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The Russian President’s “Delegated” Powers As a Means of Expansion of his Authority

The first part of the article considers the significance and the legal meaning of the Russian Federation President’s objectives and functions, as established by the Russian Constitution, as well as their relationship to presidential powers. The second part of the article illustrates the author’s thesis regarding the great, but theoretically undervalued, significance of the regulations contained in statute 80 of the Russian Constitution, which set out the process for expanding presidential authority. This section presents the findings of the author’s analysis of the scope and nature of the powers that had been delegated to the President through legislation and provides commentary to these findings.

Key words: head of state, Russian Federation President’s authority, President’s powers, (functions) of the President, delegated authority

1.

In this article, I set out to demonstrate that a significant number of the Russian Federation President’s powers are not constitutional, but exist as a result of legislative delegation. This deduction is corroborated by the findings of this study, as the author identifies and classifies the powers of the President the Russian Federation, which had been legislated following the adoption of the Russian Constitution in 1993. This article also touches upon theoretical issues. However, their conception requires further study and, as such, in this article, I limit myself to a brief discussion.

One such question is: “Are all the Russian Federation President’s powers, as outlined by federal law, *delegated*?” The answer is N Strictly speaking, delegated powers are those powers that are *vested* in a government agency, or are vested in a particular level of government, but are then delegated to a different government agency (or organisation) or a different level of government. Though, in such a case, there arises a new question: “How do we match the given meaning with the assertion made in the literature that “the principle of *non-delegation* of powers emerges from the theory of separation of powers and implies that no other branch of government can share its powers with another?” (the emphasis in quotes is mine. — M.K.).¹ The solution to the problem depends on the form and nature of the anchoring of a given power.

¹ Albert R. “Benefits” Accessible to Presidential Republics, within the Conditions of Parliamentary Democracies. Comparative Constitutional Review. 2011. N. 3. P. 36.

Firstly, it is necessary to determine whether the power to be delegated is organic or whether it is intended singularly for the delegating agency. If it is singularly intended, it cannot be delegated. The abovementioned R. Albert cites a Canadian Supreme Court decision, which finds that some functions can *only* be “judicial, executive or legislative in their nature and, as such, *cannot be delegated*.”² Secondly, another criterion to consider is the degree of specificity of the original judicial expression of a given power. For example, the first parts of articles 102 and 103 of the Constitution, which underlie the powers of the chambers of the Russian Parliament, begin with the words “The area of responsibility includes...” and are followed by utterly specific powers, which only the given chamber — the Federation Council or the State Duma — is authorised to carry out (though separate constitutional powers of the chambers are contained in other statutes as well). As such, it would be a gross violation of the Russian Constitution if the powers to approve boundaries between federal subjects of the Russian Federation or to grant amnesty were delegated to the President. Equally, the President, whose competency to some extent overlaps with the competency of the government, does not have the right to delegate his powers, which may include the right to pardon or approve/reject federal laws, to the latter.

As I will demonstrate later, the powers that the lawmaker awards to the head of state can be separated into *administrative* (for instance, the power of appointment) and *regulatory* (provision for the adoption and approval of various laws and regulations). But the assignment of regulatory powers to the President does not imply that Parliament is delegating its own “exclusive” powers. The President is within his right to carry out legislative regulation without any additional permission from legislators. In reality, the Russian Constitution formulates the President’s powers as regulatory; however, by separating the President’s acts into decrees and orders (article 90), it implies that *decrees can be normative*³, and orders can be individual in their nature. Additionally, article 115 speaks directly to the President’s *normative decrees*, although it doesn’t specify the scope of their applicability.

