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# The Constitutional Framework of Political Powers of the Russian Federation

## **Abstract**

Extract - This article examines, from a constitutional point of view, the structure and interaction of the three organs of government of the Russian Federation. The article explains the present organs of government of the Russian Federation. No historical scrutiny of the former Soviet Union is provided. A constitutional outline of the 'Russian Federation',<sup>1</sup> 'the President of the Russian Federation',<sup>2</sup> 'the Federal Assembly',<sup>3</sup> 'the Government of the Russian Federation',<sup>4</sup> and 'the Judiciary'<sup>5</sup> is provided.

## **Keywords**

The Russian Federation

# THE CONSTITUTIONAL FRAMEWORK OF POLITICAL POWERS OF THE RUSSIAN FEDERATION

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This article examines, from a constitutional point of view, the structure and interaction of the three organs of government of the Russian Federation. The article explains the present organs of government of the Russian Federation. No historical scrutiny of the former Soviet Union is provided. A constitutional outline of the 'Russian Federation',<sup>1</sup> 'the President of the Russian Federation',<sup>2</sup> 'the Federal Assembly',<sup>3</sup> 'the Government of the Russian Federation',<sup>4</sup> and 'the Judiciary'<sup>5</sup> is provided.

## **The Russian Federation<sup>6</sup>**

The Russian Federation was established in 1918 by the adoption of its first constitution shortly after the October revolution of 1917. Including the current constitution, the Russian Federation has adopted five constitutions.<sup>7</sup> The last and current *Constitution of the Russian Federation* was adopted on 12 December 1993 and invalidated its predecessor 'the Constitution (Fundamental Law) of the Russian Federation'<sup>8</sup> of 1978. The legal constitutional status of the Russian Federation is established by the *Constitution of the Russian Federation 1993*, the Declaration of governmental sovereignty of 1990,<sup>9</sup> and the Federal agreement of 1992.<sup>10</sup>

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<sup>1</sup> *The Constitution of the Russian Federation 1993* ch 3. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>2</sup> Ibid ch 4.

<sup>3</sup> Ibid ch 5.

<sup>4</sup> Ibid ch 6.

<sup>5</sup> Ibid ch 7.

<sup>6</sup> Ibid ch 3.

<sup>7</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 85.

<sup>8</sup> *The Constitution of the Russian Federation 1993* Section 2, art 1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>9</sup> Deklaratsia o gosudarstvennom syverenitete RSFSR of 12 June 1990.

<sup>10</sup> Federativnii dogovor of 31 March 1992.

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'Russia', or the 'Russian Federation',<sup>11</sup> changed its official name from the Russian Soviet Federated Socialist Republic to the Russian Federation, Russia, during the sixth session of the People's Deputies of the Russian Federation on 21 April 1992.<sup>12</sup> The Russian Federation is a Federation of 'multinational people'<sup>13</sup>, it is a 'democratic rule-of-law state with the republican form of government'<sup>14</sup> and 'shall be a social state'.<sup>15</sup> The Russian people may 'exercise their power directly,...through organs of state power and local self-government'.<sup>16</sup> This means through referendums<sup>17</sup> and free elections<sup>18,19</sup>. It currently consists of 88 subjects,<sup>20</sup> which are similar to states. The subjects are categorized as 'republics, territories, regions, federal cities, an autonomous region and autonomous areas'.<sup>21</sup> Republics possess their 'own constitution and legislation'<sup>22</sup> and the remaining five categories possess their 'own charter and legislation'.<sup>23</sup> However, the practical difference between the different categories of subjects is minor since 'all the subjects of the Russian Federation shall be equal among themselves in relations with the Federal bodies of state power'.<sup>24</sup>

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<sup>11</sup> Ibid art 1.

<sup>12</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 264. See also VSND RF and VS RF. 1992. No 20. Art 1084.

<sup>13</sup> *The Constitution of the Russian Federation 1993* Preamble. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>14</sup> Ibid art 1.

<sup>15</sup> Ibid art 7:1.

<sup>16</sup> Ibid art 3:2.

<sup>17</sup> Referendums are conducted in accordance with the federal constitutional law of 28 June 2004 'o referendume Rossiiskoi Federatsii' SZ RF. 2004. No 27. Art 2710.

<sup>18</sup> The main law regulating elections is federal law of 12 June 2002 'ob osnovnykh garantiakh izbiratel'nykh prav i prava na uchastie v referendume grazhdan Rossiiskoi Federatsii' SZ RF. 2002. No 24. Art. 2253.

<sup>19</sup> *Constitution of the Russian Federation 1993* art 3:3. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>20</sup> Ibid art 65:1. The *Constitution of the Russian Federation 1993* lists 89 subjects. However, the Federal constitutional law of 25 March 2004, 'ob obrazovanii v sostave Rossiiskoi Federatsii Novogo Su''bekta Rossiiskii Federatsii v rezul'tate ob''edineniia Permskoi oblasti i Komi-Permiatskogo avtonomnogo okryga' SZ RF. 2004. No 13. Art 1110, unified the Perm Region and the Komi-Permyak Autonomous Area and created Perm Territory at 1 December 2005.

<sup>21</sup> *The Constitution of the Russian Federation 1993* art 5:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>22</sup> Ibid art 5:2.

<sup>23</sup> Ibid art 5:2.

<sup>24</sup> Ibid art 5:4.

Nonetheless, 'the status of a subject of the Russian Federation may be changed only with the mutual consent of the Russian Federation and the subject'<sup>25</sup> itself.

The Russian Federation holds sovereign power over its entire territory.<sup>26</sup> The *Constitution of the Russian Federation 1993* and the federal laws have supremacy within the territory of the Russian Federation.<sup>27</sup> However, no 'laws or other legal acts adopted by the Russian Federation may...contravene the Constitution of the Russian Federation'.<sup>28</sup> The territory of Russia is defined in article 67:1 to 'incorporate the territories of its subjects, the internal and territorial seas and the airspace over them'.<sup>29</sup>

### **Hierarchy of Laws**

The Russian Federation has one federal legal system. This includes federal normative legal acts, normative legal acts by government organs of the subjects of the Federation, and normative legal acts by local organs of state power and local self-government.<sup>30</sup> Certain legislation of the former Union of Soviet Socialist Republics is still valid as law as long as it does not contravene any legislation of the Russian Federation that has commenced and is in force.<sup>31</sup> Also, 'international law and the international treaties of the Russian Federation'<sup>32</sup> are an integral part of the legal system.

Federal normative legal acts are: the *Constitution of the Russian Federation 1993* as 'the supreme legal force'<sup>33</sup> and is located on the top of the hierarchy of laws, federal constitutional laws which override federal laws, the Federal agreement, federal laws, codes like the civil code, normative acts by the President of the Russian Federation, normative decrees by the Federation Council and the State Duma, the Government of

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<sup>25</sup> Ibid art 66:5.

<sup>26</sup> Ibid art 4:1.

<sup>27</sup> Ibid art 4:2.

<sup>28</sup> Ibid art 15:1.

<sup>29</sup> Ibid art 67:1. In addition, the Russian Federation holds 'sovereign rights and exercise jurisdiction on the continental shelf and in the exclusive economic zone of the Russian Federation'; art 67:2.

<sup>30</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 273-274.

<sup>31</sup> Ibid p. 273.

<sup>32</sup> *The Constitution of the Russian Federation 1993* art 15:4. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>33</sup> Ibid art 15.1.

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the Russian Federation, federal ministers, federal committees etc.<sup>34</sup> However, '[i]f an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply'.<sup>35</sup>

'Federal laws may not contravene federal constitutional laws'.<sup>36</sup> The federal constitutional laws and federal laws of the Russian Federation have 'direct effect throughout the territory of the Russian Federation'<sup>37</sup> 'on issues within the jurisdiction of the Russian Federation'.<sup>38</sup> As to issues 'within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation'<sup>39</sup> 'laws and other regulatory legal acts of the subjects of the Russian Federation shall be adopted'<sup>40</sup> in accordance with issued federal laws. If 'laws and other regulatory legal acts of the subjects of the Russian Federation'<sup>41</sup> contravene the exclusive jurisdiction of the Russian Federation or the joint jurisdiction of the Russian Federation and its subjects, the federal laws will prevail.<sup>42</sup> However, the Russian Federation cannot regulate outside its exclusive jurisdiction, or its joint jurisdiction of the Russian Federation and its subjects.<sup>43</sup> All subjects 'shall effect their own legal regulation, including the adoption of laws and other regulatory legal acts'.<sup>44</sup>

### **Jurisdiction**

Firstly, article 71 of the constitution lists the exclusive jurisdiction of the Russian Federation. A non-exclusive list of the exclusive jurisdiction follows:

- a) the adoption and amendment of the Constitution of the Russian Federation and federal laws and supervision over compliance with them;
- b) the federal structure and territory of the Russian Federation;

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<sup>34</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 273.

<sup>35</sup> *The Constitution of the Russian Federation* 1993 art 15:4. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>36</sup> *The Constitution of the Russian Federation* 1993 art 76:3. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>37</sup> *Ibid* art 76:1.

<sup>38</sup> *Ibid* art 76:1.

<sup>39</sup> *Ibid* art 76:2.

<sup>40</sup> *Ibid* art 76:2.

<sup>41</sup> *Ibid* art 76:4.

<sup>42</sup> *Ibid* art 76:4.

<sup>43</sup> *Ibid* art 76:4.

<sup>44</sup> *Ibid* art 76:4.

