

CONSTITUTIONAL LAW IN RUSSIA

IRINA BOGDANOVSKAIA
TATIANA VASSILIEVA



Wolters Kluwer
Law & Business

Constitutional Law in Russia

**Irina Bogdanovskaia
Tatiana Vassilieva**

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Constitutional Law.

General Editor: Roger Blanpain
Associate General Editor: Michele Colucci
Volume Editors: André Alen, David Haljan



Wolters Kluwer

Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-3920-7

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Table of Contents

The Authors	3
List of Abbreviations	13
Glossary	15
General Introduction	17
§1. CONCISE DESCRIPTION OF CONSTITUTIONAL HISTORY	17
I. General Retrospective of Russian Constitutional Development	17
A. Before 1917: the First Steps to the Constitutional State	17
B. Soviet Constitutional Law	19
C. The Constitutional Law of the Transitional Period	24
II. A Federalization Process	27
A. Russia before 1917	28
B. Independent Federal State	28
C. Russia as a Member State of the Soviet Union: 1922–1991	29
D. Soviet Model of the Russian Federation	30
E. Transformation of the Soviet Federal Model	31
§2. PROFILE OF THE FORM OF GOVERNMENT	32
I. The State Governed by the Rule of Law	32
II. The Separation of Powers	34
III. A Federative Republic	35
IV. A Democratic Republic	36
V. A Social State	36
VI. A Secular State	37
§3. STATE TERRITORY	37
§4. POPULATION	38
Selected Bibliography	41
Part I. Sources of Constitutional Law	43
Chapter 1. Treaties	43
	5

Table of Contents

§1. INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION	43
§2. INTERNAL AGREEMENTS	45
Chapter 2. The Constitution	47
§1. TYPIFICATION	47
§2. PROCEDURE FOR AMENDING THE CONSTITUTION	48
I. Initiative for the Revision of the Constitution	49
II. Procedure for Revision of Chapters 1, 2 and 9	49
III. Procedure for Amendment of Chapters 3–8	49
IV. Changing of the Provisions of the Article 65	50
Chapter 3. Legislation and Equivalent Legislative Rules	52
Chapter 4. Jurisprudence	55
Chapter 5. Unwritten Law	57
Chapter 6. Administrative Regulations and Orders	58
§1. AT THE NATIONAL LEVEL	58
§2. AT THE LEVEL OF THE CONSTITUENT ENTITIES	59
§3. AT THE LEVEL OF THE LOCAL AUTHORITIES	59
Chapter 7. Codification, Interpretation and Publication	60
§1. CODIFICATION	60
§2. INTERPRETATION	60
§3. PUBLICATION	61
Part II. Form of Government	63
Chapter 1. General	63
§1. INTRODUCTION	63
§2. POLITICAL PARTIES, LOBBIES AND INTEREST GROUPS	65
§3. REFERENDUM	68

Table of Contents

Chapter 2. Head of State	71
§1. ELECTION	71
§2. LEGAL STATUS	72
I. Mandate	72
II. Incompatibility, Immunity and Unaccountability	75
III. Personal Powers	75
§3. COMPETENCE	75
I. The Powers of the President are Broader than Enumerated Ones	75
II. Powers Regarding the Federal Assembly	76
III. Powers Regarding the Judiciary	78
IV. Powers Regarding the Government	78
V. Regulatory Powers	79
VI. National Defence and Foreign Affairs	79
VII. Other Powers	80
Chapter 3. The Legislature	82
§1. THE ORGAN OF STATE	82
I. Bicameral System	82
A. Introduction	82
B. Reasons for the Bicameral System	83
II. Classification of Members of Parliament	83
III. Electoral System	84
A. Electoral Bodies	85
B. Electoral Constituencies	85
C. Electoral Lists	85
D. Nomination of Candidates	85
E. Electoral Campaign	86
F. Day of Election	86
G. Results of Election	86
§2. LEGAL STATUS	87
I. Mandate of the Member of Parliament	87
A. Representative Character of the Mandate	87
B. The Term of the Mandate	87
II. Incompatibilities, Immunities and Privileges	88
A. Incompatibilities	88
B. Guarantees of the Deputy's Activity	88
C. Immunities	88
D. Indemnity and Benefits	89
§3. COMPETENCE	89
I. Legislation	89

