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RUSSIAN CONSTITUTIONAL DEVELOPMENT: FORMAL AND INFORMAL PRACTICES

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Transitional constitutionalism remains the subject of intensive political controversies. On the ground of the Project realized by the Institute of Law and Public Policy (Moscow) this article presents the analysis of the basic constitutional principles (pluralism, separation of powers, federalism, independence of justice, the guarantees of political rights and freedoms) describing the changing character of their implementation in different areas of constitutional practices – legislation, constitutional justice, administrative activity and informal practices and the comparative level of constitutional deviations in each of them. The important new acquirement of this research is the concept and methodology of the constitutional monitoring and recommendations for the full-scale reforms in key areas of Russian constitutional and political settlement. The author shows that the true choice of modern society is not the dilemma - constitutionalism versus its negation but the choice between real and sham constitutionalism with a big variety of intermediate options between them. It is precisely the area, which the author defines as a transitional type of constitutionalism, the field of collision of different political stakeholders. This is an area of unstable equilibrium where the implementation of different legal strategies and technologies may produce a definitive effect.

JEL Classification: Z

Keywords: The Russian Constitution, constitutional principles, legislation, justice, administration, formal and informal practices, constitutional reforms.

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Introduction

The Russian constitution of 1993 has played a critical role in the processes of transition to democracy in Russia and elsewhere. Its adoption has led to the end and definitive renouncement of a grandiose social experiment on building a communist (socialist) society by utilizing physical force. Due to this fact, the current constitution represents a social choice by the Russian society in favor of democracy, liberal values and human rights. On the one hand, this document is a full-fledged representation of systemic changes seen by the end of the twentieth century worldwide. On the other hand, it is an independent document that to a large extent has determined the course of governmental changes in today's Russia and in other post-Soviet countries. Contemporary discussions of the Russian constitution, however, put aside the issues of to what extent the constitution has reflected transitional processes around the world; how the process of constitutional modernization has (or has not) fitted into the context of post-Soviet social development in Eastern Europe; how the constitution has impacted on social changes occurring throughout Russia; what areas of social tensions have been revealed during the course of constitutional development; and, finally, given all the above mentioned, what are the prospects for Russia's constitutional system in the future.

Speaking about the significance and prospects of the 1993 constitution, one should look at it from three perspectives: comparative (commonalities and particularities in Russian constitutional development); historical (the past, present and future of the Russian constitution) and functional (how norms correlate with reality and what mechanisms are used for enhancing social efficiency of the constitution). We believe that an analysis based on these three factors will help answer a widely debated issue of the advisability and prospects of constitutional reform in Russia.

The comparative analysis is conducted, horizontally and vertically, on the basis of methods employed by the contemporary sociology of law that primarily investigates the way legal rules operate in society. This approach seems to be highly relevant to Russia where the constitutional crisis of transitional period was simultaneously a political crisis affecting economic, social, national, cultural and legal aspects. Therefore, it is necessary to draw a comparison between constitution (in a strictly legal sense of the term) and constitutionalism (a social movement seeking to transform constitutional norms into reality). There emerges a situation resembling the theory of Rudolf Stammler, according to which the formal aspects of law are far more important than the real ones. Law, to some extent, outpaces reality, hence evolving into *a priori* category, formal logical structure that is independent of society's (social) reality and becomes an accessory. Yet, law by itself can influence society's reality through

producing a variety of strategies for regulating and restricting people's reality, which are based on a purposeful goal setting. Any changes to society's reality (social relations) should be therefore introduced through rational modification of legal rules. Under this approach, the constitution acts as an independent, indispensable element of institutionalization of new socio-economic relations, which possibly could both accelerate and hamper their development. The constitutional form is still searching for its social content, an idea that has not materialized yet.

This approach makes it possible to interpret the very attitude towards the constitution as a motive of social behavior, and to analyze it pursuant to the theory of rational choice. It also provides an opportunity for reviving the theory of the social contract and for creating a metalaw, i.e. a specific socio-cultural reality enabling one to adapt rational legal rules in the conditions of irrational legal behavior (or legal nihilism). Finally, this approach permits analyzing the process of transition as the dynamics of dissemination of constitutional principles, whereby changing the entire political and legal reality (particularly, by way of the so-called constitutionalization of branch law). Some of the countries apply the notion of "political constitution" that conveys the fundamental commonality of objectives pursued by law and politics in relation to creation of a new social ethics in a democratic society.

Along these lines, we are going to explore the genesis, relevancy and future prospects of the Russian constitution. To examine these aspects, we have formulated the following problems: constitution in the context of worldwide transitional processes from authoritarianism to democracy; a constitutional revolution in Russia; the Constitution of the Russian Federation as a turning point in establishing civil society and law-based state in Russia; constitution and federalism; a form of government and a type of political regime in Russia; potential and strategies for constitutional reform in present-day Russia [Medushevsky 2006].

The research project "Twenty years of the democratic path: the constitutional order in contemporary Russia", realized by the Institute of Law and Public Policy (ILPP) in 2011-2013, focuses on the fundamental constitutional principles, reflects the structure and logic of the country's constitutional development. On the methodological ground of the cognitive jurisprudence, comparative jurisprudence, sociology of law and political sciences the expert group conducted a systematic analysis of values, principles and norms, reconstructed the logic of their formation and systematic evolution, researched the degree of their practical implementation and the main tendencies of the Post-Soviet political transformation after the adoption of the Russian Constitution of 1993. Results of the Project were presented in recent publications of the Institute – "Fundamentals of the Russian constitutional order: twenty years of development" (Moscow, ILPP, 2013) [Osnovy konstitucionnogo stroia Rossii 2013]; "Constitutional monitoring: the concept, methods and results of the expert inquiry in Russia in Spring of 2013"

(Moscow, ILPP, 2014) [Konstitucionnyi monitoring 2014]; and also in five issues of the Institute's bulletin – "Monitoring of the constitutional processes in Russia (2011-2012)" [Monitoring konstitucionnych processov 2012].. In the summarized form results of research are presented in the Analytical report for the expert community (Moscow, ILPP, 2014) [Konstitucionnye principy I puti ich realizacii 2014]. In this editions was represented the system of the key definitions of the Project, the explanation of methodology of legal and sociological inquiry, empiric base of research and the argumentation of the proposed conclusions and recommendations.

The original character of the presented approach according our point of view consists in the following: firstly, up to date this is the most systematic and comprehensive research of constitutional principles – from their formation in 1993 to current fulfillment; secondly, the elaborated methodic of the constitutional monitoring and expert inquiry makes it possible to move from simple narrative approach to quantitatively exposed and measurable indicators of constitutional principles implementation, to verify the proposed conclusions on constitutional deviations dynamic; thirdly, to formulate the system of concrete and proof-able recommendations for the further Russian constitutional modernization.

Fairness, equality and proportionality in the current post-Soviet "law-related dispute"

Cognitive-information theory demonstrates that the solution of the problem of humanitarian knowledge consists in investigation of any purpose-oriented human behavior which as developed in empiric reality definitely involves the process of fixation of research activity results – intellectual products. These products as sources of information create the solid ground for reliable knowledge and rational construction of reality images. In contemporary political philosophy three main theory of justice could be verified – the idea of distributive justice (formal equality of possibilities in the formation of legal order) [Rawls, 1971]; the idea of legalistic justice (the priority of the existing norm of positive law over abstract moral norms)[Nozick 1974]; and the idea to combine positive law and legal consciousness of any concrete society as the basis for justice [Macintyre A. 1984].

The last approach involves the broader spectrum of argumentation over relationships between positive law, ethical principles and historical tradition, and of their reciprocal relations and practical implementations. In globalized world this kind of problems actively debates by philosophers [Hare, 1998], moralists [Sandel 2010] and political scientists [Walzer M. 2007]. Juridical constructivism (and political projects to resolve acute problems) is appeared in such

conditions as a creative orientation for the understanding of society transformation process. From the one hand it actively construct a new legal reality, from the other hand it actualize problems of legitimacy of legal decisions. In Post-Soviet transitional period juridical constructivism cover three main dimensions – space, time and the essence of being to demonstrate a sharp conflict between law and justice.