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- c) regulation and protection of the rights and liberties of the human being and citizen; citizenship of the Russian Federation; regulation and protection of the rights of national minorities;
- d) establishment of the system of federal bodies of legislative, executive and judiciary power, procedure for the organization and activities thereof; formation of federal bodies of state power;
- e) federal and state property and management thereof;
- f) determining the basic principles of federal policy and federal programs in the field of state structure, the economy, the environment, and the social, cultural and national development of the Russian Federation;
- g) establishment of the legal framework for a single market; financial, monetary, credit and customs regulation, emission of money and guidelines for price policy; federal economic services, including federal banks;
- h) the federal budget; federal taxes and levies; federal funds of regional development;
- i) federal power grids, nuclear energy, fissionable materials; federal transport, railways, information and communications; space activities;
- j) foreign policy and international relations of the Russian Federation, international treaties of the Russian questions of war and peace;
- k) foreign trade relations of the Russian Federation;
- l) defence and security; defence production; determining procedures for the sale and purchase of arms, ammunition, military hardware and other equipment; production of fissionable materials, toxic substances, narcotics and procedure for the use thereof;
- m) defining the status and protection of the state border, territorial waters, the air space, the exclusive economic zone and the continental shelf of the Russian Federation;
- n) law courts; Prosecutor's Office; criminal, criminal-procedural and criminal-executive legislation; amnesty and pardon; civil, civil-procedural and arbitration-procedural legislation; legal regulation of intellectual property;
- o) federal conflict of laws;

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- p) meteorological service; standards, models, the metric system and time measurement; geodesy and cartography; names of geographical objects; official statistics and accounting;
- q) state decorations and honorary titles of the Russian Federation;
- r) federal state service.<sup>45</sup>

The area of exclusive federal jurisdiction is extremely broad. Most of contemporary Russian law is federal law. It includes the main Russian codes of legislation: the Civil Code, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure, and the Code of Arbitration Procedure; as well as almost all commercial law. It also includes federal policy and federal programs in relation to the environment. The environment policies are often used to put pressure on foreign oil and gas companies operating in Russia. A licensee is committed to comply with certain environmental standards.<sup>46</sup> The Russian Government has put pressure on Royal Dutch Shell and Exxon Mobil's operations on Sakhalin to comply with environmental standards.<sup>47</sup> Rory MacFarquhar, the director of Goldman Sachs's Moscow office, stated that 'we continue to believe that the aim of this campaign is to force the foreign companies to accept Russian state companies as equal or even majority partners in their projects, possibly for no compensation'.<sup>48</sup> A couple of months later, Shell handed over its controlling stake in the project to the state-owned energy group Gazprom.<sup>49</sup>

Secondly, article 72:1 of the constitution lists 'the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation'. A non-exhaustive list of some of these follows:

- a) ensuring compliance of the constitutions and laws of the republics, charters, laws, and other regulatory legal acts of the territories, regions, federal cities, the autonomous region and autonomous areas with the Constitution of the Russian Federation and the federal laws;

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<sup>45</sup> Ibid art 71.

<sup>46</sup> White & Case, 'Oil and Gas Exploration and Production: Russian Legislation' (2006) *American Chamber of Commerce in Russia*.

<sup>47</sup> Andrew E Kramer, 'In Russian Far East, Concern for Environment' *New York Times* (New York), 5 October 2006.

<sup>48</sup> Ibid.

<sup>49</sup> Terry Macallister and Tom Parfitt, '\$20bn Gas Project Seized by Russia' *The Guardian* (London), 12 December 2006.



- b) protection of the rights and freedoms of man and citizen, protection of the rights of ethnic minorities; ensuring legality, law and order, and public safety; border zone regime;
- c) issues of the possession, use and management of the land, mineral resources, water and other natural resources;
- d) delimitation of state property;
- e) management of natural resources, protection of the environment and ecological safety; specially protected natural reserves; protection of historical and cultural monuments;
- f) general questions of upbringing, education, science, culture, physical culture and sports;
- g) coordination of health issues, protection of family, motherhood, fatherhood and childhood; social protection including social security;
- h) implementing measures to combat catastrophes, natural disasters, epidemics and eliminating consequences thereof;
- i) establishment of the general guidelines for taxation and levies in the Russian Federation;
- j) administrative, administrative-procedural, labour, family, housing, land, water and forestry legislation; legislation on the sub-surface and environmental protection;
- k) cadres of judiciary and law-enforcement agencies; the bar, notariate;
- l) protection of the original environment and traditional way of life of small ethnic communities;
- m) establishment of general guidelines of the organization of the system of bodies of state power and local self-government;
- n) coordination of the international and external economic relations of the subjects of the Russian Federation, compliance with the international treaties of the Russian Federation.<sup>50</sup>

The joint jurisdiction between the Russian Federation and the subjects is one of the most complex legal areas of the constitution. President Putin introduced new

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<sup>50</sup> *The Constitution of the Russian Federation* 1993 art 72:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

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legislation, Federal Law No. 159 FZ,<sup>51</sup> to strengthen the vertical of power in December 2004 as a response to the horrible events that took place in Beslan months earlier. Very conveniently, the law eliminated the elections of governors across the country; a governor is the head of a subject. The Law No. 159 gives the President of the Russian Federation the right to nominate the heads of subjects in Russia. The legislature in the subject can either accept or reject the nomination. At least 18 governors have been re-nominated and 4 governors have been dismissed since the law was enacted.<sup>52</sup> This strengthens the President's power over the subjects by appointing President friendly governors that may ensure that the areas of joint jurisdiction correspond with the policies taken in the areas of exclusive jurisdiction. However, this elimination of gubernatorial elections seems to contradict article 77 of the constitution, which states that 'the system of state power bodies of the...[subjects] shall be established independently...'<sup>53</sup> The President's interference in the creation of state power bodies seems to contradict the separation of power principle in article 10 and the independency requirement in article 77.

Finally, article 73 of the constitution states that 'the subjects of the Russian Federation shall exercise the entire spectrum of state power'<sup>54</sup> on issues that fall outside the exclusive jurisdiction of the Russian Federation and outside the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation.<sup>55</sup>

The federal bodies of executive power may set up their own territorial structures and appoint respective officials<sup>56</sup> to exercise the jurisdiction and power given by articles 71-73 of the constitution throughout the territory of the Russian Federation.<sup>57</sup> This

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<sup>51</sup> The Federal Law No.159-FZ of 11 December 2004 'O Popravkakh k Federalnomu Zakonu 'ob obshchikh printsipakh organizatsii zakonodatel'nykh (predstavitel'nykh) ispolnitel'nykh organov gosudarstvennoivlasti Rossiiskoi Federatsii I Federalnomu Zakonu 'Ob osnovnykh garantiakh izbiratel'nykh prav i prava na uchastie v referendumе grazhdan Rossiiskoi Federatsii''; about amendments to the Federal Law on general principles of the organization of legislative (representative) and executive organs of state power in the subjects of the Russian Federation and to the Federal Law on the main guarantees of electoral rights and a right to participate in a referendum of citizens in the Russian Federation' SZ RF 2004, No.29 item 4950.

<sup>52</sup> Alexander N Domrin, 'From Fragmentation to Balance: The Shifting Model of Federalism in Post-Soviet Russia' (2006) 15 *Transnational Law & Contemporary Problems* 515, 536.

<sup>53</sup> *The Constitution of the Russian Federation* 1993 art 77(1). [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>54</sup> Ibid art 73.

<sup>55</sup> Ibid art 73.

<sup>56</sup> Ibid art 78:1.

<sup>57</sup> Ibid.

power is exercised by the President of the Russian Federation and the government of the Russian Federation in accordance with the constitution.<sup>58</sup> However, 'the federal organs of executive power may delegate to'<sup>59</sup> the subjects' organs of executive power by agreement with them 'part of their powers provided this does not contravene the Constitution of the Russian Federation or federal laws'.<sup>60</sup> Similarly, the subjects' organs of executive power may delegate by agreement with the federal organs of executive power 'part of their powers to them'.<sup>61</sup>

Such agreements are entered into in accordance with the Federal law of 4 July 2003 'about introduction of amendments and annexation into the Federal law 'about general principles of organisation of legislative (representative) and executive organs of governmental power of the subjects of the Russian Federation'.<sup>62</sup>

### **Some Important Aspects of the Russian Federation**

An important element of the constitutional legal status of the Russian Federation is that citizens of Russia now hold one passport and citizenship,<sup>63</sup> unlike the former practice in the USSR. The legal age of a citizen is reached when he or she turns 18 years of age<sup>64</sup> and a citizen may hold dual citizenship.<sup>65</sup> However, a citizen may not hold multiple citizenships. Questions concerning citizenship are regulated by the *Constitution of the Russian Federation 1993* and the Federal law of 31 May 2002 'about citizenship of the Russian Federation'.<sup>66</sup>

Russian citizens have a constitutionally protected right to private property.<sup>67</sup> Article 35:2 states that 'everyone shall have the right to have property in his or her

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<sup>58</sup> Ibid art 78:4.

<sup>59</sup> Ibid art 78:2.

<sup>60</sup> Ibid art 78:2.

<sup>61</sup> Ibid art 78:3.

<sup>62</sup> Federal law of 4 July 2003 'o vnesenii izmenenii i gopolnenii v Federal'nii zakon 'ob obshchikh printsipakh organizatsii zakonodatel'nikh (predstavitel'nikh) i ispolnitel'nikh organov gosudarstvennoi vlasti sub''ektov Rossiiskoi Federatsii' (s izmeneniami i dopolneniami) SZ RF. 2003. No 27. Art. 2709.

<sup>63</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 272-273.

<sup>64</sup> *The Constitution of the Russian Federation 1993* art 60. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>65</sup> Ibid art 62:1.

<sup>66</sup> Federal law of 31 May 2002 'o grazhdanstve Rossiiskoi Federatsii'.

<sup>67</sup> *The Constitution of the Russian Federation 1993* art 35:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

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ownership, to possess, use and manage it either individually or jointly with other persons.<sup>68</sup>

Article 68 of the constitution<sup>69</sup> states the language of the Russian Federation is the Russian language. The Federal law of 1 June 2005 'about the state language of the Russian Federation'<sup>70</sup> confirms that the Russian language is the primary language throughout the whole territory of the Russian Federation. However, the republics 'have the right to institute their own state languages'.<sup>71</sup> If languages are introduced by the republics, they 'shall be used alongside the state language of the Russian Federation in bodies of state power, bodies of local self government and state institutions'.<sup>72</sup>

The Federal law of 10 June 2002 'about the Central Bank of the Russian Federation (the Bank of Russia)'<sup>73</sup>, in accordance with the *Constitution of the Russian Federation 1993*,<sup>74</sup> states that 'the monetary unit of the Russian Federation shall be the ruble'<sup>75</sup>, 'the monetary emission shall be the exclusive responsibility of the Central Bank of the Russian Federation'<sup>76</sup>, and that the main task of the Central Bank is to protect and stabilize the ruble 'independently from other bodies of state power'.<sup>77</sup> However, the President of the Russian Federation practically appoints, and may also relieve, the Chairman of the Central Bank of the Russian Federation.<sup>78</sup>

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<sup>68</sup> Ibid art 35:2.

<sup>69</sup> *The Constitution of the Russian Federation 1993* art 68:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>70</sup> Federal law of 1 June 2005 'o gosudarstvennom iazike Rossiiskoi Federatsii' SZ RF. 2005. No 23. Art 2199.

<sup>71</sup> *The Constitution of the Russian Federation 1993* art 68:2. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006

<sup>72</sup> Ibid art 68:2. This is confirmed by the Federal law of the Russian Federation of 25 October 1991 'o iazikakh narodov Rossiiskoi Federatsii'; 'about national languages of the Russian Federation'.

