

In Russia, there was never a real party system. Even now, it is not very stable. The party system is quite a new experience for Russia. That is why it is the President who shall provide for a more stable government in the country. According to the new Constitution, the President shall be the guarantor of the Constitution and ensure concerted functioning and interaction of all bodies of state power.⁷⁰

As far as the resignation of the government is concerned, the new Constitution provides for a rather complicated procedure. (1) The decision on the resignation of the Government can be adopted by the President;⁷¹ (2) The Government may tender its resignation.⁷² It can be adopted by the President or rejected by him;⁷³ (3) The State Duma may express non-confidence in the Government;⁷⁴ (4) The Chairman of the Government may put the question of confidence before the State Duma.⁷⁵

If we compare this procedure of the resignation of the Government with that which exists in France, we shall see that, in France, the resignation of the government is concerned mainly with the relationships between the government and the Parliament (the National Assembly).⁷⁶ The National Assembly votes non-confidence. Then, the prime minister must ask the President to allow the resignation. After that, the President can dismiss the Government.⁷⁷

It is quite obvious that in comparison with France the procedure for the resignation of the government is much more complicated in Russia. It is evident also that the President in Russia plays a more active role in the process of resignation of the Government. At the same time, it is quite obvious that the new Constitution established the system of checks and balances. It is not only the President but also the lower House of

⁶⁸ FR. CONST. art. 8.

⁶⁹ *See id.*

⁷⁰ KONST. RFR art. 80, available in LEXIS, Nexis library, CURRNT file.

⁷¹ *Id.* art. 83.

⁷² *Id.* art. 117.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *See* FR. CONST.

⁷⁷ *Id.* art. 8.

Parliament and the Government itself which participate in the process of resignation of the Government.⁷⁸

The new Constitution implemented a constitutional device, which was never known to the constitutional law of the country, namely the dissolution of the Parliament (to be more precise, the lower House—the State Duma).⁷⁹

According to the new Constitution, the President has a right to dissolve the lower House of Parliament.⁸⁰ However, he can do it only in the situations provided for by the Constitution.⁸¹ (1) The Constitution allows the President to dissolve the State Duma if it rejects three times the choice of the President of the Chairman of Government; (2) The Constitution allows the President to dissolve the State Duma if twice a no confidence vote in the Government is expressed.⁸²

In both situations, the President has a choice. He can make a decision about the resignation of the Government or the dissolution of the State Duma.⁸³

If we compare the provisions of French and Russian Constitutions concerning the dissolution of the Parliament, we shall see that the powers of the Russian President are more limited than that of the President of France. The French Constitution gives the President a right to dissolve Parliament.⁸⁴ The only condition for that is his consultations with the Prime Minister and the Chairman of both Houses.⁸⁵

There are other manifestations of the system of checks and balances in the Constitution. According to the Constitution, the President has a right to dissolve the Parliament.⁸⁶ However, the President may be impeached by the Parliament.⁸⁷ The procedure for impeaching the President is similar to that in the United States. The lower House brings the charges; the upper House sits in judgment.⁸⁸

⁷⁸ KONST. RFR art. 117, available in LEXIS, Nexis library, CURRNT file.

⁷⁹ *Id.* art. 84(b).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* art. 117.

⁸³ *Id.*

⁸⁴ FR. CONST. art. 8.

⁸⁵ *Id.* art. 12.

⁸⁶ KONST. RFR art. 117, available in LEXIS, Nexis library, CURRNT file.

⁸⁷ *Id.* art. 93.

⁸⁸ *Id.*

The Parliament passes the laws.⁸⁹ The President may veto a law.⁹⁰ However, the Parliament needs a two-thirds vote to override a Presidential veto.⁹¹ The procedure is also similar to the Constitution of the United States of America.⁹²

As far as the nomination of top officials is concerned, the President will nominate top Federal judges;⁹³ candidates for the Head of the Central Bank; the judges of the Constitutional Court and the judges of the Supreme Court;⁹⁴ the Attorney General. However, all will require legislative approval.⁹⁵

Such is the system of checks and balances established by the new Constitution in the relationship between executive and legislative in Russia. Only time will tell how this system will work in practice. Much will depend on the development of the political situation in Russia after the parliamentary elections in December 1993. Let us wait and see.

⁸⁹ *Id.* art. 94.

⁹⁰ *Id.* art. 115.

⁹¹ *Id.* art. 107.

⁹² *See* U.S. CONST., art. I, § 7, cl. 2.

⁹³ KONST. RFR art. 83(f), *available in* LEXIS, Nexis library, CURRNT file.

⁹⁴ *Id.*

⁹⁵ *Id.* art. 102.