The modern literature gives the principle of fairness three basic interpretations: i) it is understood as the idea of distributive fairness (the formal equality of opportunities within the legal order concept); the idea of legalist justice (the primacy of applicable positive norms over abstract moral principles); and the idea of integrating positive law with the popular traditions of legal consciousness in order to form the foundation for justice. *The principle of proportionality* gives another perspective on the assessment of legal norms and their application in judicial practice, which is based on a relationship between ends and means. It represents an "objective and reasonable" rationale for legal decisions that rely on constitutional provisions, on the one hand, and reject any interpretation leading to disparity, discrimination and therefore violating the principle of justice, on the other. Thus, the *interaction* between the principle of fairness and the principle of proportionality plays a decisive role in the judicial interpretation of law which contemporary scholars define as value, norm and fact [Konstitucionnye principy 2014]. Besides, the comprehensive interpretation of law is only possible in the light of all these three competing parameters. Accordingly, the analysis focuses on those areas of legal regulation where there is some destabilization of a "fair balance" between international law and national law; individual rights and collective interests; or there are various forms of inequality and discrimination in respect of rights and freedoms, their ambiguous interpretation and differential application of respective rules in legislative and judicial practice; as well as problems with politically motivated or selective justice.

A number of problems have become particularly relevant to the post-Soviet society. These include: *a conflict between law and fairness within the legal architecture of post-Soviet reality* (current debates over a relationship between international law and national law; issues of continuity and discontinuity of legal tradition; the proportion of legal and political arguments put forward during the adoption of key laws and court decisions determining the direction of constitutional development) [Konstituciia v postanovleniach 2015]; *tradition versus norm* (issues of conflict of the market economy principle with the principles of equality and welfare state economy in the context of privatization, newly formed property relations and traditionally stereotypical mindsets) [The Transformation and Consolidation of Market Legislation, 2003]; *solidarity and supremacy*: national identity and government structure (the impact of current debates about the nation and national identity on the solution of problems of sovereignty,

citizenship, federalism and bicameralism) [Hosking 2006; Ideologia “osobogo puti”2010]; *law and power*: a form of government and a type of political regime (debates over the conformity of the constitutional framework for human rights, forms of government and the type of political regime with the principles of fairness and proportionality; and the analysis of existing trends and techniques in the transformation of constitutional values and norms) [Power and Legitimacy 2012]; the *cyclic nature of post-Soviet constitutional development* as a manifestation of conflict between the legal consciousness of people (perceptions of justice) and positive law (which at best provides a "moral minimum") [Medushevsky 2012].

The concept of constitutional cycles

The concept of constitutional cycles is intended to describe the relationship between static state and changes occurring within a single constitutional process, to identify its similar phases in various historical periods and cultures, and to explain the mechanisms used for setting up a new constitutional order. Thus, the comparative analysis of big constitutional cycles allows us to identify general and specific features of various legal systems and to establish a relationship between legal norms and institutions in the democratic transformation of society. The essence of transitional dynamics is determined by the dialectics of three phases. In order to interpret them we introduce a new terminology - the notions of deconstitutionalization (undermined legitimacy and repeal of the old constitution), constitutionalization (adopting a new constitution and specifying its norms in the sectoral legislation), and reconstitutionalization (introduction of constitutional amendments bringing current rules in line with former constitutional rules and practices). Hence, the full constitutional cycle means a return to the starting-point of all subsequent changes. That is a question of similarity between phases and not of their repetition (which is practically impossible). The constitutional cycle resembles a dialectical spiral: phases of the new cycle repeat analogous stages of the previous cycle, but at a different qualitative level. [Medushevsky 2005].

The question is: what gears this system towards the proper order of alternating stages? The dynamics stems from a conflict between the law and the social efficiency of constitutional norms. The logic of alternating phases is determined by their various combinations. Moreover, the next combinations, to some extent, are predetermined by the previous ones. The first phase of constitutional cycle (deconstitutionalization) usually implies the rejection of current constitutional rules and shows a conflict between legal regulation (the old one) and social efficiency (based on a new sense of justice and regulatory legitimacy). The second stage (constitutionalization) reflects attempts to reconcile these two factors by adopting a new

constitution (fundamental legal norms are viewed as optimal) by society (the constituent power). Finally, the third phase (reconstitutionalization) usually implies adjusting exaggerated constitutional expectations and leveling constitutional norms with traditional institutions in order to improve their efficiency. This phase may bring an end to the cycle, i.e. restore the pre-crisis situation. As a rule, reconstitutionalization is characterized by three trends. The first trend consists in limiting political space by curbing the activities of political parties. This is achieved through constitutional and other legal methods maintaining the supremacy of one pro-government party over other parties in the area of public policy; and by adopting the legislation compelling parties to strictly observe the constitution (which also undergoes substantial modification). The second trend consists in revising the separation of powers (both horizontal and vertical) with a view to increasing their centralization: restricting federalism; introducing checks and balances systems at the federal level; building the vertical hierarchy of power; instituting the "constitutional" power based on the overwhelming discretionary authorities of the administration. This can be achieved through separating administrative law from the domain of public law and social control (through the adopted legislation on public order, state licensing, greater discretionary powers of administrative institutions and power structures along with limited independence of the judiciary). The coercive administrative supremacy of public law becomes a rationale for reconstitutionalization and concurrently determines its output. Lastly, the third trend shows the prevalence of a special imperial style presidency with the presidential administration ruling over all governmental bodies. Within such a structure, the separation of powers has purely administrative meaning, i.e. a pro-presidential party becomes dominant, especially if lead by a president.

The characteristic trends of reconstitutionalization, to some extent, stem from society's unpreparedness to introduce liberal democracy and its response to the inefficiency of democratic institutions. These trends may have different political meaning but, on the whole, they imply new interpretation of constitutional principles aimed at reinforcing centralism and reducing social control over the government through delegating extra powers to administrative bodies within the vertical hierarchy of power and, eventually, to the head of state. Comparative analyses show that the constitutional cycle completed during reconstitutionalization does not halt the process of development. Rather, it forms the basis for the next constitutional cycle.

The current Russian constitutional cycle, which began in 1990s, has now entered its final stage. This cycle is remarkable because, like its predecessor, it was affected by the collapse of the state. The cycle embraces three main phases: deconstitutionalization - the crisis of legitimacy of nominal constitutionalism in the Soviet Union (1989-1991) and then in Russia (1991-1993); constitutionalization - adoption of the new constitution on 12 December 1993; and

reconstitutionalization - the third phase that has been developing since 2000. The question remaining: what is the nature of the third phase and can the current constitutional cycle, like other ones, end up reproducing the authoritarian phase in one of its numerous forms?

Thus, constitutional crises in transitional societies provide very valuable material for a political theorist who wants to analyze the mechanisms of constitutional changes. The concept of constitutional cycles seems to be promising because it demonstrates a correlation between the main phases of constitutional process during transition: crisis (loss of constitutional legitimacy), upset balance (political discourse on constitutional issues), and stability regained at a new level (consensus on the next constitution). The problem of constitutional dysfunction is manifest in a conflict between the notions of legitimacy and legality and in the way they are revealed in the process of constitutional modernization. The mechanisms of constitutional transformations can be understood through analyzing different types of constitutional crises, their developmental stages and the role of the constitution as a factor of social changes. Hence, the theory of constitutional cycles enables one to see the correlation between the broken political and legal tradition (in the form of constitutional crisis), consolidation of a new constitutional regime (solution to the crisis) and restored continuity.

