

Briefing Memo

Russian Presidential Power in the Putin Era and the recent Discussion on Constitutional Revisions

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Introduction

During the annual address to the Federal Assembly given on January 15, 2020, President Vladimir Putin proposed constitutional revisions, including expanding parliamentary power. As a result, constitutional discussions are now proceeding at full speed in Russia.

After the collapse of the Soviet Union, the Constitution of the Russian Federation established in December 1993 (hereinafter, “1993 Constitution”) adopted semi-presidentialism as the system of government. Semi-presidentialism where the executive power is split between the president and the prime minister is categorized into premier-presidentialism and president-parliamentarism, based on the legal authority of each actor, such as the president, prime minister, cabinet and parliament as well as the mutual relationships between these actors.¹ France is classified as the former, while Russia the latter, but Russia’s semi-presidential system is frequently referred to as “superpresidentialism” or “detached presidentialism” in terms of the status and legal authority of the president.²

Under the Yeltsin administration in the 1990s, the president failed to form a ruling party that supported him, and the country faced a centrifugation of presidential-parliamentary relations and central-regional relations. There was an emergence of “pluralism by default”³ caused by a marked decline in the governance capacity of the central government (federal central). In response, the Putin administration in the 2000s worked on large-scale political reforms focused on “building power vertical” and building the ruling party United Russia, which stabilized the political order.

¹ Shugart, M.S. and Carey, J.M., (1992), *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, New York: Cambridge University Press, pp. 23-27; Elgie, R., (2011), *Semi-Presidentialism: Sub-Type and Democratic Performance*, Oxford: Oxford University Press, pp. 27-29, 146-148; (2016), Three waves of semi-presidential studies, *Democratization*, Vol. 23, No. 1, pp. 49-70.

² Barany, Z., (2007), Superpresidentialism and the Military: The Russian Variant, *Presidential Studies Quarterly*, Vol. 38, No. 1, pp. 14-38; Fish, M.S., (2000), The Executive Deception: Superpresidentialism and the Degradation of Russian Politics, In Sperling, V. (ed.), *Building the Russian State: Institutional Crisis and the Quest for Democratic Governance*, Boulder, CO: Westview Press, pp. 177-192; Takemori, M., (2003), Daitouryo – Seifu - Gikai [Chapter 3 – Section 2, President, Government and Parliament], In Komorida, A., (ed.), *Contemporary Russian Law*, University of Tokyo Press, pp. 81-82(published in Japanese).

³ Way, L., (2015), *Pluralism by Default: Weak Autocrats and the Rise of Competitive Politics*, Baltimore: Johns Hopkins University Press, pp. 146-149, 161-165; Ogushi, A., (2018), Jyusouteki Mashin Seiji kara Popyurisuto Taisei he no Henyou ka: Roshia ni okeru Kenishugi Taisei no Seiritsu to Tenkai [Changing from Stratified Machine Politics to Popularist System? Establishment and Implementation of Authoritarian Regimes in Russia], In Kawanaka, T., (ed.), *Declining Democracies, Strengthened Authorocracies*, Minerva Shobo, pp. 159-188(published in Japanese).

In other words, these developments can be viewed as the achievement of a stabilization of the constitutional system based on the presidential system defined in the 1993 Constitution.

The 1993 Constitution has been revised four times to date.⁴ Afterwards, in 2008 major changes in the system were made associated with the extension of terms of the president and members of State Duma (lower house). In 2019, Vyacheslav Viktorovich Volodin, a Russian politician who serves as Chairman of the State Duma, led the emergence of constitutional revision discussions related to procedures for cabinet formation (below, the “Volodin proposal”). Later, based on the remarks of President Putin, discussions of constitutional revisions have picked up speed. Since the situation remains fluid, this paper analyzes presidential power under the Putin administration and in particular the various issues concerning presidential authority to form federal executive organs, with a focus on the Volodin proposal.⁵

1. Cabinet Formation Process

The cabinet formation process in the 1993 Constitution system is broadly divided into the following two categories: (1) appointment of the prime minister (the chairman of the government); and (2) formation of the federal government. Regarding (1), first the president proposes the prime minister candidate to the State Duma (lower house), and after deliberations and approval in the State Duma, the candidate is officially appointed prime minister by presidential decree. During this process, if the State Duma rejects three times the proposal of prime minister candidate, the president can appoint the prime minister and dissolve the lower house. This is considered a system design that favors the president, but in actuality, as was revealed by the cabinet formation process of the Yeltsin administration in the 1990s, through appointment procedures for prime minister candidates and votes of non-confidence in the federal government, there were cases where bargaining took place between the president and the lower house. Consequently, the presence of a ruling party supporting the president and stable president-parliament relations represent a precondition of presidential superiority in this process.

