



**Amendments to the Russian Constitution:  
challenges and threats for neighboring countries**

**Tuesday, May 12, 2020 | 12:30 – 13:30 CET  
(via Webex)**

Please join the Ukrainian Think Tanks Liaison Office in Brussels and the Mission of Ukraine to the EU for videoconference dedicated to the topic of ongoing Constitutional reform in the Russian Federation, which contains dangerous provisions for international security and stability as well as undermines adherence to the principle of non-interference in the internal affairs of neighboring countries.

**KEY SPEAKERS:**

- Pavlo Klimkin, Minister of Foreign Affairs of Ukraine (2014-2019);
- Anna Fotyga, MEP, former Minister of Foreign Affairs of Poland;
- Oleksandr Marusiak, Dr., Constitutional law expert, Center of Policy and Legal Reform (Ukraine)

**Moderator:** Olena Carbou, Dr., Ukrainian Think Tanks Liaison Office in Brussels.

***BRIEF CONCEPT***

Many experts perceive ongoing Constitutional reform in its content and methods of implementation in Russia as contradictory, underlying that the proposed constitutional amendments contain dangerous provisions for international security and stability. Amendments to the Constitution of the Russian Federation also compromise the system of international law, opening the way to the Russian authorities for unscrupulous manipulation around decisions of international instances.

## **Program**

### **12:30 – Introduction remark**

by Olena Carbu, Dr., Executive Director and Co-founder, Ukrainian Think Tanks Liaison Office in Brussels

### **12:35-12:45 – General and historical aspects of the Constitutional changes in Russia**

By Oleksandr Marusiak, Dr., Constitutional law expert, Center of Policy and Legal Reform (CPLR)

### **12:45-13:10 - Amendments to the Russian Constitution: new realities and challenges**

By Pavlo Klimkin, former Minister of Foreign Affairs of Ukraine (2014-2019);

### **13:10-13:30–Conclusion Remark and Views from European and Transatlantic prospective**

by Anna Fotyga, MEP, former Minister of Foreign Affairs of Poland (tbc);

### **13:30-14:00 –Q&A**

## **Audience**

- diplomats of MS Representations (PSC and COEST), EEAS;
- MEP, representatives of EP;
- experts of leading Brussels-based think tanks;
- Ukrainian audience

### **Suggested Citation:**

Marusiak, Oleksandr. 'General and historical aspects of the Constitutional changes in Russia', Paper presented at videoconference '*Amendments to the Russian Constitution: Challenges and Threats for Neighboring Countries*', held by the Ukrainian Think Tanks Liaison Office in Brussels and the Mission of Ukraine to the EU on 12 May 2020, DOI: 10.5281/zenodo.4001520

## **General and historical aspects of the Constitutional changes in Russia**

Good afternoon, ladies and gentlemen! My name is Dr. Oleksandr Marusiak, I'm a Constitutional Law Expert at the Centre of Policy and Legal Reform, Kyiv, Ukraine. I am extremely honoured to open this discussion with my brief presentation regarding general aspects of current constitutional reform in Russia.

From the technical standpoint, the significant feature of constitutional revision process in Russia is presented by a variety of legal options available for this purpose. Chapter 9 of the Constitution of Russia outlines 4 procedures. The activation of each depends on the concrete provision of the Constitution that requires reviewing. Due to limited time, I will describe the only procedure directly related to the current situation in Russia. If you like, we can focus on other 3 procedural options — for instance, in which case the President can amend the Constitution without Parliament, how to incorporate the part of another sovereign state (like Crimea) as an integral part of Russia, and under what circumstances new Constitution can be adopted — during Question & Answer session.

In 2020, there was an attempt to amend the provisions of the Constitution in parts concerning the Federal System, President, Parliament, Government, Justice & Local Self-Government. In order to amend these chapters (Chapters 3 to 8 of the Constitution), the Law on the Constitutional Amendment shall be adopted. Please, keep in mind that the word "amendment" is used in here in singular, not in plural. That means: one constitutional amendment should be initiated towards only one constitutional subject.