In analyzing the cyclical evolution of Russian constitutionalism, we are going to address the following issues: the mechanisms of cycles - constituent power and constitutional power; decentralization and centralization of political system - the evolving concept of federalism; transition from the separation of powers to their unification - the form of government and the type of political regime in Russia; the conflict of modernization and retraditionalization - strategies for implementing constitutional reforms in today's Russia; and lastly, the third constitutional cycle and possibilities for its adjustment.

Real, nominal and sham constitutionalism

The theoretical approach has allowed us to interpret Russian constitutionalism as an integral historical phenomenon of modern and recent times. Russian constitutionalism is specifically characterized by contradictions inherent in modernization process. These are contradictions between the law and the necessity of rapid social changes; between the newly established democratic institutions and the consolidation of power needed for reform regulation; and lastly, between the classical West European models of constitutional development and the indigenous forms of political development. In the public consciousness of society or a part thereof, constitutional institutions are usually associated with the positive participation of citizens in public administration. The regimes, which cannot and thus do not want implement

adequate legal norms or institutions of government, tend to use constitutionalist terminology in a demagogic way. Constitutional modernization in transitional societies may begin or continue with this terminology, which acquires a new meaning therein [Konstitucionnye proekty v Rossii 2010]

To be clearer in interpretation of emerging gaps between the notion and reality, it was important to find a terminology for transitional process (though in reality, they sometimes imperceptibly evolve turn into one another). Hence, we describe nominal constitutionalism and real constitutionalism as two polar opposites divided by a changing space of conflicting interests and development. Like Max Weber, we call the space "sham constitutionalism". Weber, together with Russian liberals, studied the instability of sham constitutionalism using German constitutional law and drawing on the Russian specific experience of the early twentieth century. In particular, German and Russian liberals meticulously studied prospects for implementing the right of universal suffrage in the societies that are not ready for liberal thinking [Kokoschkin 2010]. In the late nineteenth and early twentieth centuries, Russian liberal philosophers focused on the issues linked to transition from the authoritarian regime to a constitutional system [Gessen 2010].

For interpreting the political system, it is important to determine its attitude toward a transitional political system, as well toward such interrelated phenomena as sham constitutionalism and nominal constitutionalism. In our systemic analysis of the transitional political system, these notions have the following meaning.

Nominal constitutionalism can be defined as a system where the constitutional norm is not effective at all. The classical principles of liberal constitutionalism which are governing human rights and power relations (the separation of powers) are not entrenched in the political system. The constitution legalizes an unlimited power, a dictatorship, which is *per se* unconstitutional. Therefore, this system is constitutional in name alone. And it does not have constitutional norms for power restriction in reality. Nominal constitutionalism embodies new principles of legitimacy (the sovereignty of people or classes) and establishes an authoritarian government (the dictatorship of a party in power).

Sham constitutionalism might be defined as the system where political decision making is withdrawn from the sphere of constitutional control. This is accomplished through: a) conferring vast legal powers on the head of state; в) maintaining flaws or lacunas in the constitution; and consequently, c) adjusting these flaws or omissions depending on the actual balance of social and political forces. As an alternative option, there may be established a new form of authoritarianism[Medushevsky: 2006].

The dialectics of sham constitutionalism and nominal constitutionalism makes it possible to better understand the logic of Russian political system development in a comparative perspective.

Implementation of five constitutional principles in comparative perspective.

The principle scientific acquirement of the Project under consideration is the elaborated program of constitutional monitoring – systematic investigation and measurement of constitutional processes on the base of Russian material, and in perspective - on the material of regional and even global constitutional processes (because methodic provides possibility to do that). The empirical ground of monitoring is based on the material of expert inquiries, which should be realized periodically on the basis of the same program with fixed questions (which are listed in sociological form). This data base after sociological elaboration (in tables of different types) becomes the object of substantial research and commentaries by special group of the legal analysts. In a framework of the piloted stage of monitoring (in Spring of 2013) more than 300 forms were distributed, 76 respondents returned answers in the filled up forms. That makes possible to speak about mathematical representative character of the sociological research. The generalized analysis is represented in Tables of results of sociological inquiry and in Tables of the coefficients of constitutional deviations which became the object of the further analytics work in order to understand the foibles of Russian constitutional development [Konstitucionnyi monitoring 2014].

Comparative implementation of all five selected fundamental principles shows the uneven character of their implementation. All analyzed principles (and related spheres of constitutional regulation) scheduled according to the level of deviances in their implementation could be scaled as follows: pluralism (F-0,39); separation of powers (0,39); federalism (0,53), independence of judicial power (0,53); guarantees of political rights and freedoms (0,62). The research gives the possibility to differentiate three areas of constitutional regulation: rather positive (pluralism and separation of powers), rather negative (federalism and independence of judicial power) and absolutely negative (guarantees of political rights and freedoms).

At the same time comparative analysis of principle's implementation according to zones of constitutional practices (legislation, judicial system, another organs of the state power and informal practices) showed those of them which are mostly responsible for the constitutional dysfunctions. The general logic of constitutional dysfunctions is represented: in the growth of deviances in transition from more broad and general principles to sub-principles and concrete

norms; from legal regulation to enforcement of law; and from formal norms and procedures to informal practices.

Two principles, posed in the area of relative positive regulation – pluralism and separation of powers (F<0,5) are characterized as more abstract and normatively stable, their legal regulation includes lower rate of manipulation. That does not mean, however, that regulation of these principles is absolutely protected from disproportions and erosion of their original sense. Rather this erosion, as it was demonstrated in research, has indirect character and goes through other (more concrete) principles and application of legislation. These general trends were demonstrated clearly by the analysis of disproportions among separate constitutional principles.

The comparison of realization of principles over the zones of constitutional practices makes it possible to concretize the failures of constitutionalism. The principle of pluralism in its important elements has been presented in all mentioned areas of constitutional practices – in legislation, courts decisions, the activity of organs of state power and in the informal practices. . But the degree of this realization varies according the rate of constitutional deviations: if on the level of legislative and judicial practices it is not high, the opposite is true on the level of institutional practices. The similar picture is presented for the principle of separation of powers, the highest rate of deviations in which is registered in the areas of executive power and informal practices. The investigation concretizes the character of these deviances – they concerned with extra-constitutional influence of the President (and his Administration) upon the elections in State Duma, the formation of the Council of Federation and their legislative activity as well as upon judicial power in particular cases which are important for the protection of the existing political interests of the ruling group.

Two principles, posed in the area of relative negative regulation- federalism and independence of judicial power (F= 0,5) are confronted with the problem of constitutional dysfunction already on the level of legal regulation. In spite the position of the majority of experts (respondents), the analytics in their commentaries does not share this rather optimistic picture. The principle of federalism, regulated in the Constitution in rather ambivalent form (which opens different strategies of the principle's interpretation) is started to be neutralized on the legislative level which put under question the adequacy of principle's adequate implementation as such. The contradictions in legislative regulation, the insufficiency of the independent judicial control and trends of political practice in the regions makes evident the process of federalism's deconstitutionalisation and the predominance of the centralist vector of its interpretation. In this prospect the position of the judicial power appeared to be rather contradictable: from the one hand in past years grace to activity of constitutional judges it was

created in the country the system of basic laws for the protection of the independent and impartial justice; from the other hand, in the process of the further legal changes (known as "judicial contra-reform") and especially in the process of expansion of the formal and informal administrative control over courts their independence and the role in constitutional control was substantially reduced.

Comparison of two above mentioned principles (spheres of constitutional regulation) over zones of constitutional practices shows similar trends of the deviations growth in turn to the institutional and administrative aspects of regulation. The principle of federalism has been eroded in the direction of growing legislative as well as factual revision of the status of the Subjects of Federation. As a result of these changes constitutional model of the distribution of prerogatives in the area of the common or competitive competences lost practically all characteristics of cooperative federalism in terms of a broad interpretation of the federal centre competences in the area of legislative, administrative and financial regulation. The methods of the administrative regulation overwhelmed the constitutional ones. The role of the legislative positions of the Constitutional Court appeared to be controversial in the area of constitutional control of federalism relations. For the horizontal as well as for the vertical dimensions of the separation of powers design the growth in the rate of the constitutional deviances is obviously contra-productive and progressively expanded in turn from the central to regional level.