<sup>73</sup> Federal law of 10 June 2002 'o Tsentral'nom banke Rossiiskoi Federatsii (Banke Rossii)' SZ RF. 2002. No 28. Art 2790; 2004. No 31. Art 3233.

<sup>74</sup> *The Constitution of the Russian Federation 1993* art 75:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006

<sup>75</sup> Ibid art 75:1.

<sup>76</sup> Ibid art 75:1.

<sup>77</sup> *The Constitution of the Russian Federation 1993* art 75:2. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>78</sup> Ibid art 83:d). The President of the Russian Federation introduces 'to the State Duma a candidature for appointment to the office of the Chairman of the Central Bank of the

An important element of the legal constitutional status of the Russian Federation is the structure of the Russian Armed Forces.<sup>79</sup> They are organised to protect and defend the Russian Federation. They may be used as desired by the 'Supreme Commander-in-chief',<sup>80</sup> which is the President of the Russian Federation.<sup>81</sup>

### State Symbols

An important component of any country's legal constitutional status is state or government symbols.<sup>82</sup> The main symbols are the national flag, the State Emblem, the national anthem, and the status of the capital.<sup>83</sup> The state flag of the Russian Federation is a striped rectangular flag with three equal sized stripes running vertically from one long side of the flag to the other. The coloured stripes are white, blue, and red. The relationship between the height and length is 2:3.<sup>84</sup>

The State Emblem is a red square with two circular bottom corners. A two headed golden eagle, with open outstretched wings pointing upwards, are located in the middle of the Emblem which is a heraldic shield. The eagle wears a crown on each head and above them is located a bigger crown. They are all connected with a ribbon. A sceptre is located in the eagles left paw and an orb in its right paw. A red shield is located on the eagle's chest. Within the shield is a silver knight with a blue cape and a silver spear on a silver stallion stabbing a black dragon, which is lying on its back.<sup>85</sup>

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Russian Federation; submit to the State Duma the proposal on relieving the Chairman of the Central Bank of the Russian Federation of his duties'; art 83:d).

<sup>79</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 277.

<sup>80</sup> *The Constitution of the Russian Federation 1993* art 87:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>81</sup> *Ibid* art 87:1.

<sup>82</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 282-289.

<sup>83</sup> *The Constitution of the Russian Federation 1993* art 70. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>84</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 282. This is stated by the Federal constitutional law of 25 December 2000 'o Gosudarstvennom flage Rossiiskoi Federatsii' (s izmeneniiami i dopolneniiami) 'about the state flag of the Russian Federation' (with amendments and annexations) SZ RF. 2000. No 52. Art. 5020.

<sup>85</sup> *Ibid* p. 285. This is stated by the Federal constitutional law of 25 December 2000 'o Gosudarstvennom grebe Rossiiskoi Federatsii' (s izmeneniiami i dopolneniiami) 'about the State Emblem of the Russian Federation' (with amendments and annexations) SZ RF. 2000. No 52. Art. 5021.

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The national anthem is governed by the Federal constitutional law of 25 December 2000 'about the national hymn of the Russian Federation'.<sup>86</sup> The words are written by S. V. Mikhalkov and the music by A. V. Aleksandrov.<sup>87</sup> The national anthem is played by state regulated television and radio channels daily, once at 6 am and once at midnight by local time.<sup>88</sup> It is also played at every New Years Eve at midnight from the Moscow Kremlin's Spassky tower.<sup>89</sup>

Finally, the city of Moscow is the capitol of the Russian Federation.<sup>90</sup> The federal organs of state power of the Federation are located in Moscow. Representatives of all the subjects, the city of Saint Petersburg, and diplomatic representatives of foreign countries are also located in the capital.<sup>91</sup>

### Separation of Powers

Separation of powers is entrenched in the Constitution of the Russian Federation and is expressly stated in Article 10, which reads as follows: 'State power in the Russian Federation shall be exercised on the basis of the separation of the legislative, executive and judiciary power'.<sup>92</sup> The state powers of the Russian Federation are exercised by the President of the Russian Federation and his government, the Federal Assembly consisting of the Council of the Federation and the State Duma, and the courts of the Russian Federation.<sup>93</sup> These arms of government act independently of each other.<sup>94</sup> Similarly, the 'state power in the subjects of the Russian Federation...[is]

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<sup>86</sup> The Federal constitutional law of 25 December 2000 'o Gosudarstvennom gimne Rossiiskoi Federatsii' SZ RF. 2000. No 52. Art. 5022; 2001. No 13. Art. 1139.

<sup>87</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 288.

<sup>88</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 288.

<sup>89</sup> Ibid p 288. 'Spasskaja bashnia Moskovskovo Kremlija'.

<sup>90</sup> *The Constitution of the Russian Federation* 1993 art 70:2. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006. The act governing the regulation of the capital is the Law of the Russian Federation of 15 April 1993 'o statuse stolitsi Rossiiskoi Federatsii' 'about the status of the capital of the Russian Federatoin' VSND RF and VS RF. 1993. No 19. Art. 683; SZ RF. 1995. No 30. Art. 2863.

<sup>91</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 289.

<sup>92</sup> *The Constitution of the Russian Federation* 1993 art 10. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>93</sup> Ibid art 11:1.

<sup>94</sup> *The Constitution of the Russian Federation* 1993 art 10. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

exercised by the organs of state authority formed by them'.<sup>95</sup> The three organs of government will now be individually explained and examined.

### **The President of the Russian Federation**<sup>96</sup>

The President of the Russian Federation is 'the head of state'<sup>97</sup> and is 'the guarantor of the Constitution of the Russian Federation, and of human and civil rights and freedoms'.<sup>98</sup> However, he is not the head of the executive power. The government of the Russian Federation is the highest organ of executive power.<sup>99</sup> The first President of the Russian Federation, Boris N. Yeltsin, was elected by a direct national election held 12 June 1991.<sup>100</sup> The following presidential elections were held in 1996, 2000, and 2004.<sup>101</sup> The next presidential election will be held in 2008.

The President of the Russian Federation is 'elected for a term of four years by the citizens of the Russian Federation on the basis of general, equal and direct vote by secret ballot'.<sup>102</sup> The procedure of Presidential elections is set forth in the *Constitution of the Russian Federation 1993* and by the Federal law of 10 January 2003 'about elections of the President of the Russian Federation'.<sup>103</sup> 'A citizen of the Russian Federation not younger than 35, who has resided in the Russian Federation for not less than 10 years, may be elected President of the Russian Federation'.<sup>104</sup> A person cannot 'hold office of President of the Russian Federation for more than two terms in succession'.<sup>105</sup> This will theoretically mean that constitutionally President Putin can not be re-elected under the 2008 presidential election. However, he may, if desired, participate in the 2012 presidential election.

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<sup>95</sup> Ibid art 11:2.

<sup>96</sup> Ibid ch 4.

<sup>97</sup> Ibid art 80:1.

<sup>98</sup> Ibid art 80:2.

<sup>99</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 383.

<sup>100</sup> Ibid p. 371.

<sup>101</sup> Ibid.

<sup>102</sup> *The Constitution of the Russian Federation 1993* art 81:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>103</sup> The Federal law of 10 January 2003 'O biborakh Prezidenta Rossiiskoi Federatsii' N-19 FZ (Last amendment of 25 August 2006 N-128 FZ)

<sup>104</sup> *The Constitution of the Russian Federation 1993* art 81:2. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006

<sup>105</sup> Ibid art 81:3.

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The Federal Council of the Russian Federation calls the presidential elections.<sup>106</sup> If it does not call a presidential election that is due, the Central Electoral Commission will call the presidential election.<sup>107</sup> The Election Day is the second Sunday of the month and the presidential electoral constituency is the territory of the Russian Federation as a whole.<sup>108</sup> Candidates for the presidential elections may either run individually or through a registered political party.<sup>109</sup> A candidate wins the presidential election if the candidate receives no less than 50% of the votes from the participants in the presidential election.<sup>110</sup> However, if none of the candidates receive 50% of the votes, a second presidential election is called for the two candidates that receive more votes than the other candidates in the first presidential election.<sup>111</sup> The President of the Russian Federation, when elected to the Office of President, takes an oath<sup>112</sup> 'in the presence of members of the Council of the Federation, deputies of the State Duma and judges of the Constitutional Court of the Russian Federation'.<sup>113</sup>

### **Powers of the President of the Russian Federation**

A famous quote by Lord Acton in a letter to Mandell Creighton reads 'all power tends to corrupt and absolute power corrupts absolutely'.<sup>114</sup> The President of the Russian Federation holds a very wide range of powers. His powers to appoint, preside, introduce, dismiss, and recall are very extensive and extremely important powers. Article 83 of the 1993 Constitution states that 'the President of the Russian Federation shall':

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<sup>106</sup> Ibid art 102:1:e).

<sup>107</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 373.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p 374.

<sup>111</sup> Ibid p. 373.

<sup>112</sup> *The Constitution of the Russian Federation 1993* art 82:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006, which reads: 'I vow, in the performance of my powers as the President of the Russian Federation to respect and protect the rights and freedoms of man and citizen, to observe and protect the Constitution of the Russian Federation, to protect the sovereignty and independence, security and integrity of the state and to serve the people faithfully'.

<sup>113</sup> Ibid art 82:2.

<sup>114</sup> Letter from John Emerich Edward Dalberg Acton, 1st Baron Acton (Lord Acton) to Mandell Creighton, 3 or 5 April 1887.



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- a) appoint Chairman of the Government of the Russian Federation subject to consent of the State Duma;<sup>115</sup>
- b) have the right to preside over meetings of the Government of the Russian Federation;
- c) decide on resignation of the Government of the Russian Federation;
- d) introduce to the State Duma a candidature for appointment to the office of the Chairman of the Central Bank of the Russian Federation; submit to the State Duma the proposal on relieving the Chairman of the Central Bank of the Russian Federation of his duties;
- e) appoint and dismiss deputy chairmen of the Government of the Russian Federation and federal ministers as proposed by the Chairman of the Government of the Russian Federation;
- f) submit to the Federation Council candidates for appointment to the office of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation as well as the candidate for Prosecutor-General of the Russian Federation; submit to the Federation Council the proposal on relieving the Prosecutor-General of the Russian Federation of his duties; appoint the judges of other federal courts.
- g) form and head the Security Council of the Russian Federation, the status of which is determined by federal law;
- h) endorse the military doctrine of the Russian Federation;
- i) form the staff of the President of the Russian Federation;<sup>116</sup>
- j) appoint and dismiss plenipotentiary representatives of the President of the Russian Federation;
- k) appoint and dismiss the Supreme Command of the Armed Forces of the Russian Federation;

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<sup>115</sup> The office of the Prime-Minister of the Russian Federation is not expressly stated in the 1993 Constitution. However, the office of the Prime-Minister of the Russian Federation and the office of the Chairman of the Government of the Russian Federation are the same. See: unknown, *Visshii Gosudarstvenii Sovet* (Highest State Council) (2005) Sous Info (United Info) <[http://www.sinfo.ru/ru/officially/heald\\_union/sovet/?id4=68473&i4=3](http://www.sinfo.ru/ru/officially/heald_union/sovet/?id4=68473&i4=3)> at 30 October 2006.