The formation of the federal government (2) executed as the next process became the exclusive jurisdiction of the president and prime minister under the 1993 Constitution. This process begins with a proposal from the prime minister to the president concerning the formation of the federal government, but it must be noted that the appointment and dismissal of the deputy prime minister and other federal ministers as well as the establishment, reorganization or abolition of ministries and agencies is carried out by presidential decree, based on Article 83 and Article 112 of the

⁴ Excluding the reorganising of the federal structure. Revising Articles 3 to 8 of the 1993 Constitution is known as a “constitutional revision” and revising Chapters 1, 2 and 9 is known as a “constitutional amendment.” The procedures between the two vary widely. Refer to the following article for more details. Mizoguchi, S., (2017), Russia’s Constitutional System and its Transformation, *Leviathan*, No. 60, pp. 79-99(published in Japanese).

⁵ This paper referred to the following works regarding the clauses in the 1993 Constitution along with Kommentar and Japanese translations. Бархатова, Е. Ю., (2017), *Комментарий к Конституции Российской Федерации. Издание второе, переработанное и дополненное*, М.: Проспект; Shibuya, K., (2012), Russia, In Takahashi, K., *New Compilation of Constitutions Around the World 2nd ed.*, Iwanami Shoten, pp. 457-517(published in Japanese); Sato, M., (2018), *Roshia Renpo* [Russian Federation], In Hata, H. and Komorida, A., *Constitution of Nations (5th ed.)*, Yushindo, pp. 551-574(published in Japanese).

Constitution.⁶ Given this, most of the authority for formation of the federal executive organs can be interpreted to belong to the president. Considering the political influence of President Putin, it can be said that since 2000 the president has played a central role in the cabinet formation process.⁷

2. What is the Volodin proposal?

Volodin proposed a constitutional revision that would strengthen the authority of the lower house in the cabinet formation process. Prime Minister Dmitry Medvedev held a negative view regarding this proposal, but it carries great meaning that the constitutional view of the Chairman of the State Duma was presented on the lower house's official website and in parliamentary newspaper.⁸

Volodin highly praised the constitutional revision of 2008 that legislated the federal government provide annual activity reports to the State Duma, and he proposed "The State Duma be granted at least authority to get involved in consultation on the appointment of ministers."⁹ If realized, in addition to (1) appointment of the prime minister, this would mean the State Duma would wield influence over (2) the formation of the federal government in terms of the appointment of cabinet ministers.

It is noteworthy that Volodin considers this proposal to be "a problem related to the deficiency of necessary balance in the activities of legislative power and executive power." Under the Putin administration since 2000, parliamentary deliberations have become a ceremonial affair and the relative decline in influence of legislative power has been observed under the powerful leadership of the president and one-party dominant system led by the ruling party United Russia. Within this context, if this constitutional revision were realized, the rising influence of the State Duma in the cabinet formation process would be greatly defined by actual institutional design and president-parliamentary relations, but it is also expected to improve the balance of state power among institutions, mainly in terms of the executive power's accountability to legislative power.

⁶ Указ Президента РФ от 15 мая 2018г., № 215 (ред. от 28 октября 2019г.), «О структуре федеральных органов исполнительной власти», *Собрание законодательства РФ (СЗРФ)*, 21 мая 2018г., № 21, ст. 2981; Article 112 of the Federal Law on the Government of the Russian Federation simply provides for the president's authority to form the federal executive organs exclusively in the cabinet formation process. The 1993 Constitution does not contain any provisions on the establishment, amendment or abolishment of the federal executive organs after formation of a cabinet. The president's authority regarding this was made into an established fact during the Yeltsin administration. Morishita, T., (1998), Структура исполнительной власти в Российской Федерации: Правительство и Администрация Президента, *Kobe annals of law and politics*, No. 14, p.16(published in Japanese).

⁷ Regarding presidential authority during the "Tandem" period (2008 to 2012), the "Putin" Proposal as prime minister" held an important meaning for cabinet formation process, from the standpoint of political influence. To engage in more detailed discussions, however, the "autonomy" of President Medvedev needs to be examined.

⁸ Государственная Дума, Новости от 6 апреля 2019г., «Охостелях, госзакупках изменений в Конституцию: Вячеслав Володин дал эксклюзивное интервью сайту ГД»: [<http://duma.gov.ru/news/44450/>]; *Парламентская Газета*, от 17 июля 2019г., «Живая Конституция развития: Статья Председателя Государственной Думы Вячеслава Володина», [<https://www.pnp.ru/politics/zhivaya-konstituciya-razvitiya.html>]

⁹ *Парламентская Газета*, от 17 июля 2019г., «Живая Конституция развития: Статья Председателя Государственной Думы Вячеслава Володина».