With mentioned trends in the area of separation of powers corresponds the conclusion about implementation of the principle of the independence of justice: the most prominent constitutional deviations here has taken place in the implementation by courts their control functions and principles of competitiveness and neutrality, the presumption of innocence, and the right for the fair justice in criminal and administrative process i.e. in those areas of jurisprudence were the public power is a side in the judicial dispute. The high level of deviations is fixed in the area of communications between chairman of courts and other public functionaries as well as between chairman and justices of the court itself. The level of deviations in this areas is rather higher in comparison with a general medium range of deviations presented in the zone of the independency and autonomy of courts. The result of this trend, according to the analysts, is a general fall of citizen's trust to courts as the institutes of neutral and impartial justice. The important part of this tendency is the erosion of the control functions of courts which is corresponded with the general enfeeblement of the principle of separation of powers implementation as well as with the trend toward the monopolization of power by regional elites [Standarty spravedlivogo pravosudiia 2012].

The exposed trends in the implementation of basic constitutional principles has been concentrated in the sphere of the constitutional guarantees of political rights and freedoms which

is disposed in the area of absolutely negative realization (F>0,6). General situation and prospects in this sphere of legal implementation were critically appreciated in the context of the apparent divorce between legislative norms and trends of practical activity of the state organs and used informal practices. The highest level of constitutional deviations is represented in the following practices: different methods of the political parties activity regulation; the recruiting of political elite sets; extra-constitutional practices of executive power organs used for the indirect violation of constitutional norms; the using of different informal instruments of influence and pressure (which in many aspects are anti-constitutional). The key element of the political pluralism principle – the equal status of political parties and civil unions and the neutrality of the state in front of them – is put under question. The political system progressively diminish the reciprocal connections with society and being put outside the effective social control becomes less reform able.

Thus, the dysfunctions of the constitutionalism are represented over all five principles, cover all zones of constitutional practices, but demonstrates the highest level of rate in institutional and informal practices. The overlapping character and inter-connection of constitutional deviances over different principles and zones of practices makes it possible to speak about their cumulative effect.

Mechanisms and parameters of constitutional dysfunctions

The general dynamics of constitutional deviations could be underline according to the following lines of interpretation: 1)the quantitative growth of deviations in temporal perspective cover mostly the period of the past decade; 2)the general trend of their expansion – goes from more broad constitutional regulations to the concrete ones - elements (sub-principles) of each investigated principle (as a result the general legal formula is quipping stable, but the structure and sense changes substantially); 3)deviation rate grows progressively by move from more formalized modes of practices (legislative and judicial) to the less formalized ones – institutional and informal; 4) the most visible qualitative growth of deviations is fixed in the area of transition from the federal level of legislation to the legal regulation and notably to enforcement of laws at the regional and local level (the phenomenon of monopoly of different branches of power in the hands of regional elites).

In the process of investigation has been shown some important legal disproportions which are mostly sensible to constitutional deviations in terms of the using of informal practices. Among them – the exploitation of vagueness (or ambiguity) of some constitutional norms for their political-oriented interpretation in favor of executive power; the inadequate contra-posing

of one group of constitutional rights against the other in judicial assessment of the balance of norms hierarchy; the broad and unclear regulation of "security" notion and competences of appropriate structures; the selective using of norms by courts; the diffusion of the strict border lines between constitutional and administrative law, which opens the way for the broad interpretation of delegate prerogatives of administration; the enfeeblement of justice via courts bureaucratization; selective use of criminal repression (and treatment of criminal process procedures) and the application of the examined informal practices for the "correction" of legal norms and their revision in law-adoption practices.

These factors and technologies put under question not only functional adoption of constitutional principles, but includes the possibility of progressive substitution (and narrowing on semantic level) of the mentioned principles – the rejection of constitutional spirit in favor of the letter of the law. The result of this transformation could be the appearance of the phenomenon of "constitutional parallelism" or para-constitutionalism – the acute divorce between formal and informal constitutional regulation or the pretended constitutionalism [Carothers 2002].

As it has been shown in research under consideration the system of informal practices appeared to be the central issue of contrasting positions of respondents. As the Table of coefficients of contrasting expert opinions demonstrates, the highest level of diverse positions is presented in the appreciation of informal practices at the area of positive regulation (pluralism and separation of powers) as well as in the area of negative regulation (guarantees of political rights and freedoms from the overbalanced administrative control and limitation). That means that the contrast of respondent's opinions can not be explained by the simple fact of the uneven fulfillment of different principles but rather considered as an empirically proved general misbalance of the Russian constitutional development and the growing polarization of the expert community regarding this phenomenon.

The rationales for the understanding of contrasting expert visions of informal practices could be find in three main hypotheses: the first one is the general indefinite character of the notion: informal practices cover different relations – constitutional, extra-constitutonal and anti-constitutional (the logic plurality of the notion makes possible different ways of its interpretation); the second one is the professional priorities of the respondents (mostly teachers of law at Russian universities) combined with their social profile (modernists versus traditionalists) which stimulates them to definite treatment of informal practices (theorists versus practitioners); the third one is the ideological split inside the expert community (pessimists versus optimists) which probably reflect the growing political polarization in society.

Retraditionalization in Russian constitutional development

Theoretically, a conflict between the new legal regulation and the existing social reality can be settled in favor of either the former via constitutionalization or the latter via reconstitutionalization. The quest for the rationality of law replaces the search for its efficiency. Therefore, constitutional revolutions are followed by constitutional counter-revolutions or reconstitutionalization which re-enforce the legal norms or practices preceding the newly adopted constitution. Thus, due to the difficulties of constitutionalism, an unprepared society (where the constitution lacks grass-root support, only elite groups are involved in politics, constitutional norms are not protected by courts, and adequate administrative reform is needed) might encounter constitutional retraditionalization occurring directly or indirectly, in one of the ways described below.

The 1993 Constitution became a turning point in the movement towards civil society and law-based state, which marked the beginning of transition from nominal constitutionalism to real one. A comparative study into the adoption of the constitution, specifics of its contents and subsequent developments allows us to make a number of general observations. The historical role and, in a way, teleology of the Russian constitution should be recognized as its distinguishing feature. The constitution was drafted and delegated under the stiff confrontation of the old regime forces with the nascent new regime. No matter what specific goals and objectives the coups instigators pursued, their historical legitimacy involved democracy and struggle against totalitarianism. The constitution's authoritarian nature and way of adoption were referred to as forced measures against the conservative supporters of the old regime restoration (that were termed neo-Stalinists) [Konstituciia Rossiiskoi Federacii 1997].

Contradictory views on the constitution and its historical significance are typical of both contemporary literature and society at large. Some authors state that the constitution is liberal in nature and forms a solid basis for the new Russia. The others assert that the Russian constitution is "nominal rather than real" and treat it as a document of transitional period "because of the debatable legitimacy of its promulgation and the president's unrestricted right to issue decrees" [Grajdanskoe obschestvo 2009]. While some of them consider the principles of human rights, federalism, separation of powers and multiparty system declared in the constitution to be a real thing and a safeguard of democracy; the others doubt that the declared principles are a *fait accompli* and a guarantee against the restoration of authoritarianism. The majority of researches claim the constitution is to some extent inconsistent and stress its conformity with the objectives of Russian authoritarian modernization [Konstitucionnye prava v Rossii 2002].