The decision of the Constitutional Court of the Russian Federation whereby the court found that the President’s right to issue *decrees, which address legislative gaps*, does not violate the Constitution contributes to the argument that the President’s creation of regulatory acts is not a power delegated from Parliament. The decision does specify that the President’s decrees are not in violation “on the condition that such decrees do not violate the Russian Constitution and federal laws, and that their temporal scope is limited until a corresponding legislative act is adopted.”⁴ At the same time, many of the Constitutional Court decisions establish that the existing *powers of the Russian government*, which outline the terms for adopting normative legal acts, are in fact *delegated*. The Court employs this term in relation to the powers of other organisations — both governmental and non-governmental — but never in relation to the powers of the Russian President.

² See: Ibid. P. 42. For the Court Decision cited by R. Albert, see: Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3. Para.139

³ In practice, many of the decrees are individual in nature (for example, decrees that establish the appointment of federal ministers)

⁴ See: P. 4 of the preamble of the Russian Constitutional Court resolution, dated 30 April 1996, N 11-P. “Regarding the Inspection of Constitutionality of item 2 of the Russian President’s Decree, dated 3 October 1994, N 1969 “On Consolidating the Unified System of Executive Power in the Russian Federation” and item 2.3 of the regulation of the head of administration of a krai, oblast, federal city, autonomous oblast, autonomous okrug of the Russian Federation, ratified by the said Decree” // SZ RF 06.05.1996. N. 19, statute 2320.

This could be explained by the weakly developed theory of power delegation, which, in turn, is conditioned by weak demand for corresponding application in practice — both in the legislature and the courts. If “the primary incentive” for both the lawmaker and the legal practitioner is the satisfaction of immediate political and economic issues (in this instance, I do not consider the degree of their “moral justification”), one should not expect an objective theoretical basis.

As such, it is incorrect to describe the powers, ascribed to the President by legislation, as delegated. Nonetheless, for the sake of simplicity, in this article I describe them as “delegated”, albeit I put in them in quotations (as a sign of theoretical compromise).

2.

It is understood that the term “competency” can be defined in various ways in juridical literature; however, it is most frequently defined as a sum total of issues, functions⁵ and corresponding powers. The actual scope of “power” of a government body or an official is determined by the scope of his powers. As such, it makes sense to use the same approach when considering the constitutional competency of the Russian President (i.e. to examine the scope of presidential power and its degree of political significance by considering the powers, outlined in the *Russian Constitution*).

An examination of such powers reveals that they are limited in number. More importantly, in their sum total, these powers do not explain why, despite the existence of democratic principles, proclaimed in the Constitution, there exists a phenomenon of *personalistic rule*⁶ in modern Russia. Practically all significant decisions originate with the head of state, while other agencies of public power depend on him in one way or another. Some may disagree with me and point to the head of state’s constitutionally appointed capabilities to single-handedly form the government, fully control its activity⁷ and essentially prevent the State Duma from having access to executive power.⁸ Raymond Legeais, a famous comparativist, has eloquently stated that the Constitution provides the President of the Russian Federations with “significant powers, making the government into an agency that makes important decisions, which can only partially be considered its own.”⁹

Indeed, in many ways, the political constitutional powers of the President and the lack of corresponding checks and balances from the Parliament set out the misbalance in the

⁵ In this article, the author considers “tasks” and “functions” to be synonymous.

⁶ For more details on this phenomenon, see: *Krasnov M.A.* The Personalistic Regime in Russia: An Institutional Analysis. Moscow, 2006; *Krasnov M.A., Shablinsky I.G.* Russian System of Power: A Triangle with One Angle. Moscow, 2008.

⁷ The current “diarchic” or “duumvirate” state of affairs, whereby the political weight of the President has clearly weakened, does not refute — but actually supports — the above said, as the shift of power to the Head of Government as the locus of power is correspondent to factors external to institutions. Constitutionally, the President retains decision-making levers vis-a-vis the government, but for reasons, which we can only guess at, he does not use them to their full capacity.

⁸ The 2008 amendment of the Russian Constitution, which states that the State Duma must hear annual accounts of the work carried out by the Russian Government (part 1, article 103), has not resulted in the smallest expansion of the Duma’s powers, for a negative account of the work of the Government does not award the Duma the ability to recall the Cabinet. The fate of the Cabinet lies exclusively in the hands of the President.