Table of Contents

II. Supervision of and Control over the Executive	89
A. Participation in the Appointment of the Prime-Minister	89
B. Vote of Non-Confidence	90
C. Questions	90
D. Inquiry	90
E. Procedure of Accusation of a President	90
F. Control of the Central Bank of Russia	91
III. Power to Appoint Members of Other Bodies	91
IV. Foreign Affairs Power	91
V. Other Powers of the Council of the Federation	92
§4. WORKING	92
I. Parliamentary Proceedings	92
A. Sessions of the Chambers	93
B. The Chairmen of the Chambers	94
C. The Council of the Chamber	94
D. The Procedure of Voting	95
E. The Committees and the Commissions of the Chambers of the Federal Assembly	95
II. The Legislative Process	96
§5. MISCELLANEOUS	98
Chapter 4. The Executive	99
§1. THE ORGAN OF STATE	99
I. The Process of Forming a Government	99
II. Composition and Organization of the Government	100
§2. LEGAL STATUS	101
§3. COMPETENCE	103
I. Regulatory Powers	103
II. National Defence and Foreign Affairs	104
III. Relations with the President	104
IV. Relations with the Federal Assembly	105
§4. WORKING	106
§5. MISCELLANEOUS	106
Chapter 5. The Judiciary	107
§1. JUDICIAL ORGANIZATION	107
I. Court System	108
A. The Supreme Court of Russia	109

Table of Contents

B. Other Courts of General Jurisdiction	110
C. Arbitration Courts	110
D. The High Arbitration Court	111
II. Legal Status of the Judges	112
III. Judicial Proceedings	116
§2. JUDICIAL REVIEW	117
I. The Constitutional Court	118
II. Constitutional (Charter) Court of a Federal Entity	120
Chapter 6. Independent Non-Political Bodies: the Audit Chamber	121
Part III. The State and its Subdivisions	123
Chapter 1. The Structure of the State: A Federal State	123
Chapter 2. Entities of the Russian Federation	126
§1. GENERAL DESCRIPTION	126
§2. DELIMITATION OF POWERS BETWEEN THE FEDERATION AND ITS ENTITIES	127
§3. COOPERATION BETWEEN FEDERATION AND ENTITIES OF THE RUSSIAN FEDERATION, PREVENTION AND SETTLEMENT OF CONFLICTS	130
§4. FINANCIAL POSITION AND RELATIONS BETWEEN THE FEDERATION AND THE ENTITIES OF THE RUSSIAN FEDERATION	132
§5. INTERNAL STRUCTURE OF THE CONSTITUENT ENTITIES	134
Chapter 3. Local Self-Government	138
Part IV. Citizenship and the Administration of Justice	141
Chapter 1. Rules Regarding Citizenship and the Relevance of Citizenship	141
§1. CONSTITUTIONAL AND STATUTORY PROVISIONS REGARDING CITIZENSHIP	141
I. Attribution of Russian Federation Citizenship	142
II. Acquisition of Russian Federation Citizenship	142
III. Loss of the Russian Federation Citizenship	143
IV. Dual Citizenship	144

Table of Contents

V. Proceeding	144
§2. RELEVANCE OF CITIZENSHIP	144
Chapter 2. Fundamental Rights and Liberties	146
§1. GENERAL	146
I. The Protection of Human Rights	148
II. The Restriction of Human Rights and Freedoms	149
III. Equality	150
§2. CIVIL AND POLITICAL RIGHTS	151
§3. SOCIAL AND ECONOMIC RIGHTS	158
Chapter 3. Constitutional Problems of Minorities	161
§1. CONSTITUTIONAL AND STATUTORY PROVISIONS REGARDING NATIONAL MINORITIES	161
§2. LANGUAGE RIGHTS	162
§3. CULTURAL NATIONAL AUTONOMY	163
§4. INDIGENOUS PEOPLES	163
Chapter 4. Judicial Control of Administrative Action	165
§1. PREVENTIVE LEGAL PROTECTION	165
§2. CURATIVE LEGAL PROTECTION	165
I. Historical Background	165
II. The Procedure of Judicial Review against Unlawful Actions of Officials	166
§3. MISCELLANEOUS	168
Chapter 5. Legal Position of Aliens	171
§1. CONSTITUTIONAL PROVISIONS REGARDING ALIENS	171
§2. STATUTORY PROVISIONS REGARDING THE STATUS OF ALIENS	171
I. Entry into Russia, Transit and Exit	172
II. Sojourn or Residence	173
III. Deportation	174
IV. Right to Asylum	175