Contemporary literature on legal issues provides many ways of constitutional revision (some of them are unlawful, of course,) that can be arranged in decreasing order of their sweeping nature, as shown below. First: through a constitutional revolution or a coup (when a constitution randomly changes without resorting to revision procedures enshrined therein; for example, the adoption of the RF constitution in 1993). Second: through the revision of the entire RF constitution when chapters 1,2 and 9 are modified by the Constitutional Assembly (it practically means a radical constitutional reform). Third: by altering the Russian constitution through introducing amendments (under the procedure prescribed by the constitution, decisions of the RF Constituional Court and the Federal Law of 4 March 1998 "On the Procedure of Adoption and Enactment of Amendments to the Constitution of the Russian Federation"). Fourth: by revising the Russian constitution through its interpretation by the RF Constitutional Court (particularly, while considering lacunas, omissions and discrepancies in the constitution, solving conflicts between the constitution and federal constitutional laws). Fifth: through revision of the RF constitution by adopting new constitutional or federal laws that, as known, can transform the scope of basic constitutional definitions and the hierarchy of their values. Besides, it can be done not necessarily by an individual law but their totality. These changes, implemented without a formal revision of the constitution, have already resulted in a virtually parallel constitution. Russia's current constitution has undergone substantial modification in all of its most important sections (by federal constitutional laws).

These changes are made along the following lines: vertical separation of powers (transition from contractual federalism to centralized one, creation of a new administrative and territorial system, changing the status of subjects of the Russian Federation and their role in the interpretation of federalism in general); horizontal separation of powers (changing of the functioning of the upper chamber through a radical revision of its formation procedure, institution of the State Council which is not envisaged by the constitution, reform of the judiciary and procuracy, giving more powers to the president for re-enforcing the vertical hierarchy of power etc.); relationships between the state and society (revision of the status of social organizations and political parties, an incipient restructuring of the electoral system etc.). It is asserted that the real prerogatives of the presidential powers are to be drastically increased (the model of imperial presidency) [Administrativno-territorial'noe ustroistvo Rossii 2004]. Sixth: by implementing the presidential "decree" law and modifying the legislation through the revision of law application (up to changing completely the political regime, for example, by delegating powers to courts and to the administration or imposing a state of emergency etc.). By the way, it is precisely the simple laws that had changed the Weimar Constitution. Therefore, the Russian constitution is in principle not protected from facing again a situation where radical

constitutional changes could be introduced by the decisions of parliament or RF president. Seventh: by changing the actual conditions of life without revision of law (it is possible, in particular, to provoke such actual conditions). These changes in their totality (for example, new public ethics and ideology, regime of administrative structures, media and business) transform the whole spectrum of constitutional norms, including those enshrined in the sections on fundamental rights, federalism, system of state power and form of government. To some extent, these changes reflect a tendency towards reconstitutionalization, implying a return to the discussions held on the eve of adoption of the RF constitution in 1993.

Form of government, separation of powers and political regime in transitional society

Contemporary scholars argue about the form of government existing in Russia. According to one opinion, Russia is a mixed republic whose nature is referred to as semi-presidential, semi-parliamentary and even "non-preparliamentary" (this is rather a journalistic term expressing a strive to an extended parliamentarism) [Scheinis V. 2014]. The most immediate analogue of this system could be seen in the Fifth Republic in France. It was termed a mixed form of government, though the very formula is quite ambivalent as it covers political regimes featuring different trends (from the trends close to parliamentary to those close to "republican monarchy") [Duverger M. 1974]. The other point of view treats the Russian form of government as presidential republic. The nearest analogue is the US presidential model (though sometimes the concept of "presidential republic" is interpreted in broader terms and includes also the French model, which may function as presidential republic). The main arguments of this standpoint stress the legal and actual precedence of presidential power in Russia. It is precisely where the proponents of the mixed form of government in Russia see the proofs of its presence (as components of constitutional accountability of government), its opponents find confirmation of their case (in the form of weakness of these components). And, finally, the third opinion defines the Russian model as a super-presidential republic. It is specific in that, given some (sooner formal) attributes of presidential system, it lacks a real separation of powers for the president is vested with huge executive and legislative powers. The concept of super-presidential system was developed as applied to regimes in Latin America. The numerous dictatorship regimes (Argentina, Brazil, Venezuela, Uruguay, Chile) have elevated this power to an absolute level. Some of its essential components were retained, however, upon transition to democracy. It is important to note, in comparative perspective, that the real presidential powers are far from always arising directly from constitutional provisions. In reviewing the Mexican Constitution of

1917, the term “meta-constitutional power of president” is used. Mexican scholars generally use the term “presidencialismo” so as to concurrently define the presidential system of government and stress the exceptional concentration of powers (constitutional and all others) in the hands of the Mexican President [Presidentialism and Democracy in Latin America 1999].

Indeed, Russian political system is designed so as the RF president is above the system of separation of powers, acts as an umpire between branches of power and a guarantor of constitution. This construction bears a strong resemblance to the system of constitutional monarchy pursuant to the fundamental law of the Russian empire of 1906; the empire was subject to controversy whether the system was really a restriction of monarchical power. In due time, we suggested to interpret the system as “sham constitutionalism” meaning a specific etymological sense of this concept in the course of transition from absolutism to law-based state in the form of constitutional monarchy.[Reformen im Russland 1996]. This is, no doubt, a transitional model capable of evolving in different directions and expressing an unstable balance between democracy and authoritarianism. Some authors refer to it as a “hybrid form of government”, “dualistic regime”, “proto-democracy”, “post-totalitarian democracy”, “delegated democracy”, “presidential democracy”, “controlled democracy”, etc. This regime can be defined as “authoritarian democracy” were this notion not a sort of *contradicio in adjecto*. The idea of all definitions comes to expressing a subtle gist made up of a unique combination of democracy and authoritarianism, whose contradictory relations are each time dialectically reproduced at a new convolution creating a similar synthesis. On this basis, there can emerge and exist various forms of restricted democracy and authoritarianism.

Russia’s president is above the system of separation of powers, performing the functions of guarantor of constitution and umpire (in the broadest sense of the Gaullist term “arbitration”). Quite applicable to the Russian system, therefore, are the notions expressing different ways of power concentration in democratic states, which in different times were suggested for defining the head of state: Weimar Republic - “ersatzkaiser” (Hugo Preis) , Gaullist France - “republican monarch” (Michel Debre), the United Kingdom - “elected dictator” (Lord Hailsham). All of these are combined in a highly ready-witted notion of “President of All Russia” designating a synthesis of democratic and monarchical powers. The RF president power makes one to recall the constitutions of East European monarchical states at the turn of the nineteenth-twentieth centuries with their sham constitutionalism [Diskurse der Personalität 2008]. Yet, in relation to the acts of Russia’s president (who is formally head of state but not of executive power) no institute of countersign is envisaged, which distinguishes him from constitutional monarch and sooner brings closer to “republican monarch”. As a matter of fact, the institute of checks and balances is present in American-type presidential republics where, given a rigid separation of

powers, president is head of executive power, but is missing from French-type mixed republics, where president is head of state [Mény 1996]. Hence, the following conclusion is valid: the power of Russia's president (apart from the virtually unfeasible impeachment procedure) is really limited (and in this it differs from monarchical one) only by the term of office and non-hereditary nature of power devolution.

What is more, normative definitions fail to explain the specifics of the regime, which are associated with extra-constitutional and extra-legal clouts and have always been strong. It is impossible to understand the nature of Russian presidential regime of post-Soviet type if no account is taken of the meta-constitutional power of president including a set of symbolic and real powers not directly fixed in the constitution [Konstitutsionnyi sud kak garant razdelenia vlastei. 2004]. In describing political and legal regime in Russia it would, therefore, be reasonable to use political science rather than formal legal terms. Therefore, scientific literature makes mention of "hybrid" form of government, "latent monarchy", dualistic form of government (these notions have also been borrowed from the history of European constitutionalism of monarchical period), and some authors give up the task of typology, defining the Russian model as "atypical" form of government [Mommsen M., Nussberger A. 2007] or defected democracy [Yasin 2012].