<sup>116</sup> This is done in accordance with the presidential decree of 6 April 2004 'polozhenie ob Administratsii Prezidenta Rossiiskoi Federatsii' ('position about the Administration of the President of the Russian Federation'). Note, the last amendments of 1 August 2005.

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- l) appoint and recall, after consultations with the respective committees or commissions of the Federal Assembly, diplomatic representatives of the Russian Federation to foreign states and international organizations.<sup>117</sup>

The effect of the President's power was seen when the 2006 Georgia scandal occurred. Russia recalled all diplomats from Tbilisi to Moscow.<sup>118</sup> The constitution is created in such a way that the wrong person as President can create a lot of damage. The President appoints the Prime Minister, the Ministers, all the judges, the Prosecutor-General, the head of the Security Council, the Generals, Governors, and his staff. It is not hard to imagine how President friendly people in all these positions would affect the independence of the legislative and judiciary in regards to the separation of powers. Considering the fact that President Putin went from unemployed to President of Russia in less than four years,<sup>119</sup> it can be very difficult to detect an aspiring bad apple to the office of President.

The powers of the President of the Russian Federation are further stated in article 84 of the 1993 Constitution:<sup>120</sup> 'the President of the Russian Federation shall:'

- a) call elections to the chambers of the State Duma in accordance with the Constitution of the Russian Federation and federal law;
- b) dissolve the State Duma in cases and under procedures envisaged by the Constitution of the Russian Federation;

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<sup>117</sup> Ibid art 83.

<sup>118</sup> Yuri Filippov, 'Outside View: The Russia-Georgia Rift' *World Peace Herald* (<http://wpherald.com>), 6 October 2006.

<sup>119</sup> Anatoly Sobchak lost the St. Petersburg mayoral election in 1996. Putin became unemployed. However, in June 1996 he became the Deputy Chief of the Presidential Property Management Department. On March 26, 1997 Putin was appointed Deputy Chief of Presidential Staff and Chief of the Main Control Directorate of the Presidential Property Management Department. On May 25, 1998 Putin was appointed First Deputy Chief of Presidential Staff for regions, and on July 15 of the same year - the Head of the Commission for the preparation of agreements on the delimitation of power of regions and the federal centre attached to the President. On July 25, 1998 Putin was appointed Head of the FSB. He became a permanent member of the Security Council of the Russian Federation on October 1, 1998 and its Head on March 29, 1999. On August 16 the State Duma approved his appointment as Prime Minister. On December 31, 1999, Yeltsin unexpectedly resigned and, according to the constitution, Putin became (acting) President of the Russian Federation, see <http://en.wikipedia.org/wiki/Putin> and Richard Sakwa, *Putin Russia's Choice* (1<sup>st</sup> ed, 2004) p. 1-33.

<sup>120</sup> *The Constitution of the Russian Federation 1993* art 84. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

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- c) call a referendum under procedures established by federal constitutional law;
- d) introduce draft laws in the State Duma;
- e) sign and publish federal laws;
- f) present annual messages to the Federal Assembly on the situation in the country and on basic directions of the internal and external policies of the state.<sup>121</sup>

A very significant aspect of the President's power is the ability to introduce draft laws in the State Duma. This opportunity blurs the separation of powers principle and gives the President an opportunity to achieve more goals on his own without the need to co-operate with other parties as much as he might have had to in the drafting stage of the law. This initiative to introduce legislation gives the President an advantage when quick changes are desired. There have been multiple changes to the federal, regional and government structure over the last years, many which have been initiated with presidential decrees or introduced to the State Duma by the means of Presidential draft laws.

Furthermore, the President of the Russian Federation may resolve conflicts 'between the organs of state power of the Russian Federation and organs of state power of the subjects of the Russian Federation'<sup>122</sup> by using dispute settlement procedures. However, if the procedures do not provide resolution for the dispute, an action may be brought before a court of law.<sup>123</sup> Nonetheless, the President of the Russian Federation has the power and 'the right to suspend acts by organs of executive power of the subjects of the Russian Federation'.<sup>124</sup> This is a temporary suspension until the appropriate court has decided upon the matter. However, the acts must contravene the Constitution, federal laws, international obligations, human rights, or civil rights and liberties.<sup>125</sup>

The President of the Russian Federation has the main responsibility of conducting foreign affairs and policies. He supervises 'the conduct of the foreign policy',<sup>126</sup> conducts negotiations,<sup>127</sup> signs international treaties,<sup>128</sup> signs 'instruments of

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<sup>121</sup> Ibid.

<sup>122</sup> Ibid art 85:1.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid art 85:2.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid art 86 a).

<sup>127</sup> Ibid art 86 b).

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ratification',<sup>129</sup> and accepts 'credentials and instruments of recall of diplomatic representatives'.<sup>130</sup> The President of the Russian Federation is also the 'Supreme Commander-in-Chief of the armed forces',<sup>131</sup> and he may introduce a state of martial law 'with immediate notification thereof [to] the Federation Council and the State Duma'<sup>132</sup> in the event of any aggression or threat against Russia.

Notwithstanding the above, the President of the Russian Federation shall resolve disputes or issues concerning Russian citizenship,<sup>133</sup> granting political asylum,<sup>134</sup> 'award state decorations' and honorary titles,<sup>135</sup> award 'top military ranks' and 'top specialized titles',<sup>136</sup> and 'grant pardons'.<sup>137</sup>

Finally, the President of the Russian Federation may issue presidential decrees, or normative acts, 'and executive orders',<sup>138</sup> which shall 'be binding throughout the territory of the Russian Federation'.<sup>139</sup> However, the presidential decrees and executive orders 'may not contravene the *Constitution of the Russian Federation 1993* or federal laws';<sup>140</sup> thus, being third in the hierarchy of laws. This is a very powerful tool because there is no real organ that controls the President, except the Constitutional Courts. However, the Constitutional Courts cannot really control the masses of decrees that are issued yearly.

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<sup>128</sup> Ibid.

<sup>129</sup> Ibid art 86 c).

<sup>130</sup> Ibid art 86 d).

<sup>131</sup> Ibid art 87:1.

<sup>132</sup> Ibid art 87:2.

<sup>133</sup> Ibid art 89 a). This is done in accordance with the Federal law of 31 Mai 2002 'o grazhdanstve Rossiiskoi Federatsii' ('about citizenship of the Russian Federation'). Note, last amendments of 2 November 2004.

<sup>134</sup> *The Constitution of the Russian Federation 1993* art 89 a). [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006Ibid.

This is done in accordance with the presidential decree of 21 July 1997 'polozhenie o poriadke predostavleniia Rossiiskoi Federatsii politicheskogo ybezshishcha' ('the position of the Russian Federation about the order of granting political refuge'). Note, last amendments of 1 December 2003.

<sup>135</sup> Ibid art 89 b). This is done in accordance with the presidential decree of 2 March 1994 'polozhenie o gosudarstvennikh hagradaakh Rossiiskoi Federatsii' ('the position about state decorations of the Russian Federation'). Note, last amendments of 28 June 2005.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid art 89 c).

<sup>138</sup> Ibid art 90:1.

<sup>139</sup> Ibid art 90:2.

<sup>140</sup> Ibid art 90:3.

Hence, the Russian Federation may be characterised as a super-presidential republic.<sup>141</sup> This form of governing is also referred to as a half presidential republic.<sup>142</sup> The President may be characterised as God and the Devil, Lawmaker, Upholder and Judge.

### **Impeachment of the President of the Russian Federation**

The President of the Russian Federation has constitutional immunity.<sup>143</sup> The President's powers start from the day the President is sworn into office and expire at the time the newly-elected President of the Russian President is sworn into office.<sup>144</sup> Nonetheless, 'in the event of the President's resignation or sustained inability due to health...or in the event of impeachment'<sup>145</sup> the President's powers will be terminated. In such a case, a presidential election must be called within three months.<sup>146</sup> During this time, the acting President will be the chairman of the Government of the Russian Federation, and will temporarily perform the duties of the President.<sup>147</sup> However, the acting President cannot dissolve the State Duma, call referendums, 'make proposals on amendments or revision of the provisions of the Constitution'.<sup>148</sup>

Only the Federal Council may impeach the President of the Russian Federation.<sup>149</sup> An impeachment may be based only on charges of high treason or a grave crime.<sup>150</sup> The charge must be ruled 'on the presence of indicia of crime in the President's actions'<sup>151</sup> and confirmed by the Supreme Court. In addition, the Constitutional Court must rule upon the correctness of the procedure followed.<sup>152</sup> The State Duma may initiate an action of impeachment by a suggestion of one-third of its deputies, which must be 'in

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<sup>141</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 383.

<sup>142</sup> Ibid.

<sup>143</sup> *The Constitution of the Russian Federation 1993* art 91. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>144</sup> Ibid art 92:1.

<sup>145</sup> Ibid art 92:2. This is done in accordance with the Federal law of 12 February 2001 'o garantiakh Prezidentu Rossiiskoi Federatsii, prekrativshemu ispolnenie svoikh polnomochii, I chlenam ego sem'i' ('about guarantees to the President of the Russian Federation and to his family members, having suspended the execution of his powers').

<sup>146</sup> Ibid.

<sup>147</sup> Ibid art 92:3.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid art 93:1.

<sup>150</sup> Ibid.

<sup>151</sup> *The Constitution of the Russian Federation 1993* art 93:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>152</sup> Ibid.