In response to Volodin's proposal, the leaders of the Communist Party of the Russian Federation and Liberal Democratic Party of Russia held positive opinions,¹⁰ and it was reported that members of A Just Russia and United Russia supported the proposal.¹¹ However, it must be noted that the 1993 Constitution making process and discussions on constitutional amendment of the 1990s became a point of debate regarding parliamentary authority related to cabinet formation process.¹² In addition, Prime Minister Medvedev and Presidential Press Secretary Dmitry Peskov have indicated negative views toward the proposal.¹³ These appear to be statements cautious as to avoid criticism of significant restrictions on presidential authority or revolutionary constitutional reforms. It is necessary to remember that regarding the proposal Volodin emphasized "detached presidential position" stipulated in the constitution through expressing his view that "the proposal aligns with the realization of presidential constitutional power pertaining to Article 80 of the constitution, the president shall ensure coordinated functioning and interaction of all the bodies of state power."

3. Presidential Power: Paramilitary Forces and Intelligence Agencies as "Resource of Power"

The important aspects to consider concerning the presidential authority, particularly to form federal executive organs under the current constitutional system are the following two points. First, the presence of powerful auxiliary organizations that support the president can be cited.¹⁴ These auxiliary institutions include not only the Presidential Administration, but also federal executive organs, mainly paramilitary forces and intelligence agencies. These include the Federal Security Service (FSB), Foreign Intelligence Service (SVR) and Federal Protective Service (FSO), derived from the KGB during the former Soviet Union.

Unlike the Ministry of Defense and Ministry of Foreign Affairs, which are federal executive organs under the jurisdiction of the president, as well as the Ministry of Economic Development and Ministry of Agriculture under the jurisdiction of the prime minister, federal executive organs above including the FSB are not included in the cabinet (federal government), so personnel matters or organizational composition are the exclusive authority of the president. In other words, they can be considered executive organs that are auxiliary institutions of the president. These organs are Siloviki (power ministries) community and have wielded strong influence in the policy process in the Putin era. In April 2016, the Federal National Guard Troops Service (FSVNG) was established by presidential decree following the reorganization of the Internal Troops of the Ministry of

¹⁰ Государственная Дума, Новости от 17 июля 2019г., «Во фракциях ГД прокомментировали статью Вячеслава Володина о Конституции», [<http://duma.gov.ru/news/45740/>]

¹¹ *Ведомости*, от 17 июля 2019г., «Володин представил свои предложения об изменении Конституции», [<https://www.vedomosti.ru/politics/news/2019/07/17/806693-konstitutii>]

¹² Morishita, T., (2001), *Gendai Roshia Kenpo Taisei no Tenkai [Russian Constitutional System]*, Shinzansha, pp. 339-340(published in Japanese) Mizoguchi, S., (2016), *Formulation of Constitutional System in Russia*, Hokkaido University Press, p. 187(published in Japanese).

¹³ *Ведомости*, от 17 июля 2019г., «Володин представил свои предложения об изменении Конституции».

¹⁴ Refer to the following for detailed discussions. Hasegawa, T., (2019), A study on Resources of the Russian Presidential Power under Putin: the Presidential Administration of Russia as directive and supervisory authority, *Russian Eurasian Economy & Society*, No. 1037, pp. 2-19(published in Japanese).

Internal Affairs.¹⁵ This resulted in an auxiliary institution of executive power system comprised of seven agencies and two directorates.¹⁶

In addition, the Presidential Administration with constitutional status has 25 directorates including the Domestic Policy Directorate and Foreign Policy Directorate, and in recent years steps have been taken to reinforce its structure. It is responsible for comprehensive coordination and supervision of important policies,¹⁷ by means of personnel policy for appointing the heads of directorates from vice-ministers or deputy directors from government ministries and agencies, and the legislative authority of the Presidential Administration including information orders for paramilitary forces and intelligence agencies.¹⁸ There is a certain limit placed on the parliament's ability to exercise authority related to administrative supervision against these powerful auxiliary institutions, or in other words "institutional resources of presidential power."

Second, the relationship between the upper and lower houses of the federal parliament and the Security Council (below, "SC") is cited.¹⁹ The SC is a constitutional organ that prepares for decisions by the president in the field of national security, with the president serving as chairman. SC has seen its power increase in the Putin era. It is not a simple advisory body to the president; it is considered a policy decision-making structure with supervisory authority.

The chairs of the upper and lower houses of the federal parliament are appointed by presidential decree as permanent members of the SC with veto power. This is attributed to the significant increase in real authority of the president concerning the personnel moves of the SC by the Yeltsin's presidential decree issued immediately after the establishment of the 1993 Constitution. Under the current administration, too, Valentina Matviyenko, Senator and Chairwoman of the Federation Council, and Volodin are appointed as permanent members of the SC by presidential decree. Based on the relations between the SC and federal parliament, SC is to be responsible for certain coordination functions of all the bodies of state power (presidential function). At the same time, the phenomenon is also observed where the federal parliament is partially embedded in executive branches.