In comparative perspective, modern Russian political regime has acquired a number of key attributes of democratic Caesarism. If the plebiscite democracy regime is characterized by legitimation through plebiscites (referendums), then democratic Caesarism no longer needs it. It maneuvers between the forces of previous system, craving for revenge, and the forces pushing for modernization. Its characteristic manifestations come to be a dual legitimacy (democratic and authoritarian-paternalistic), limited parliamentarism, distrust of political parties, centralism, super-party technical government, bureaucratization of state machinery and the concept of strong presidential power [Ostrogorskii M. 2010]. Being an objective consequence of complex processes in transitional period, any centrist political regime can rely on different social forces, hence, has a choice of political trajectory. Democratic Caesarism is a qualitatively new phase in regime consolidation, which is being built in the conditions of limited and controlled democracy [Sartori G. 2002]. In Russia, this situation emerged in the wake of elimination of the dualism of parliament and president, creation of a new party in power, neutralization of public organizations and regional opposition, the beginning of agrarian reform. At present, these tendencies are rationalized, institutionalized and, so to speak, symbolically manifest themselves in the concept of imperial presidency. If there is need for a uniform formula, illustrating the evolution of Russian constitutionalism over the past ten years, then it is as follows: from plebiscite democracy to democratic Caesarism.

Positive law and legitimacy: the contribution of constitutional justice in construction of legal reality

The contribution of constitutional justice to the framing of legal reality in the post-Soviet society can be illustrated by interpretation of fairness, equality and proportionality principles in Russia's Constitutional Court decisions [Konstituciia v postanovleniach Konstitucionnogo Suda Rossii 2015]. The concept of fairness, as shown in ILPP research, has not received a meaningful doctrinal rationale in the Court decisions. It can be uneven in scope and ambiguous in substance. The *first trend* is toward interpreting the principle of fairness in terms of its distributive meaning. In this sense, it modernizes the concept of equality as defined by Article 19(1) of the Russian Constitution: "All are equal before the law and the court". However, this gives major significance to different meanings acquired by the references to the equality concept. First, in a wide range of matters the Court decisions define fairness as a formal equality before the law and unfairness - as inequality which may be caused by various factors ranging from deficiencies in the law itself, a self-contradictory and uncertain nature of its provisions to their arbitrary interpretation and so on. Accordingly, unfairness is a result of departure from the principle of formal equality. Second, in treating fairness as equality before the law, the Court often goes beyond the formal interpretation of equality to address issues from the perspective of actual material inequalities between the parties to the dispute. In this sense, fairness not only represents the formal equality of all before the law but also acts as its actual safeguard. Third, fairness can be understood as the opposite of formal equality, that is a conscious departure from the principle of formal equality for the sake of factual circumstances; yet such departure is not recognized as a principle by the Court [Medushevsky 2002, 2004].

Another trend in understanding the principle of fairness involves its legalist interpretation, i.e. the interpretation which is based on the law but is modified along the lines of proportionality. This approach is mostly applied by the Court when deciding on the matters of human rights and freedoms restrictions and their boundaries within the meaning of Article 55(3) of the Constitution. Any legislation that goes against the established norms and principles will be found unfair and unconstitutional precisely by reason of its *disproportionality* [Verchovenstvo prava kak factor ekonomiki. 2013]

The *third trend* in interpretation of fairness (in the light of constitutional values and traditions) can be probably seen in various interpretations of the concept of proportionality. But the question remains: to be proportionate to what? - constitutional values and other principles (the principle of fairness, in the first place), standards or purposes, and what kind of purposes? The Constitutional Court often uses in its decisions the formula of proportionality with regard to

"constitutionally important objectives". [Konstitutsia Rossiiskoi Federatsii v rescheniach Konstitutsionnogo suda 2005]. Finally, we should emphasize the significance of not only substantive but also procedural fairness. This concept, as formulated in Article 14 of the International Covenant on Civil and Political Rights, includes the right to "fair and public hearing by a competent, independent and impartial tribunal established by law." The combination of the principles of fairness, proportionality and legality may vary depending upon the situation (the factual circumstances of a case). However, within the existing set of solutions it is difficult to distinguish between values, principles and standards of constitutional regulation, to determine their hierarchy in the decision-making process, and most importantly, to understand their relationship in the reasoning part. Given the continued high level of uncertainty in the understanding of such principles as fairness, equality and proportionality, the Constitutional Court faces the credibility problem as regards its decisions in the context of the principle of a "specific, clear-cut and unambiguous legal norm" (i.e. ruling out any constraints that distort the essence of law) [Medushevsky 2012].

The lack of a full-fledged doctrine for legitimizing judicial decisions on acute economic and political matters results in legal difficulties and psychological conflicts in the transitional society: inflated legal expectations (created by a high rating of constitutional justice resulting from his previous role in legislative liberalization) are confronted with unpredictable, contradictory and groundless decisions which cannot be explained to the society using a single logical formula. Bridging a gap between the key principles of fairness, proportionality and legality in the post-Soviet society should be sought through reconciliation of reason and tradition, ideal and reality, solidarity and supremacy, legal norm and virtue, legitimacy and legality, the ethics of public law, legal doctrine and overall effectiveness of law; in other words, by consistently fulfilling the mandate of democratic modernization with the help of science-based policy of law.

Targets of constitutional modernization

For a comparative study, it is important to assert that there are two models of transitional processes: one is based on the contract (consensus model) and the other on the disruption of consensus (essentially, the model of delegated constitution). While the former may imply a better expression of the will of the people (via political parties), the latter may boil down to a situation where a victorious side (a party, a state or even a foreign power) imposes its will on the defeated. The consensus model is preferred to the rupture model in terms of stability, legitimacy and continuity of legal development. The rupture model is best suited for introducing the

principles of democracy, modernization and constitutionalism into a traditional authoritarian society [Pravo i obschestvo v epochu peremen. 2008].

The constitution was adopted in the heat of political confrontation. It embodied both the merits and demerits of the continuity rupture model. In particular, the merits of the constitution are its liberal stance on human rights, commitment to the market economy and pro-western orientation [Konstitucia Evropeiskogo Sojusa 2004; Implementatsia reschenii Evropeiskogo suda 2006; Edinoe pravovoe prostranstvo Evropy 2007; Evropeiskii Sojuz 2008]. However, Russia, as Bruce Ackerman put it, didn't missed its "constitutional moment" (the culmination of national and social upsurge calling for adoption of a constitution corresponding to the true aspirations of society and to the level of national development). The Russian constitution resulting from the rupture of legal continuity, a genuine constitutional revolution, in this sense did not mean implementation of the contractual model of transition from authoritarianism to democracy but implied the delegated method of transition (virtually it was given from above by the victorious side). The conflict between the new legitimacy and the old legality was resolved in favor of the former. Hence, there emerged a legitimacy deficit and the necessity of long subsequent legitimation for the constitution. The main contradiction of this transitional process - adoption of the democratic constitution by non-democratic means - is not unique to Russia in recent times. Nevertheless, Russia's transitional process has most clearly revealed the fundamental inconsistency of modernization - between goals (declaration of a law-based state) and means (strengthening of authoritarianism in the form of plebiscite democracy).

Currently, the political regime of the Russian Federation displays distinct features of transitional regimes. This regime took shape in an underdeveloped civil society whose shaky foundations were destroyed by the subsequent regime at the outset of the twentieth century. [Grajdanskoe obschestvo 2009]. Democratic transformations, which had not been properly prepared in advance, led to an acute crisis of legitimacy and split the ruling elite at the end of the twentieth century. The process of legitimation, implemented initially on the basis of former legitimation (nominal Soviet constitutionalism), revealed sharp social conflicts that could be resolved solely through radical (revolutionary) transformation of a legitimating underpinning of the entire political system [Epocha Eltsina 2008]. Unlike some countries of Southern and Eastern Europe, Russia's transition to democracy was based not on the contractual model, meaning consensus among social movements and political parties, but on the model of legal continuity rupture. Eventually, the Constitution of the Russian Federation was adopted in 1993 not as a result of constitutional reform but as an outcome of constitutional revolution (according to its formal legal assessment) in which course the victorious side imposed its will on the

defeated. Therefore, the Russian constitution is characterized by a number of significant features [Konstitucionnoe razvitie Rossii 2007].