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the presence of the opinion of a special commission formed by the State Duma'.<sup>153</sup> The action will be moved forward to the Federation Council by a two-thirds vote of the total number of the deputies of the State Duma. The Federation Council must reach a decision within three months after the charge is passed by the State Duma.<sup>154</sup> If a decision is not reached within the three months by the Federation Council, the action is considered rejected. A charge of impeachment is approved by a two-thirds vote of the total number of the members of the Federation Council within three months after the State Duma pass the charge.<sup>155</sup> The impeachment process has only been initiated once, against President Yeltsin in 1999.<sup>156</sup>

### **The Federal Assembly**<sup>157</sup>

The Federal Assembly is the Parliament of the Russian Federation,<sup>158</sup> and is a permanent body.<sup>159</sup> It is the 'supreme representative and legislative body of the Russian Federation'.<sup>160</sup> The Federal Assembly consists of two bodies or chambers; namely, 'the Federation Council and the State Duma'.<sup>161</sup> These chambers sit separately<sup>162</sup> and their sessions are open.<sup>163</sup> However, they may sit in joint sessions to hear addresses of the President and the Constitutional Court of the Russian Federation, 'and speeches by leaders of foreign states'.<sup>164</sup>

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<sup>153</sup> Ibid art 93:2.

<sup>154</sup> *The Constitution of the Russian Federation 1993* art 93:3. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>155</sup> Ibid art 93:2-3.

<sup>156</sup> President Yeltsin was exposed to the impeachment process in 1999. The result of the charges of impeachment, after the one-third of the deputies of the State Duma had initiated the charge, was 283 deputies of the State Duma for the charges. The required number of deputies in May 1999 was 300 for a charge of impeachment to be passed to the Federation Council. Thus, President Yeltsin ducked the charge in March 1999. Source: Nupi Centre for Russian Studies, *Impeachment Efforts Fall Short by 17 Votes* (1999) Chronology of Events Norwegian Institute of International Affairs <<http://www.nupi.no/cgi-win/Russland/krono.exe?4166>> at 1 November 2006.

<sup>157</sup> *The Constitution of the Russian Federation 1993* ch 5. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>158</sup> Ibid art 94.

<sup>159</sup> Ibid art 99:1.

<sup>160</sup> Ibid art 94.

<sup>161</sup> Ibid art 95:1.

<sup>162</sup> Ibid art 100:1.

<sup>163</sup> Ibid art 100:2. However, each chamber may choose to hold closed sessions if supported by its rules, art 100:2.

<sup>164</sup> Ibid art 100:3.

Deputies of both chambers possess immunity while in office.<sup>165</sup> Thus, meaning 'a deputy may not be detained, arrested, searched except when detained in the act of perpetrating a crime'.<sup>166</sup> However, a deputy may be personally searched only if 'authorised by law to ensure safety of other people'.<sup>167</sup> Nonetheless, a deputy may be stripped of his or her immunity on recommendation by 'the Prosecutor-General of the Russian Federation by the corresponding chamber of the Federal Assembly'.<sup>168</sup>

The cost of entering the Moscow Duma is substantial. Some candidates spend millions of dollar to secure a seat. It seems very surprising if people become members of the Federal Assembly for the very moderate salary, a small office, and a secretary. However, a very good method to avoid prosecution or investigation for tax fraud or illegal activities is to become a member of the Federal Assembly. At the same time, they can lobby for organizations or groups, to which that they belonged when these illegal activities was committed. On the 2005 Forbes list of Russia's 100 richest were seven upper house members, six State Duma deputies, two members of regional legislature, two presidents of Russian internal republics and a governor.<sup>169</sup> Each chamber is subsequently explained.

### **The Federation Council**

The Federation Council is formed by taking two deputies from each subject of the Russian Federation; 'one from the representative and one from the executive bodies of state authority'.<sup>170</sup> The procedure of forming the Federal Council is executed according to the Constitution<sup>171</sup> and the Federal law of 5 August 2000 'about the order of formation of the Federation Council of the Federal Assembly of the Russian Federation'.<sup>172</sup>

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<sup>165</sup> Ibid art 98:1.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid art 98:2.

<sup>169</sup> MosNews, *Prosecutors Call for an End to Presumption of Innocence for Russian Civil Servants* (2005) MosNews.com/NEWS

<<http://www.mosnews.com/news/2005/04/22/kolesnduma.shtml>> at 28 April 2007.

<sup>170</sup> *The Constitution of the Russian Federation* 1993 art 95:2. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>171</sup> Ibid art 96:2, stating: 'the procedure for forming the Federation Council...shall be established by federal law'.

<sup>172</sup> The Federal law of 5 August 2000 'O poriadke formirovaniia Soveta Federatsii Federal'nogo Sobraniia Rossiiskoi Federatsii' SZ RF. 2000. No 32. Art. 3336; 2004. No 51. Art. 5128.

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It is important to keep in mind that President Putin introduced the Federal Law No. 159 FZ,<sup>173</sup> which gives the President of the Russian Federation the right to nominate the heads of subjects in Russia. Thus, the President of the Russian Federation appoints the executive body of the subject that appoints the member of the Federal Council. It is not difficult to see the effect of a President friendly Governor appointing according to the President's instructions a President friendly member of the Federation Council. The President cannot dissolve the Federation Council and friendly appointed members can make the President's time in power smoother. This network of people appointed by the President can become quite substantial and may severely undermine the principle of independence and separation of powers, which a democracy should value dearly.

The Chairman of the Federation Council and its deputies are elected from the members of the aforementioned chamber.<sup>174</sup> They 'shall preside over the sessions and supervise the internal rules of the chamber'.<sup>175</sup> The Federation Council 'shall adopt its own rules and solve questions of internal organization and work'.<sup>176</sup> The Federation Council 'shall form committees and commissions, exercise parliamentary supervision over issues within their jurisdiction and hold parliamentary hearings'.<sup>177</sup>

The Federation Council may pass resolutions on issues within its jurisdiction of the Constitution,<sup>178</sup> which will be adopted by a majority vote of all deputies of the Federation Council.<sup>179</sup> Article 102:1 of the Constitution states the jurisdiction of the Federal Council, which shall include:

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<sup>173</sup> The Federal Law No.159-FZ of 11 December 2004 'O Popravkakh k Federalnomu Zakonu 'ob obshchikh printsipakh organizatsii zakonodatel'nykh (predstavitel'nykh) ispolnitel'nykh organov gosudarstvennoivlasti Rossiiskoi Federatsii I Federalnomu Zakonu 'Ob osnovnykh garantiakh izbiratel'nykh prav i prava na uchastie v referendumе grazhdan Rossiiskoi Federatsii''; about amendments to the Federal Law on general principles of the organization of legislative (representative) and executive organs of state power in the subjects of the Russian Federation and to the Federal Law on the main guarantees of electoral rights and a right to participate in a referendum of citizens in the Russian Federation' SZ RF 2004, No.29 item 4950.

<sup>174</sup> *The Constitution of the Russian Federation* 1993 art 101:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>175</sup> Ibid art 101:2.

<sup>176</sup> Ibid art 101:4.

<sup>177</sup> Ibid art 101:3.

<sup>178</sup> Ibid art 102:2.

<sup>179</sup> Ibid art 102:3.



- a) approval of changes of borders between the subjects of the Russian Federation;
- b) approval of the decree of the President of the Russian Federation on the introduction of martial law;
- c) approval of the decree of the President of the Russian Federation on the introduction of a state of emergency;
- d) making decisions on the possibility of the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation;
- e) calling of elections of the President of the Russian Federation;
- f) impeachment of the President of the Russian Federation;
- g) the appointment of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, and the Supreme Court of Arbitration of the Russian Federation;
- h) the appointment to office and the removal from office of the Prosecutor-General of the Russian Federation;
- i) the appointment to office and removal from office of the deputy Chairman of the Accounting Chamber<sup>180</sup> and half of its staff of its auditors.<sup>181</sup>

### *The State Duma*

‘The State Duma shall consist of 450 deputies’<sup>182</sup> and are elected for a four-year term.<sup>183</sup> Any Russian citizen, who is age 21 or older is eligible to participate in the election, ‘may be elected deputy to the State Duma’.<sup>184</sup> However, that same person

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<sup>180</sup> Ibid art 101:5. The Accounting Chamber is formed by the Federal Council and the State Duma to exercise control over the federal budget. The rules of membership, rules of order and membership is governed by Federal law of 11 January 1995 ‘O Chetnoi palate Rossiiskoi Federatsii’ (s izmeneniiami i dopolneniiami) (‘about the Accounting Chamber of the Russian Federation’ (with amendments and annexations)) SZ RF. 1995. No 3. Art. 167.

<sup>181</sup> *The Constitution of the Russian Federation* 1993 art 102:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>182</sup> Ibid art 95:3. The deputies of the State Duma are elected in accordance with the Federal law of 18 May 2005 ‘O bivorakh deputatov Gosudarstvennoi Dumi Federal’nogo Sobraniia Rossiiskoi Federatsii’ (‘about elections of deputies of the State Duma of the Federal Assembly of the Russian Federation’) SZ RF. 2005. No 21. Art 1919.

<sup>183</sup> Ibid art 96:1.

<sup>184</sup> Ibid art 97:1.

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may not be a deputy to the Federation Council. In addition, a State Duma deputy cannot hold office in 'any other representative body of state power or [in] bodies of local self-government'.<sup>185</sup> The office as deputy of the State Duma is a full-time and professional position. Thus, 'deputies to the State Duma may not be employed in the civil service or engage in any activities for remuneration other than teaching, research or other creative activities'.<sup>186</sup>

The State Duma is obliged to 'hold its first session on the 30<sup>th</sup> day after its election',<sup>187</sup> and 'shall be opened by the oldest deputy'.<sup>188</sup> The powers of the old State Duma will cease to have effect 'from the start of the work of the new State Duma'.<sup>189</sup>

The Chairman of the State Duma and the Chairman's deputies are elected from the members of the aforementioned chamber.<sup>190</sup> They 'shall preside over the sessions and supervise the internal rules of the chamber'.<sup>191</sup> The State Duma 'shall adopt its own rules and solve questions of internal organization and work'.<sup>192</sup> The State Duma 'shall form committees and commissions, exercise parliamentary supervision over issues within their jurisdiction and hold parliamentary hearings'.<sup>193</sup>

The State Duma may pass resolutions on issues within its jurisdiction of the Constitution,<sup>194</sup> which will be adopted by a majority vote of all deputies of the State Duma.<sup>195</sup> Article 103:1 of the Constitution states the jurisdiction of the State Duma, shall include:

- a) granting consent to the President of the Russian Federation for the appointment of the Chairman of the Government of the Russian Federation;
- b) decisions on confidence in the government of the Russian Federation;
- c) the appointment and dismissal of the Chairman of the Central Bank of the Russian Federation;

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<sup>185</sup> Ibid art 97:2.

<sup>186</sup> Ibid art 97:3.