Law on the Constitutional Amendment requires the supermajority (two-thirds + three-fourths) of both houses of Parliament to be adopted and the President of Russia cannot exercise the veto power in this case. Also, this law shall come into force only after its ratification by the parliaments of not less than two-thirds of the federal units. As we see, according to the Constitution, neither Constitutional Court is engaged and no referendum is required to activate this amendment process.

It is also interesting that the technical background regarding this amendment option has been regulated by an ordinary federal law, but not the federal constitutional law, as it should be. I'm referring here to Federal Law dated 4th of March 1998 which established the procedural order of adoption, ratification, and entry into force of such amendments. For 4 times in history, the Constitution was changed using this procedure: twice in 2008 and twice in 2014. In 3 cases, the amendment was initiated by the President of Russia.

The 2008 amendments regulated the following:

First, changing the term of office both of President and State Duma (before reform — 4 years; after reform — 6 and 5 years in respect).

Second, minor changes in Government responsibility before the State Duma.

The 2014 amendments were about:

First, reform of the Supreme Court and the Prosecutor's Office (9 articles were affected).

Second, granting the President the new power to appoint up to 10% of the total number of members of the Federation Council (upper house of Parliament). By the way, the President has not exercised this right so far.

The latest, Law of 2020 will become the 5<sup>th</sup> activation of this amendment option. Nevertheless, unlike previous endeavours, the current constitutional amendment law is quite different. Procedurally, Putin always pays considerable attention to the letter of the law to create an illusion of legality in constitutional amendment policy. However, the recent constitutional amendments were proceeded with the significant negligence to established constitutional parameters both in procedural and substantive aspects. For example, without any legal reason, the Constitutional Court and some kind of referendum without certain rules were included in this constitutional amendment process. Procedural dynamics of adoption and ratification of constitutional amendments was fascinating. In one day, State Duma voted for the constitutional amendment law in second and third reading, and on the next day, Federation Council approved it. In one day, the required number of ratifications by the regional parliaments has been achieved. In two days, Constitutional Court produced a legal opinion in favour of these amendments on 52 pages!

The substantive paradigm of law is even more disturbing than its procedural aspects. Technically, this law on constitutional amendment is a mix of 110 different amendments on a wide range of subjects affecting 46 articles from 6 chapters of the Constitution. This is the most ambitious textual revision of the Constitution. Unfortunately, it is impossible to cover all of them in a presentation like this. Again, if you like, we can them during the Q&A session. However, I'd like to point your attention now at the most detrimental ones for the international community.

First. The new version of Article 81 allows the a person residing on the newly accessed territory of Russian Federation, which was previously a part of other sovereign state or the sovereign state itself, to occupy President of Russia. Definitely, this article means occupied Crimea as the only territory annexed by Russia in such manner.

Second. The new version of Article 67 prohibits any significant changes affecting the territory of Russia Federation as well as even calls for such actions. Such calls can easily be penalized.

Third. The new article 67 (1) calls Russia as the legal successor of the USSR regarding its territory, membership in international organizations, in international treaties, as well as regarding soviet obligations and assets of the USSR outside the territory of Russia. This article also regulates the issue of official historical truth that is not allowed to be criticized. New sanctions are implied here.

Forth. Most 'international novelty'. Articles 79 and 125 create the constitutional mechanism where Russian is able not to fulfil its own international obligations if, say, they contradict the constitutional order of Russia. The decisions of international organizations, courts, foreign or international arbitral tribunals based on the interpretation, recognized by the Constitution Court as unconstitutional or as violating the principles of public order, cannot be implemented in Russian. These provisions create a collision with Chapters 1 and 2 of the Constitution, which are basic and unamendable. Russian recognized principles and norms of international law and international treaties are an integral part of its legal system. And if an international treaty of the Russian Federation establishes rules other than those provided by law, the rules of the

international treaty shall apply (article 15). Also, none of the provisions of the Constitution may contradict the foundations of the constitutional order of the Russian Federation established by Chapter 1 (article 16).

In summary, we can observe the decay of constitutionalism in Russia for the last decade. I am not saying we should over-romanticize the current version of the Russian constitution but the 2020 amendments will completely damage and undermine even the tiniest glimmers of the legal order still left in this system.