As a result of the research project it was proposed to fulfill a complex of the first-rate targets which according to the expert pool opinion are at the same time necessary and realizable in a short-time perspective. They could be divided in three main groups concerning the policy of law, mechanisms of separation of powers and institutional functioning [Konstitucionnye principy I puti ich realizacii 2014].

In a framework of *the thirst group of recommendations* it was proposed, firstly, to deliberate constitutional deviances not as a combination of separate events but as a structural problem of the Russian constitutionalism. In a sphere of public law it is important to overcome the logic of double standards in interpretation of pluralism and to reject the undeclared existence of special reservations for executive power making its free from constitutional control. This target could be realized by the creation of the new public ethics, the revival of justice independence in the control of constitutionality of lows and the practice of their implementation. Secondly, to change the policy of law in the direction of the authentic functional implementation of the basic constitutional principles. That means the necessity to return the competitive atmosphere in political life, put in action the constitutional system of checks and balances in the areas of vertical and horizontal separation of powers, to nullify the legal shortages and bureaucratic deformations of the recent period. The revival of the five analyzed constitutional principles as proposed should be realized by the way of constitutional modernization and abortion of new tendencies toward conservative political romanticism and related constitutional contra-reforms [Power and Legitimacy 2012], by institutional and administrative procedures. Thirdly, to bridge the gap between formal and informal practices and differentiate the informal practices for the elimination of their anti-constitutional substrate especially in the evidence of their role in the growth of constitutional deviances over all principles. For the achievement of this goal it is recommended to use the purpose-oriented legal regulation, institutional reforms and especially the enforcement of the independence of judicial power, strict juridical definition and limitation of delegate prerogatives of administration, creation of the administrative justice [Medushevskii 2014].

In a framework of *the second group of recommendations* it was proposed, firstly, to rethink the dominant doctrine of the separation of powers principle treatment, which in reality bind its functional realization with the predominant role of the supra-arbiter –the presidential power. Key importance in this list of priorities should have: the abortion of conditions which provides the possibility for the presidential power to realize the unconstitutional influence on process of State Duma elections and adoption of laws in Duma and Council of Federation, and to

put courts under informal pressure in cases where political interest of executive branch is in presence.

Secondly, it was proposed to make radical reinterpretation of the existing treatment of the federalism principle which actually presumes the predominance of the centralist tendency. For that – it is prescribed to revise norms of the federal legislation which in reality substituted the Federal Constitution, constitutions of Republics and federation subject's statutes in definition of their legal status at the area of the division of the common and competitive competences. The important target is to avoid the overburden bureaucratization and administrative centralization in the subjects of the Federation at the areas of regional budget prerogatives, institutes and their functions, to realize on the regional level the principles of political pluralism, multiparty system and direct democracy, to strengthen the authority of the Federation Council as a chamber of regions of the Russian parliament. The abortion of disproportions in the system of checks and balances on the regional level has the acute importance in the prospect of effective constitutional control over the informal practices in the work of organs of the executive power. Actually the power of the regional leaders is so high that makes possible (grace to uneven character of the civil society and the insufficient character of control over administration in regional medias) to put under their dominance local parliaments and courts, though the last ones (with the exception of peace justices and local constitutional courts) stay formally under federal control.

Thirdly – the important target of constitutional modernization is to de-bureaucratize the judicial system and exclude legal norms and institutional shortages which created the special judicial bureaucracy (nominated court chairmen) monopolized in fact the decision-making process in courts and justices professional community. For strengthening the constitutional fundament of independent justice it was proposed to modify the status of courts chairmen and to enforce the independence of courts via organs of justices self-regulation, the strengthening of the procedural control over the quality of judicial decisions, institutional and functional judicial control over inquisition process in criminal jurisprudence and the enforcement of extra territorial organization of the court districts (which should not be combined with the existing administrative districts).

In a framework of *the third group of recommendations* it was proposed to undertake the legal reforms capable to stimulate the real multiparty competition and substantive guarantees of political rights and freedoms of the citizens. The target of these reforms should be the full-fledged implementation of the constitutional principles – protection of the freedom of speech and the abolition of informal censorship, implementation of norms on the right of meetings and demonstrations. The actual character has the proper implementation of electoral legislation and

independent public control over democratic electoral practices, the protection of norms on equality of public unions in the area of law and constitutional guarantees for the activity of political opposition from their unconstitutional deformations. The important role could be played by the independent public TV-channel.

To summarize, it was recommended to destroy the artificial barriers between society and the state, create a system of inter-connections between citizens and political power by using constitutional institutes and procedures in their proper sense and by protecting and developing new forms of democratic civil activities. That means the abolition of the whole system of deformations in the implementation of fundamental constitutional principles. These deformations appeared as a result of the public law policy which was conducted in the last ten years in order to built a system of limited pluralism and authoritarian modernization. The prolongation of these tendencies means the blockade of main constitutional principles in terms of political stagnation and bureaucratization of the system.

The essence of presented recommendations resumes in the proposal to change the policy of law in the area of the constitutional principles implementation towards the fulfillment of the real political competition, separation of powers and independent judicial control, to find clear and reasonable answer to this challenge.

References

Administrativno-territorial'noe ustroistvo Rossii: istoria I sovremennost. 2003. M.: Olma-Press.

Billington J.H. 2004. Russia in Search of itself. Baltimore and London: The J. Hopkins University Press.

Carothers Th. 2002. The End of the Transition Paradigm. Journal of Democracy. Volume 13, Number 1, January. National Endowment for Democracy and Johns Hopkins University Press.

Dam K.W. 2006. The Law-Growth Nexus. The Rule of Law and Economic Development. Washington: Brookings Institution Press.

Diskurse der Personalität.Die Begriffsgeschichte der "Person" aus Deutscher und Russischer Perspective. Hrsg von A.Haardt und N.Plotnikov. 2008. München: Wilhelm Fink, S. 207-223

Duverger M. 1974. La Monarchie Républicaine, ou comment les démocraties se donnent des roi. Paris: R.Laffont.

Duverger M. A. 1980. New Political System Model: Semi-Presidential Government. Journal of Political Research, Vol.8.