<sup>187</sup> Ibid art 99:2. However, the President of the Russian Federation may convene a session on an earlier day.

<sup>188</sup> Ibid art 99:3.

<sup>189</sup> Ibid art 99:4.

<sup>190</sup> Ibid art 101:1.

<sup>191</sup> Ibid art 101:2.

<sup>192</sup> Ibid art 101:4.

<sup>193</sup> Ibid art 101:3.

<sup>194</sup> Ibid art 103:2.

<sup>195</sup> Ibid art 103:3.

- d) the appointment and dismissal of the Chairman of the Accounting Chamber<sup>196</sup> and half of its staff of auditors;
- e) the appointment and dismissal of the Plenipotentiary for Human Rights acting in accordance with the Federal Constitutional Law;
- f) granting amnesty;
- g) bringing charges against the President of the Russian Federation for his impeachment.<sup>197</sup>

### **The Process of Passing Legislation**

The first step of the passing of a bill is the 'right of legislative initiative'.<sup>198</sup> This right is held by the President of the Russian Federation, the Federation Council, and the individual members of the Federation Council, a group of no less than one-fifth of the State Duma deputies,<sup>199</sup> the Government and the 'legislative (representative) bodies of the subjects of the Russian Federation.'<sup>200</sup> Nonetheless, the Constitutional Court, the Supreme Court, and the Supreme Court of Arbitration of the Russian Federation may initiate passing bills within their respective jurisdictions.<sup>201</sup>

The second step requires that a 'draft law shall be introduced in the State Duma'.<sup>202</sup> The exceptions are bills that introduce taxes, abolish taxes, except tax paying, concerning state loans, change financial obligations of the state, provide 'for expenditure covered from the federal budget'.<sup>203</sup> The exceptions require the draft law to be accompanied with a resolution of the Government of the Russian Federation when introduced in the state Duma.

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<sup>196</sup> Ibid art 101:5, see footnote 169 about the Accounting Chamber.

<sup>197</sup> *The Constitution of the Russian Federation 1993* art 103:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>198</sup> Ibid art 104:1.

<sup>199</sup> O. E. Kutafin (ed), *Konstitutsiia Rossiiskoi Federatsiii (Ofitsial'noi tekst na 1 fevralia 2004 g.) Postateinii Nauchno-Prakticheskii Kommentarii Kollektiva Uchenikh-Pravovedov*, (The Constitution of the Russian Federation (official text of 1 February 2004) clause-by-clause academic legal review by the group of legal scholars ) (2th ed, 2003-2004) p. 267.

<sup>200</sup> *The Constitution of the Russian Federation 1993* art 104:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid art 104:2. The particulars that are required stated on the bill, when introducing a draft law to the State Duma, is stated in the Rules of Procedure of the State Duma of the Federal Assembly of 12 January 1998, (Reglament Gosudarstvennoi Dumi Federal'nogo Sobraniia RF).

<sup>203</sup> Ibid art 104:3.

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The third step concerns the passing of draft law by the Federal Assembly. The State Duma may only pass federal laws.<sup>204</sup> They are passed, unless the Constitution requires otherwise, by the 'a majority of votes of all deputies of the State Duma'.<sup>205</sup> A State Duma passed bill must be handed to the Federal Council within five days for review.<sup>206</sup> The bill passes if either more than half of the deputies of the Federation Council vote for the bill, or the Federation Council does not consider the bill within fourteen days.<sup>207</sup> Upon rejection of a bill by the Federation Council, 'the chambers may set up a conciliatory commission to settle the differences'.<sup>208</sup> If amended, a bill must be passed to the State Duma for consideration.<sup>209</sup> However, the State Duma can override the decision of the Federation Council if, 'in the second voting, at least two-thirds (i.e. 300) of the total number of deputies to the State Duma vote for it'.<sup>210</sup>

The fourth step concerns presidential approval and publication. The Federation Council must send a passed bill within five days to the President of the Russian Federation for signing and publication.<sup>211</sup> The President shall sign and publish the bill within fourteen days.<sup>212</sup> Thus, a bill becomes federal law. The President may reject a bill within the fourteen days. The bill will then be passed through the State Duma and the Federation Council. However, if the bill is passed, during its second hearing, 'by a majority of no less than two-thirds of the total numbers of deputies of the Federation Council and the State Duma',<sup>213</sup> the bill must be signed and published by the President of the Russian Federation within seven days. Hence, the Federal Assembly may override a presidential veto.

Finally, federal constitutional laws may be passed to clarify certain issues in relation to the Constitution.<sup>214</sup> The State Duma may pass such bills by at least two-thirds of its

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<sup>204</sup> Ibid art 105:1.

<sup>205</sup> Ibid art 105:2.

<sup>206</sup> Ibid art 105:3.

<sup>207</sup> Ibid art 105:4. The Federation Council must consider a federal bill passed by the State Duma if concerning: 'the federal budget; federal taxes and levies; financial, monetary, credit and customs regulations and money emission; ratification and denunciation of international treaties of the Russian Federation; the status and protection of the state boarder of the Russian Federation; war and peace. Art 106.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid art 105:5

<sup>211</sup> *The Constitution of the Russian Federation* 1993 art 107:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>212</sup> Ibid art 107:2.

<sup>213</sup> Ibid art 107:3.

<sup>214</sup> Ibid art 108:1.

total number of deputies. The Federation Council needs a majority of at least three quarters of its number of deputies to pass such a bill. A federal constitutional bill will become law upon its signing and publication by the President, which must be undertaken within fourteen days by the President of the Russian Federation.<sup>215</sup>

### **Dissolving the State Duma**

The President of the Russian Federation may dissolve the State Duma in cases of three rejections of the candidate for Chairman of the Government<sup>216</sup> or no-confidence in the Government of the Russian Federation.<sup>217</sup> However, dissolution of the State Duma for a no-confidence vote in the Government cannot be exercised within the first year after the election of the State Duma.<sup>218</sup> The President must select the date of the election for the new State Duma 'so that the newly-elected State Duma shall convene not later than four months from the time of dissolution'.<sup>219</sup>

There seems to be constitutional limitations on the person who the President may nominate as the Prime Minister and if the State Duma rejects to many times, they may be dissolved. A play with unacceptable candidates may take place to either create a situation to dissolve the State Duma or the candidate will become Prime Minister. Not the ideal relationship between the President's and the State Duma's power.

The President of the Russian Federation may not dissolve the State Duma during the time the State Duma has brought accusations against the President and until the matter has been decided by the Federation Council.<sup>220</sup> The President may also not

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<sup>215</sup> Ibid art 108:2.

<sup>216</sup> Ibid art 111. The State Duma elects the Chairman of the Government on the suggestions by the President of the Russian Federation. If the State Duma rejects candidates three times, the President 'shall appoint a Chairman of the Government of the Russian Federation, dissolve the State Duma and call a new election'; art 111:3.

<sup>217</sup> Ibid art 117. Firstly, the State Duma may, by a simple majority of its deputies, express non-confidence in the Government. If the State Duma expresses non-confidence in the Government again within three months, the President must either announce the resignation of the Government or dissolve the State Duma; art 117:3. Secondly, if the Chairman of the Government pose the question of non-confidence to the State Duma and the State Duma votes for a non-confidence action, then 'the President shall within seven days make a decision about the resignation of the Government of the Russian Federation or about the dissolution of the State Duma and call a new election'; art 117:4.

<sup>218</sup> Ibid art 109:3.

<sup>219</sup> Ibid art 109:2.

<sup>220</sup> Ibid art 109:4.

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dissolve the State Duma during a period of state emergency or martial law, and within the six last months of the President's time in office.<sup>221</sup>

The fact that the President may dissolve the State Duma gives the President an upper hand in relation to dealings with the State Duma. In particular, considering the fact that some members of the State Duma will no longer be immune for investigation or prosecution in regards to illegal activities. It is unfortunate that the legislative body of the Russian Federation relies on the President, the executive body, for its existence.

### **The Government of the Russian Federation**<sup>222</sup>

The Government of the Russian Federation exercises the executive power of the Russian Federation,<sup>223</sup> and consists of the Chairman, the Deputy Chairman, and the federal ministers.<sup>224</sup> The office of the Chairman of the Russian Federation is the same as the office of the Prime-Minister of the Russian Federation and is currently held by Mikhail Fradkov.<sup>225</sup> The Chairman is appointed by the President with consent of the State Duma.<sup>226</sup>

The President of the Russian Federation must submit his or her candidate for the Chairman of the Government within two weeks after being elected to office as the President or after the resignation of the Government.<sup>227</sup> The State Duma must consider the nominated candidate within one week from the nomination. The President must resubmit his or her candidate within one week if the State Duma rejects the President's candidate.<sup>228</sup> However, if candidates are rejected three times,

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<sup>221</sup> Ibid art 109:5.

<sup>222</sup> *The Constitution of the Russian Federation 1993* ch 6. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>223</sup> Ibid art 110:1. The position and work of the Government of the Russian Federation in the 1993 Constitution is defined and regulated, in accordance with article 114:2 of the 1993 Constitution, by the Federal constitutional law of 17 December 1997 'O Pravitel'stve Rossiiskoi Federatsii' (s izmeneniiami i dopolneniiami) ('about the Government of the Russian Federation' (with amendments and annexations)) SZ RF. 1997. No 51. Art. 5712; 1998. No 1. Art. 1; 2004. No 25. Art. 2478.

<sup>224</sup> Ibid art 110:2.

<sup>225</sup> The Government of the Russian Federation, *Internet Portal of the Government of the Russian Federation* (2006) <<http://www.government.ru/government/>> at 5 November 2006.

<sup>226</sup> *The Constitution of the Russian Federation 1993* art 111:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>227</sup> Ibid art 111:2.

<sup>228</sup> Ibid.

the President shall appoint the Chairman, 'dissolve the State Duma and call a new election'.<sup>229</sup>

The Chairman of the Government, within one week from approval, proposes the structures of the federal bodies of executive power to the President of the Russian Federation.<sup>230</sup> Additionally, the Chairman proposes candidates for the offices of Deputy Chairmen and federal ministers.<sup>231</sup> The Chairman of the Government also determines the working guidelines and organizes the work of the Government pursuant to the Constitution, federal laws, and presidential decrees.<sup>232</sup>

The express constitutional jurisdiction of the Government of the Russian Federation is stated in article 114:1, that the Government shall:

- a) develop and submit the federal budget to the State Duma and ensure compliance therewith; submit a report on the execution of the federal budget to the State Duma;
- b) ensure the implementation in the Russian Federation of a uniform financial, credit and monetary policy;
- c) ensure the implementation in the Russian Federation of a uniform state policy in the field of culture, science, education, health, social security and ecology;
- d) manage federal property;
- e) adopt measures to ensure the country's defence, state security and the implementation of the foreign policy of the Russian Federation;
- f) implement measures to ensure legality, the rights and freedoms of citizens, protect property and public law and order and control crime;
- g) exercise any other powers vested in it by the Constitution of the Russian Federation, federal laws and the decrees of the President of the Russian Federation.<sup>233</sup>

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<sup>229</sup> Ibid art 111:3.