⁹ *Legeais R.* Great Modern Legal Systems: a Comparative Approach. Translated from French by Gryadov, A.V. 2nd ed. Moscow. 2010. P. 212.

existing system of checks and balances. Nonetheless, *these powers alone cannot serve (at least, not in the long term) as a juridical basis for the dominant position¹⁰ within the system of governmental power agencies, which, in actuality, is occupied by the Russian President, independent of his trust rating.*

It is well known that the initial popularity of the first Russian President, B.N. Yeltsin, peaked during the course of August 1991 events, then began to drop, before, finally almost disappearing by mid-1990s. This trend was reflected in the first elections to the State Duma, which were held concurrently with a referendum on adopting the first non-Soviet Constitution on 12 December 1993. Out of 450 seats, Yeltsin's supporters (who, at that time, were represented by Russia's Choice) received 64 seats, while his ideological opponents (the Communist Party of Russia, the Agrarian Party, and the Liberal Democratic Party of Russia) won 143 seats and the democratic bloc, "Yavlinsky-Boldyrev-Lukin", which would eventually become Yabloko, took 27 seats. The remaining legislative seats were divided among parties, blocs and movements, which neither supported the presidential course of action nor opposed it. Additionally, 77 deputies of the first Duma, elected in single-member districts, were not part of any faction and, as such, in combination with the vacillating factions, comprised a "swamp".

In the 1995 elections (according to the transitional nature of the Russian Constitution, the State Duma was elected for two years), the Communist Party of Russia won 157 seats (99 deputies through the party list and 58 through single-member districts). With 20 deputies from the Agrarian Party and 9 deputies from the newly formed legislative group¹¹ "Power to the People", the total number of deputies in the "leftist bloc" comprised 186. The Liberal Democratic Party of Russia won 51 seats in the second Duma, while Yabloko obtained 45. It is revealing that the party that was formed with the President's and government's initiative and support (Our Home is Russia) — the "party of power" at the time — won only 55 seats.

The December 1999 election results depended on an entirely different political situation. From August of that year, V.V. Putin, the new Prime Minister, had begun to quickly accumulate political leverage, while B.N. Yeltsin had distanced himself from influencing the political course, allowing his "successor" the opportunity to prove himself. In this political environment, the federal and regional bureaucracies began urgent work to create two new parties — "Unity" (in reality, Putin's party) and "Fatherland — All Russia" (the party of the regional elite, whose patrons were Moscow's mayor Yu.M. Luzhkov and Tatarstan's president M.Sh. Shaimiev). Both had fairly successful results: "Unity" won 73 seats and FAR won 66.¹² Curiously, "Our Home is Russia" won only 7 seats — all in single-member districts (i.e. the popularity of personal candidacies likely helped secure these seats). The Communist Party of Russia won 113 seats (several dozen of its seats had gone to new bu-

¹⁰ The term "dominant position" is borrowed from the Federal law "On Protection of Competition", dated 26 June 2006. N 135-FZ (SZ RF, 31.07.2006. N 31 (part 1, statute 334), where according to statute 5 "dominant" is defined as "the status of the business entity (group of persons) or several business entities (groups of persons) on the market of a given good, which provides said business entity (group of persons) or business entities (groups of persons) the opportunity to exert *critical influence on the general conditions* of circulation of the good on the corresponding goods market, and/or *eliminate other business entities from the goods market*, and/or *obstruct access* to the goods market by other business entities". In fact, this is the threshold of *monopolistic* provision.

¹¹ At this time, the State Duma Regulations do not permit the formation of legislative groups.