Edinoe pravovoe prostranstvo Evropy i praktika konstitutsionnogo pravosudia. 2007. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Epocha Eltsina. Ocherki politicheskoi istorii.2011. M.: Prezidentskii Centr B.N.Eltsina.
Evropeiskii Sojuz: osnovopolagajuschie akty v redakcii Lissabonskogo dogovora s kommentariami. 2008. M.: INFRA-M.
Gessen V.M. 2010. Osnovy konstitucionnogo prava. M.: Rosspen.
Gosudarstvennaia Duma Rossiiskoi imperii. 1906-1917. Encyclopedia. 2006. M.: Rosspen.
Gosudarstvo i nacia v Rossii i Centralno-Vostochnoi Evrope. Materialy mejdunarodnoi nauchnoi konferencii. 2008.Budapest: Russica Pannonicana.
Grajdanskoe obschestvo I pravovoe gosudarstvo kak factory modernizatsii rossiiskoi pravovoi sistemy. 2009. Sankt-Petersburg.: Asterion.
Hosking G. Rulers and Victims. The Russians in the Soviet Union. 2006.Cambridge, Mass.: Univ. Press.
Ideologia “osobogo puti” v Rossii i Germanii: istoki, soderjanie, posledstvia. Pod red. E. A. Paina. 2010. M.: Tri kvadrata.
Implementatsia reschenii Evropeiskogo suda po pravam cheloveka v praktike Konstitutsionnych sudov stran Evropy. Moscow, Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy). 2006).
Kokoschkin F.F. 2010. Isbrannoe. M.: Rosspen.
Konstitucia Evropeiskogo Sojusa: Dogovor, ustanavlivajuschii konstituciu dlia Evropy.(s kommentariem). 2005. M.: INFRA-M.
Konstituciia Rossiiskoi Federacii: Problemnyi kommentarii. 1997. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).
Konstituciia v postanovleniach Konstitucionnogo Suda Rossii (1992-2014). 2015. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).
Konstitucionnoe razvitie Rossii. Zadachi institucionalnogo proectirovania. Sbornik statei. 2007. M.: Higher School of Economics.
Konstitucionnye prava v Rossii: dela I reschenia. 2002.
Konstitucionnye principy I puti ich realizacii: Rossiiskii context. Analiticheskiy doklad. 2014. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).
Konstitucionnye proekty v Rossii XVIII-XX veka. Pod red. A.N.Medushevskogo. 2010. M.: Rosspen.
Konstitucionnyi monitoring: koncepciia, metodika I itogi ekspertnogo oprosa v Rossii v marte 2013 goda. 2014. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).
Konstitutsia Rossiiskoi Federatsii v rescheniach Konstitutsionnogo suda RF. 2005. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Konstitutsionnyi sud kak garant razdelenia vlastei. 2004. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Les Constitutions de la France depuis 1789. Présentation par J. Godechot. 1994. Paris: Flammarion.

Macintyre A. 1984. After Virtue. London: Univ. of Notre Dame Press.

Maus D. Etudes sur la Constitution de la V-e République. Mise en place pratique. 1990. Paris: Les Editions STH.

Medushevskii A. 2014. Problems of Modernizing the Constitutional Order: Is it Necessary to Revise Russia's Basic Law// Russian Politics and Law, Vol. 52, N.2, March-April, pp. 44-59.

Medushevsky A,N. 2012 Law and Justice in Post-Soviet Russia: Strategies of Constitutional Modernization// Journal of Eurasian Studies. N. 3.

Medushevsky A. 2002. Power and Property in Russia: The Adoption of the Land Code// East European Constitutional Review, Volume II. Number 3 (summer).

Medushevsky A. 2012. Conservative Political Romanticism in Post-Soviet Russia// Power and Legitimacy – Challenges from Russia. Ed. by Per-Arne Bodin, Stefan Hedlund and Elena Namli. London and New York: Routledge. P.169-187.

Medushevsky A.N. 2004. Agrarian Reform: Difficulties in Implementing Land Legislation at the Current Stage.// The Transformation and Consolidation of Market Legislation in the Context of Constitutional and Judicial Reform in Russia. Analitical Report 2003. A.N.Medushevsky and L.Skyner (eds). M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Medushevsky A.N. 2005. Teoria konstitutsionnych ciklov. M.: Vishaia shcola ekonomiki,

Medushevsky A.N. 2006.Russian Constitutionalism. Historical and Contemporary Development. London and New York: Routledge.

Mény Yv. 1996. Politique comparée. Paris: Montchrestien.

Mesto Rossii v Evrope i Asii. Pod red. D.Svaka. 2010. Budapest- Moscow: Russica Pannonicana.

Modely obschestvennogo pereustroistva Rossii. XX vek. Pod red. V.V.Shelohaeva. 2004. M.: Rosspen.

Mommsen M., Nussberger A. 2007. Das System Putin. Gelenkte Demokratie und politische Justiz in Russland. München: Beck.

Monitoring konstitucionnych processov v Rossii: analiticheskii bulleten, 2012. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy). № 1-4.

Nazionalism v mirovoi istorii. Pod red. V.N.Tishkova i V.A.Shnirelmana. 2008. M.: Nauka.

Nozick R. 1974. Anarchy, State and Utopia. New-York: Blackwell Publishing.

Obraz Rossii s centralno-evropeiskim akzentom. Materialy mejdunarodnoi Konferenzii.. Budapest: Univ. Press, 2010.

Obschestvennaia mysl Rossii XVIII-nachala XX veka. Encyclopedia**.** 2005. M.: Rosspen.

Obschestvennaia mysl Russkogo Zarubejia. Encyclopedia. 2009. M.: Rosspen.

Osnovy konstitucionnogo stroia Rossii: dvadcat' let razviytiia. 2013. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Ostrogorskii M. 2010. Demokratiya I politicheskie partii. M.: ROSSPEN.

Power and Legitimacy – Challenges from Russia. Ed. by Per-Arne Bodin, Stefan Hedlund and Elena Namli. 2012. London and New York: Routledge.

Pravo i obschestvo v epochu peremen. 2008.M. Institut gosudarstva i prava RAN.

Presidentialism and Democracy in Latin America. Ed. by S.Mainwaring and M.S.Shugart. 1999. Cambridge: Univ. Press.

Programmy politicheskih partii Rossii konca XIX-XX veka. 1995. M.: Rosspen.

Put v Evropu. 2008. M.: Novoe izdatelstvo.

Rawls J. 1971. A Theory of Justice. Harvard: Univ. Press.

Reformen im Russland des 19. und 20. Jahrhunderts. Westliche Modelle und russische Erfahrungen. 1996. Frankfurt am Main: V.Klostermann.

Rossiiskaia imperia ot istokov do nachala XIX veka. Ocherki socialno-politicheskoi i economicheskoi istorii. 2011. M.: Russkaia panorama.

Rossiiskii conservatism. Encyclopedia. 2010. M.: Rosspen.

Rossiiskii liberalism serediny XVIII-nachala XX veka. Encyclopedia**.** 2010. M.: Rosspen.

Russia. A History. Ed. by G.Freeze. 2009. Oxford: Univ. Press, P.503.

Sakwa R. 2006. Sravnitelnyi analiz izmenenii politicheskich rejimov stran postsovetskoi Evrazii. Sravnitelnoe Konstitucionnoe obozrenie. № 4 (57). C. 117-125

Sandel M.J. 2010. Justice: What's the Right thing to do? London: Penguin books.

Sartori G. 2002. Comparative Constitutional Engeneering. An Inquiry into Structures, Incentives and Outcomes. London: Palgrave. P. 145-147.

Scheinis V. 2014. Vlast I zakon: politika I konstitucii v Rossii v XX-XXI vekach. M.: Mysl.

Schmitt C. 1998. Politische Romantik. Berlin: Duncker und Humblot.

Sovet Federacii. Evoluciia statusa I funkcij. 2003. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Staatsburgerschaft in Europa. Historische Erfahrungen und aktuelle Debatten. Hrsg. von Ch.Conrad und J. Kocka. 2001. Hamburg: Korber-Stiftung.

Stalinism kak model socialnogo konstuirovania. 2010. *Rossiiskaia istoria,* N.6.

Standarty spravedlivogo pravosudiia: mejdunarodnye i nacionalnye praktiki. 2012. M.: Mysl.

Transformation and Consolidation of Market Legislation in the Context of Constitutional and Judicial Reform in Russia. Analitical Report 2003. A.N.Medushevsky and L.Skyner (eds). 2004. M.: Institut Prava I Publichnoi Politiki (Institute of Law and Public Policy).

Transiciones y diseños institutionales. 2000. Mexico: Universidad autonoma de Mexico.

Verchovenstvo prava kak factor ekonomiki. 2013. M.: Mysl.

Vlastnye structury I gruppy dominirovania.2012. Spb.: Intersocis.

Walzer M. 2007. Thinking Politically. Essays in Political Theory. New York: Yale University Press.

Yasin E. 2012. Prijivetsia li demokratiia v Rossii. M.: NLO.

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