<sup>230</sup> Ibid art 112:1.

<sup>231</sup> Ibid art 112:2.

<sup>232</sup> Ibid art 113. One such example is the presidential decree of 9 March 2004 'O sisteme i strukture federal'nikh organov ispolnitel'noi vlasti' (about the system and structure of the federal organs of executive power) SZ RF. 2004. No 11. Art. 945.

<sup>233</sup> *The Constitution of the Russian Federation 1993* art 114:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

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The Government of the Russian Federation may issue decrees and orders.<sup>234</sup> The decrees and orders are 'binding throughout the Russian Federation',<sup>235</sup> and are published in the 'Rossiskoi gazete' (the Russian Gazette) and in the 'Sobranii zakonodatel'stva Rossiiskoi Federatsii' (collection of legislation of the Russian Federation).<sup>236</sup> However, the President may repeal decrees and executive orders of the Government, 'if they contravene the Constitution of the Russian Federation, federal laws and decrees of the President of the Russian Federation'.<sup>237</sup>

The Government of the Russian Federation is obligated to resign 'before the newly-elected President of the Russian Federation'.<sup>238</sup> Nonetheless, the Government may hand its resignation to the President, who may, personally in the capacity of President,<sup>239</sup> either accept or reject the resignation.<sup>240</sup> The State Duma may express no-confidence in the Government. The question of no-confidence may also be posed by the Chairman of the Government to the State Duma.<sup>241</sup> However, if the Government resigns or lays down its powers it shall continue working, under the direction of the President, until a new government is formed.<sup>242</sup>

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<sup>234</sup> Ibid art 115:1. The decrees and orders of the Government must be according to the Constitution, federal laws and presidential normative decrees. The order for publicising and for acts entering into legal effect is regulated by the presidential decree of 23 May 1996 'O poriadke opublikovaniia i vstupleniia v silu aktov Prezidenta Rossiiskoi Federatsii, Pravitel'stva Rossiiskoi Federatsii i normativnykh pravovykh aktov federal'nykh organov ispolnitel'noi vlasti' (about the order of publication and entry into force of acts of the President of the Russian Federation, the Government of the Russian Federation and normative legal acts of the federal organs of executive power) SZ RF. 1996. No 22. Art. 2663.

<sup>235</sup> Ibid art 115:2.

<sup>236</sup> O. E. Kutafin (ed), *Konstitutsiia Rossiiskoi Federatsiii (Ofitsial'noi tekst na 1 fevralia 2004 g.) Postateinii Nauchno-Prakticheskii Kommentarii Kollektiva Uchenikh-Pravovedov*, (The Constitution of the Russian Federation (official text of 1 February 2004) clause-by-clause academic legal review by the group of legal scholars ) (2th ed, 2003-2004) p. 285.

<sup>237</sup> *The Constitution of the Russian Federation* 1993 art 115:3. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>238</sup> Ibid art 116.

<sup>239</sup> Ibid art 117:2.

<sup>240</sup> Ibid art 117:1.

<sup>241</sup> Ibid art 117:3-4. See footnote 206 for details surrounding a non-confidence vote by the State Duma of the Government.

<sup>242</sup> Ibid art 117:5.



## The Judiciary<sup>243</sup>

The Judiciary of the Russian Federation is based on independence and the general principle of democracy.<sup>244</sup> Justice in the Russian Federation is only administrated by courts of law,<sup>245</sup> and the judicial power is exercised by 'constitutional, civil, administrative and criminal'<sup>246</sup> proceedings. However, the creation of extraordinary courts is not permitted.<sup>247</sup> The judiciary system is established by the Constitution and the federal constitutional law.<sup>248</sup> Only sufficient support from the federal budget may finance the courts, which 'shall ensure full and independent administration of justice'.<sup>249</sup>

Judges of the Courts shall be independent and shall only submit to the Constitution and the federal law.<sup>250</sup> In the case of illegal acts by the government or any other body, the court of law shall rule appropriately in accordance with law.<sup>251</sup> A citizen of the Russian Federation holding a law degree, aged 25 years or over, and who has more

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<sup>243</sup> Ibid ch 7.

<sup>244</sup> I.E. Kozlova and O. E. Kutafin, *Konstitutsionnoe Pravo Rossii* (Constitutional Law of Russia) (4th ed, 2006) p. 529.

<sup>245</sup> *The Constitution of the Russian Federation 1993* art 118:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>246</sup> Ibid art 118:2.

<sup>247</sup> Ibid art 118:3.

<sup>248</sup> *The Constitution of the Russian Federation 1993* art 118:3. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006. The federal constitutional law regulating the Judiciary is that of 31 December 1996 'O sudebnoi sisteme Rossiiskoi Federatsii' (s izmeneniami i dopolneniami) ('about the judicial system of the Russian Federation' (with amendments and annexations)) SZ RF. 1997. No 1. Art. 1.

<sup>249</sup> Ibid art 124. The main regulation is the Federal law of 10 February 1999 'O finansirovanii sudov Rossiiskoi Federatsii' ('about the financing of courts of the Russian Federation'). The regulations of the individual courts are also relevant.

<sup>250</sup> Ibid art 120:1.

<sup>251</sup> Ibid art 120:2.

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than five years experience in the legal profession is eligible to become a judge.<sup>252</sup> Judges cannot be replaced,<sup>253</sup> and they possess legal immunity.<sup>254</sup>

All trial proceedings of all courts of law of the Russian Federation are open.<sup>255</sup> 'Hearing of criminal cases in courts of law in absentia shall not [generally] be allowed.'<sup>256</sup> 'Judicial proceedings shall be held on the basis of controversy and equality of the parties'.<sup>257</sup> However, jury trials are only held if so stated by the federal law.<sup>258</sup>

### The Individual Courts

'The Constitutional Court of the Russian Federation consists of 19 judges'.<sup>259</sup> The Constitutional Court considers cases within its jurisdiction upon request by the President, the State Duma, one-fifth of Federation Council members or State Duma

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<sup>252</sup> Ibid art 119. This must be read subject to further requirements that may be introduced in the federal law. Example: the law of the Russian Federation of 26 June 1992 'O statute sudei v Rossiiskoi Federatsii' (s izmeneniiami i dopolneniiami) ('about the status of judges in the Russian Federation' (with amendments and annexations)) VSND RF and VS RF. 1992. No 30; Art. 1792. Articles 3 and 4 of this law state that judges of the Supreme Court and the Higher Arbitration Court must be a citizen of the Russian Federation, aged 35 years or older, and hold more than ten years of experience in the legal profession.

<sup>253</sup> Ibid art 121:1. The power of a judge may only be terminated or suspended under the federal law; art 121:2. The retirement age of a judge of the Constitutional Court is 70 years old. Judges of the remaining courts retire at the age of 65 year; the Federal constitutional law of 5 April 2005 'O vnesenii izmenenii v Federal'nii konstitutsionnii zakon "O sydebnnoi sisteme Rossiiskoi Federatsii"' ('about introduction of amendments into the federal constitutional law "about the judicial system of the Russian Federation"') SZ RF. 2005. No. 15. Art. 1274.

<sup>254</sup> Ibid art 122:1. Criminal proceeding of a judge can only be initiated under federal law; art 122:2.

<sup>255</sup> Ibid art 123:1. In some circumstances under the federal law, hearing of certain cases may be in camera.

<sup>256</sup> Ibid art 123:2. Certain exceptions are laid down in the federal law.

<sup>257</sup> *The Constitution of the Russian Federation* 1993 art 123:3. [English translation] by Garant-Service <<http://www.constitution.ru/en/10003000-08.htm>> at 7 October 2006. One of the two major companies engaging in publishing cases, legislation, comments, and academic references. The Embassy translation of this article is not quite clear.

<sup>258</sup> *The Constitution of the Russian Federation* 1993 art 123:4. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006

<sup>259</sup> Ibid art 125:1. The Constitutional Court is regulated by the Federal constitutional law of 21 July 1994 'O Konstitutsionnom sude Rossiiskoi Federatsii (s izmeneniiami i dopolneniiami) ('about the Constitutional Court of the Russian Federation' (with amendments and annexations)) SZ RF. 1994. No 13. Art. 1447.

deputies, the Government, the Supreme Court and the Higher Arbitration Court of the Russian Federation, and 'bodies of legislative and executive power of the subjects of the Russian Federation'.<sup>260</sup> The Constitutional Court hears cases concerning compliance with the constitution, such as:

- a) federal laws, normative acts of the President of the Russian Federation, the Federation Council, State Duma and the Government of the Russian Federation;
- b) republican constitutions, charters, as well as laws and other normative acts of subjects of the Russian Federation published on issues pertaining to the jurisdiction of bodies of state power of the Russian Federation and joint jurisdiction of bodies of state power of the Russian Federation and bodies of state power of subjects of the Russian Federation;
- c) agreements between bodies of state power of the Russian Federation and bodies of state power of subjects of the Russian Federation, agreements between bodies of state power of subjects of the Russian Federation;
- d) international agreements of the Russian Federation that have not entered into force.<sup>261</sup>

Additionally, the Constitutional Court holds jurisdiction to resolve disputes over jurisdiction 'between the federal state bodies',<sup>262</sup> 'between state bodies of the Russian Federation and state bodies of the subjects of the Russian Federation',<sup>263</sup> and 'between higher state bodies of subjects of the Russian Federation'.<sup>264</sup> Also, the Constitutional Court shall review complaints and requests by courts 'about violation of constitutional rights and freedoms of citizens',<sup>265</sup> and the constitutional application of laws in particular cases. The President, the Federation Council, the State Duma, the Government, and legislative bodies of the subjects may request the Constitutional Court to interpret the Constitution.<sup>266</sup> The Constitutional Court, on request by the Federation Council, 'shall rule on compliance with established procedure when charging the President of the Russian Federation with state treason or other grave

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<sup>260</sup> Ibid art 125:2.

<sup>261</sup> *The Constitution of the Russian Federation* 1993 art 125:2. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>262</sup> Ibid art 125:3 a).