When examining presidential authority under the 1993 Constitutional regime, regardless of the president's power to dismiss cabinet members or dissolve the lower house, attention must be placed also on the relationship between the president's auxiliary institutions (resources of presidential power) and the federal parliament.

¹⁵ Указ Президента РФ от 05 апреля 2016г., № 157 (ред. от 15 мая 2018г.), «Вопросы Федеральной службы войск национальной гвардии Российской Федерации», *СЗРФ*, 11 апреля 2016г., № 15, см. 2072.

¹⁶ 7 agencies and 2 directorates including the FSB, SVR, FSO, FSVNG, State Courier Service (Federal Agency), Federal Agency for Financial Monitoring, Federal Archival Agency, Chief Directorate for Special Programmes of the President, and Administrative Directorate of the President.

¹⁷ Hasegawa 2019, 7-19.

¹⁸ П. 5 и 6, «Положение об Администрации Президента Российской Федерации», Указ Президента РФ от 06 апреля 2004г., № 490 (ред. от 14 июня 2018г.), «Об утверждении Положения об Администрации Президента Российской Федерации», *СЗРФ*, 12 апреля 2004г., № 15, см. 1395.

¹⁹ Refer to the following for detailed discussions. Hasegawa, T., (2016), A Study on Russian National Security Decision-Making Structure: the Establishment of Russian Security Council, *Russian Eurasian Economy & Society*, No. 1001, pp. 2-18(published in Japanese).

4. Full-fledged Constitutional Discussions

The constitutional discussions by Volodin launched in the first half of 2019 were not revolutionary in nature as to change the foundation of the 1993 Constitutional system (president-parliamentarism), but rather they are believed to be preparation for the full-fledged constitutional discussions by the later remarks of Putin.

During his regular big media conference held on December 19, 2019, President Putin mentioned the possibility of revising Article 81 of the Constitution on the presidential term limit.²⁰ The current clause stipulates “The same person cannot serve in the office of president for more than two consecutive terms.” The current administration is built atop the constitutional interpretation that a person can service three or more terms if they are not consecutive. President Putin mentioned during the same media conference that the word “consecutive” could be deleted. If this constitutional revision becomes a reality, no person shall be elected to the office of the Russian President more than twice, and it would mean that for President Putin, who is in his fourth term, the current term would be his last.²¹

Furthermore, on January 15, 2020, proposal of the constitutional revisions indicated in the annual state of the nation address by President Putin were more in-depth than the Volodin proposal. The following two points relate to this paper.²² (I) Significant changes would be made in the cabinet formation process by increased power of the lower house; in other words, it would allow the authority of the lower house concerning approval of prime minister candidates along with deputy prime minister and federal minister candidates, and the president would have an obligation to appoint the ministers following the approval of the lower house. At the same time, the president would maintain his authority to dismiss ministers. (II) The president, based on the results of discussions with the upper house, would be appointed directors of paramilitary forces and intelligence agencies such as the FSB.

Such a proposal will generally increase the authority of the federal parliament, including changing the system related to the institutional resources of the presidential power and could bring about certain changes in presidential power. By presidential instruction of January 15, a working group was established to prepare a constitutional revision proposal,²³ and the first meeting of this working group was held on January 16.²⁴

²⁰ Президент России, от 19 декабря 2019г., «Большая пресс-конференция Владимира Путина», [<http://kremlin.ru/events/president/news/62366>]

²¹ *Коммерсантъ*, от 19 декабря 2019г., «Два срока не подряд: Владимир Путин поддержал дискуссию об изменении Конституции», [<https://www.kommersant.ru/doc/4199333>]

²² Президент России, от 15 января 2020г, «Послание Президента Федеральному Собранию», [<http://kremlin.ru/events/president/news/62582>]; *Ведомости*, от 15 января 2020г., «Как Путин предложил изменить Конституцию», [<https://www.vedomosti.ru/politics/news/2020/01/15/820638-putin>]

²³ Президент России, от 15 января 2020г, «Образована рабочая группа поподготовке предложений овнесении поправок в Конституцию», [<http://www.kremlin.ru/events/president/news/62589>]

²⁴ Президент России, от 16 января 2020г, «Встреча с членами рабочей группы поподготовке предложений овнесении поправок в Конституцию», [<http://kremlin.ru/events/president/news/62592>]

The discussions introduced in this paper are closely related to the accountability issues, mutual relationship between actors of state power, and in other words the present state of the government system, while maintaining the general framework of the 1993 Constitutional system. The cabinet resignation of January 15 and full-fledged start of constitutional revision process will likely result in more active discussions over President Putin's course of action and his successor. Amidst this, Russian political process will need to be observed calmly and collectedly, including the type of changes in government system and detailed political reforms.

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