Table of Contents

§3. INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION	176
Part V. Specific Problems	177
Chapter 1. War, Treaty and Foreign Affairs Powers	177
§1. NATIONAL DEFENCE	177
I. Use of the Armed Forces	177
II. Martial Law and State of War	177
III. Military Duty	178
IV. Military and Technical Cooperation	179
§2. EXTERNAL RELATIONS	179
I. Treaty-Making Process, Negotiations and Conclusions	179
II. Approval by the Federal Assembly	180
III. Publication	180
IV. International Contacts of the Federal Entities	180
Chapter 2. Taxing and Spending Powers	182
§1. TAXING POWERS	182
I. The Principle of Legality	182
II. Non-Retroactiveness of Fiscal Laws	183
III. Principles of Equality and Non-Discrimination	183
§2. BUDGETARY SYSTEM OF THE RUSSIAN FEDERATION	183
§3. FEDERAL BUDGETARY PROCESS	184
Chapter 3. Emergency Powers	186
§1. CONSTITUTIONAL PROVISIONS	186
§2. STATUTORY PROVISIONS	187
I. State of Emergency	187
II. Emergency Situations of Natural and Technogenical Character	188
III. Existing Practice Regarding a State of Emergency	188
Chapter 4. The Constitutional Relationship between Church and State	190
§1. CONSTITUTIONAL PROVISIONS REGARDING THE FREEDOM OF CONSCIENCE	190

Table of Contents

§2. STATUTORY PROVISIONS	191
I. Relations between the State and Religious Associations	191
II. Religious Associations	192
III. Freedoms of Conscience and Religion	193
Index	195

Constitutional Law in Russia

**Irina Bogdanovskaia
Tatiana Vassilieva**

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Constitutional Law.

General Editor: Roger Blanpain
Associate General Editor: Michele Colucci
Volume Editors: André Alen, David Haljan



Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper:

ISBN 978-90-411-3920-7

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Authors



Irina Bogdanovskaia is a Senior Research Fellow at the Institute of State and Law, Russian Academy of Science. She is specialized in Comparative Law and Comparative Constitutional law. Irina is the author of two books and numerous articles in this sphere. As an Associate Professor, she teaches courses on Jurisprudence, Comparative Law and Comparative Constitutional Law at the International Law Institute of the Ministry of Justice of the Russian Federation and at the Academic Law University of the Institute of State and Law.



Tatiana Vassilieva is the Head of the Department of Comparative Law at the Institute of State and Law, Russian Academy of Science, Associate Professor of Comparative Constitutional Law at the Law Faculty of the Academy of National Economy and Civil Service under the President of the Russian Federation, and an expert of the Committee on Nationality Issues of the State Duma of the Federal Assembly. She is a former Research Fellow of the Law Faculty of the Moscow State University, consultant at the State legal department of the of the President of the Russian Federation. She is an author of numerous publications in the fields of the Comparative Constitutional Law and the

Constitutional Law of Russia.

The Authors

Published by
The University of
Chicago Press
Chicago, IL
60607

Printed in the
United States of
America
All rights reserved
© 1998

Table of Contents

The Authors	3
List of Abbreviations	13
Glossary	15
General Introduction	17
§1. CONCISE DESCRIPTION OF CONSTITUTIONAL HISTORY	17
I. General Retrospective of Russian Constitutional Development	17
A. Before 1917: the First Steps to the Constitutional State	17
B. Soviet Constitutional Law	19
C. The Constitutional Law of the Transitional Period	24
II. A Federalization Process	27
A. Russia before 1917	28
B. Independent Federal State	28
C. Russia as a Member State of the Soviet Union: 1922–1991	29
D. Soviet Model of the Russian Federation	30
E. Transformation of the Soviet Federal Model	31
§2. PROFILE OF THE FORM OF GOVERNMENT	32
I. The State Governed by the Rule of Law	32
II. The Separation of Powers	34
III. A Federative Republic	35
IV. A Democratic Republic	36
V. A Social State	36
VI. A Secular State	37
§3. STATE TERRITORY	37
§4. POPULATION	38
Selected Bibliography	41
Part I. Sources of Constitutional Law	43
Chapter 1. Treaties	43
	5

Table of Contents

§1. INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION	43
§2. INTERNAL AGREEMENTS	45
Chapter 2. The Constitution	47
§1. TYPIFICATION	47
§2. PROCEDURE FOR AMENDING THE CONSTITUTION	48
I. Initiative for the Revision of the Constitution	49
II. Procedure for Revision of Chapters 1, 2 and 9	49
III. Procedure for Amendment of Chapters 3–8	49
IV. Changing of the Provisions of the Article 65	50
Chapter 3. Legislation and Equivalent Legislative Rules	52
Chapter 4. Jurisprudence	55
Chapter 5. Unwritten Law	57
Chapter 6. Administrative Regulations and Orders	58
§1. AT THE NATIONAL LEVEL	58
§2. AT THE LEVEL OF THE CONSTITUENT ENTITIES	59
§3. AT THE LEVEL OF THE LOCAL AUTHORITIES	59
Chapter 7. Codification, Interpretation and Publication	60
§1. CODIFICATION	60
§2. INTERPRETATION	60
§3. PUBLICATION	61
Part II. Form of Government	63
Chapter 1. General	63
§1. INTRODUCTION	63
§2. POLITICAL PARTIES, LOBBIES AND INTEREST GROUPS	65
§3. REFERENDUM	68