<sup>263</sup> Ibid art 125:3 b).

<sup>264</sup> Ibid art 125:3 c).

<sup>265</sup> Ibid art 125:4.

<sup>266</sup> Ibid art 125:5.

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crime.<sup>267</sup> If any acts, provisions of acts, or international agreements are deemed unconstitutional by the Constitutional Court the acts, provisions, or agreements will lose force and may not be applied or relied upon as legally valid or binding.<sup>268</sup>

The Supreme Court of the Russian Federation is the highest judicial body concerning 'civil, criminal, administrative and other matters'<sup>269</sup> of issues tried under the jurisdiction of the common courts. The Supreme Court has jurisdiction to judicially supervise the activity of the common courts according to federal procedural forms. The Supreme Court shall also 'offer explanations on questions of judiciary practice'.<sup>270</sup>

The Higher Arbitration Court of the Russian Federation is the highest judicial body 'resolving economic disputes and other cases considered by arbitration courts'.<sup>271</sup> The Higher Arbitration Court has jurisdiction to judicially supervise the activity of the arbitration courts according to federal procedural forms. The Higher Arbitration Court also offers 'explanations on questions of judiciary practice'.<sup>272</sup>

The President of the Russian Federation nominates a candidate to the offices of judge of the Constitutional Court, the Supreme Court, and the Higher Arbitration Court. The nomination is passed to the Federation Council, which then makes the appointment.<sup>273</sup> Nonetheless, the President appoints judges of other federal courts.<sup>274</sup> Federal constitutional law states the powers, procedure of formation, and activities of the Constitutional Court, the Supreme Court, the Higher Arbitration Court, and other federal courts.<sup>275</sup>

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<sup>267</sup> Ibid art 125:7.

<sup>268</sup> Ibid art 125:6.

<sup>269</sup> Ibid art 126. The Supreme Court is also regulated by the federal constitutional law of 31 December 1996 'O sudebnoi sisteme Rossiiskoi Federatsii' (s izmeneniiami i dopolneniiami) ('about the judicial system of the Russian Federation' (with amendments and annexations)) SZ RF. 1997. No 1. Art. 1.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid art 127. The Higher Arbitration Court is also regulated by the Federal constitutional law of 28 April 1995 'Ob arbitrazhnikh sudakh v Rossiiskoi Federatsii' ('about arbitrations courts in the Russian Federation') SZ RF. 1995. no 18, art. 1589. Also see Arbitrazhnyi protsessual'nii kodeks Rossiiskoi Federatsii (Arbitrational procedure code of the Russian Federation) of 24 July 2002, SZ RF. 2002. No 30, art. 3012.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid art 128:1.

<sup>274</sup> Ibid art 128:2. Appointments of judges of other federal courts are done 'in accordance with procedures established by federal law.

<sup>275</sup> Ibid art 128:3.

## The Situation

The Russian people in general have little confidence in the judiciary. Judges have a tendency to be biased towards the government or to criminal organizations instead of ruling strictly on the law. In 2004, the speaker of the Federation Council, Sergei Mironov, said that 8 nominees to the post of federal judges in Moscow alone were rejected because they were directly associated with criminal groups.<sup>276</sup> Nonetheless, bias is not a single problem, corruption is one of the major challenges. During the first six months of 2006 the Supreme Qualifying Collegium of Judges reported that 39 judges were removed from the bench and 151 were given warnings in relation to corruption.<sup>277</sup>

Russian judges just received a raise. They are paid well, more than \$3000 USD a month, making them one of the best-paid professions in Russia.<sup>278</sup> However, the courts are only funded through the federal budget creating a reliance on the executive government for adequate funding.<sup>279</sup> This reliance can be used against courts if a certain outcome is desired.

A problem in the Russian judiciary is that close to all judges are educated soviet lawyers. They have been entrenched in a law and methodology that is not currently valid. Current Russian law is based on legal principles quite distinct from Soviet law. However, the current legal mindset of the bench will change over time.

The judiciary and the courts are not respected. Courts in Russia have a history of government and party control. Political officers and members of the Federal Assembly must respect the law and abide by court decisions as a step to change the public opinion of the judiciary. The Mayor of Moscow, Yuri Luzhkov, enacted a soviet concept of a need for residency permits to move to Moscow in the 1990s. The

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<sup>276</sup> Grigory Pasko, *Money Talks: On the Raising Salaries of Russian Judges* (2007) Robert Amsterdam <[http://www.robertamsterdam.com/2007/02/grigory\\_pasko\\_money\\_talks.htm](http://www.robertamsterdam.com/2007/02/grigory_pasko_money_talks.htm)> at 25 April 2007.

<sup>277</sup> Bureau of Democracy, Human Rights and Labour, *Russia Country Reports on Human Rights Practices – 2006* (2007) U.S. Department of State <<http://www.state.gov/g/drl/rls/hrrpt/2006/78835.htm>> at 28 April 2007.

<sup>278</sup> Grigory Pasko, *Money Talks: On the Raising Salaries of Russian Judges* (2007) Robert Amsterdam <[http://www.robertamsterdam.com/2007/02/grigory\\_pasko\\_money\\_talks.htm](http://www.robertamsterdam.com/2007/02/grigory_pasko_money_talks.htm)> at 25 April 2007.

<sup>279</sup> *The Constitution of the Russian Federation* 1993 art 124. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

## THE CONSTITUTIONAL FRAMEWORK OF POLITICAL POWERS OF THE RUSSIAN FEDERATION

Constitutional Court of Russia ruled this 'pass system' unconstitutional. Nonetheless, the Mayor continued this behaviour.<sup>280</sup>

The Russian courts are a bureaucracy. In the Moscow City court a person needs to spend hours standing in line. They accept documents only if they comply strictly with a plethora of conditions, such as dates, stamps, fees, deadlines, particulars etc. The same court may also change venue to an earlier time without notifying one of the parties. However, the prosecution is usually notified and appears without the other party present.<sup>281</sup>

In practice, the President appoints judges in Russia. The same person appoints the head of the law enforcement organ, the Procurator-General. It is not unreasonable to expect that the President will appoint persons whom he trusts. Judges in Russia are trained in the judges-and-procurators departments of the law schools. This may explain why there seems to be a bias by judges towards the procurators, in many cases. Further, the procurators seem to be biased towards the government.

### **The Procurator's Office**

The Procurator's Office is the law enforcement organ of the Russian Federation. The Office is forms 'a single centralized system'.<sup>282</sup> The Procurator-General is at the top of the hierarchy with lower procurators subordinate to higher procurators.<sup>283</sup> The President of the Russian Federation nominates the Procurator-General and passes the nomination to the Federation Council, which appoints the Procurator-General.<sup>284</sup> The Procurator-General appoints the procurators of the subjects 'after consultations with its subjects'.<sup>285</sup> The Procurator-General also appoints other procurators.<sup>286</sup> 'The powers, organization and working procedure for the [Procurator's] Office of the Russian Federation shall be determined by federal law'.<sup>287</sup>

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<sup>280</sup> Scott P Boylan, 'The Status of the Judicial Reform in Russia' (1998) 13 *American University International Law Review* 1327, 1336.

<sup>281</sup> Grigory Pasko, *Money Talks: On the Raising Salaries of Russian Judges* (2007) Robert Amsterdam <[http://www.robertamsterdam.com/2007/02/grigory\\_pasko\\_money\\_talks.htm](http://www.robertamsterdam.com/2007/02/grigory_pasko_money_talks.htm)> at 25 April 2007.

<sup>282</sup> *The Constitution of the Russian Federation* 1993 art 129:1. [English translation] by the Russian Embassy <<http://www.russianembassy.org/RUSSIA/CONSTIT/>> at 7 October 2006.

<sup>283</sup> Ibid.

<sup>284</sup> Ibid art 129:2.

<sup>285</sup> Ibid art 129:3.

<sup>286</sup> Ibid art 129:4.

<sup>287</sup> Ibid art 129:5. Regulated by the Federal law of 17 November 1995 'O prokurature Rossiiskoi Federatsii' ('about the procurator's office of the Russian Federation') with

Political influence in criminal prosecutions seems often present. Since Russia was in a state of unlawfulness with no apparent presence of the rule of law in the 1990s, many Russian businessmen accumulated wealth by breaching the law. This makes political prosecution ideal. Everybody has committed an offence; thus, anybody may be prosecuted if it seems fit. Once Russia's richest man, Khodorkovsky, was in 2005 sentenced to jail for tax fraud.<sup>288</sup> He was considering running for the 2008 presidential election. However, the conviction will prevent him from running. Khodorkovsky stated that 'judicial power has been turned into a blunt weapon of the authorities'.<sup>289</sup>

Journalism is a very dangerous profession in Russia. The Committee to Protect Journalists state that 13 journalists has been murdered because of their reporting since President Putin assumed power in 2000. Reporters Without Borders says the number is 21.<sup>290</sup> These murders, if investigated, take years and the cases are rarely solved. 7 October 2006 the well-known journalist Politkovskaya was shot dead.<sup>291</sup> She was known for reporting against Putin's policies and the decline of democracy in Russia. No suspect for that killing has been found. There are speculations that this is another journalist murder that will most likely not be solved because of its political sensitivity.

## Conclusion

The Constitution of the Russian Federation is constructed on the two principles of separation of power and democracy. The Constitution creates separate organs of government, which are independent from, but interacts with, each other. The political system formed in the Constitution is, however, not necessarily how the three organs of government work and interact in practice in Russia today.

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amendments of 5 October 2002. However, functions and tasks of the Procurator's Office is also regulated by Criminal Procedure Code of the Russian Federation of 18 December 2001 (Ugolovno-protsessual'nii kodeks RF) with amendments of 31 October 2002; the Federal law of 25 July 1998 'O bor'be s terrorizmom' ('about the fight with terrorism') with amendments of 21 November 2002; the Federal law of 30 May 2001 'O chrezvichainom polozenii' ('about a state of emergency'); the federal law of 25 July 2002 'O protivodeistvii ekstremistskoi deiatel'nosti' ('about counteractions of extremist activity') and similar acts.

<sup>288</sup> Dr. Constantin Gurdgiev, 'The Bad and the Ugly from Moscow' (2005) *Trinity College Dublin*, 1.

<sup>289</sup> *Ibid* 2.

<sup>290</sup> Nabi Abdullaev, 'Counting the Dead a Dicey Job' *Moscow Times* (Moscow), 9 April 2007, Issue 3632, p. 1.

<sup>291</sup> Anne Applebaum, foreword to Anna Politkovskaya 'Putin's Russia' (2007).