¹² Later these two parties merged into a single party — "United Russia".

reaucratic parties); the Liberal Democratic Party of Russia (“Zhirinovskiy’s bloc”) won 17 seats, Yabloko secured 20 and the Union of Right Forces (liberal democrats) won 29. The remaining seats went to candidates running under the majority system in single-member districts and left-nationalist movements. In other words, the post-1999 elections Duma comprised blocs that largely opposed B.N. Yeltsin.

In the 1990s, the ideological opponents of the first President persisted to an even greater degree in the federal regions — both in terms of the “gubernatorial corps” and regional legislative bodies. As such, the Federation Council (the “regional” chamber) was also beyond the influence of the President.

However, it should be noted that *even in unfavourable conditions, the President remained the most important political actor. He alone made significant decisions.* So, was it Yeltsin’s personality that played a role? Perhaps, to a certain degree. But the main reason is *institutional*.

The animosity of the legislators and the regional elite did vex the President. But, objectively, this proved useful for implementing completely new principles of constitutionalism. If the situation following the adoption of the Russian Constitution in 1993 was similar to today’s political environment, whereby elite loyalty to the “political leadership” has reached the level of servility, we would not have the number of legal positions available to the Constitutional Court vis-a-vis the scope of presidential competency. As such, we must admit that, to a great degree, *the low rating of the Russian President* helped create a legal course, despite the costs of the post-revolutionary period.

It was in the 1990s that the Court considered the majority of the cases relating to the competency of the President and the interpretation of the norms of the Constitution related to his competency. A great number of such cases can be explained by the fact that parliamentary groups, the chambers of the Federal Parliament, regional heads, and regional legislative bodies were not afraid to officially question the Constitutional validity of Presidential acts and to challenge them in the Constitutional Court.

In any case, what interests us now is the content of those decisions. A closer examination reveals that practically all of them were resolved *in the President’s favour*. These Constitutional Court decisions underline *the priority of the competency of the head of state vis-a-vis the competency of other public authority bodies*. This is noted by other scholars as well.¹³ We can formulate hypotheses related to the Court’s position, but whatever they are, the Constitutional Court would not be able to deliver verdicts that legalise the expansion of the scope of presidential competency if it could not rely on the numerous tasks (functions) set out for the head of state in article 80.

In my opinion, it is a mistake, frequently made by other researchers, to underestimate the functions set out in article 80 of the Constitution. For instance, when discussing the tasks (functions) of the Russian President listed in statute 80, Legeais suggests that these “general Constitutional clauses can lose their meaning in the absence of a number of important prerogatives”, by which he means the appointment of the Prime Minister and members of the government, the right to dismiss the State Duma and others.¹⁴ However, in my opinion, it is precisely the constitutional tasks (functions) that comprise the main juridical base for the process of expansion of the head of state’s competency. More precisely,

¹³ For instance, see: Russian Model for Separation of Powers in the Decision of the Russian Constitutional Court. Abstract... Candidacy in juridical sciences. Moscow. 2009.

¹⁴ See: *Legeais R.* Ibid. P. 212.

this process becomes possible due to the *combination* of the President's constitutional powers and his tasks (functions).

This combination creates a certain *synergetic effect*, when the discretionary potential of the president's powers¹⁵ is multiplied by an even greater discretionary potential of his functions. This conclusion is supported by the President himself, who frequently refers to article 80 of the Russian Constitution and the decisions of the Constitutional Court in his decrees.

Finally, by relying on statute 80 of the Constitution, **the lawmaker expands not only the already broad discretionary potential of the head of state, but also the overall scope of presidential competency.** I describe this in greater detail in the next section of the study.¹⁶

3.

The goal of the research was to identify:

- the overall number of powers "delegated" to the President of the Russian Federation through federal legislation;
- the evolution of "delegated" powers from 1994¹⁷ to the present¹⁸;
- the relationship between those powers that comply with the Constitution, those that comply with it conditionally and those that do not comply with it at all;
- the Russian Federation President's powers to adopt normative legal acts (regulatory);
- the administrative powers (see below for their definition).

An analysis of federal legislation¹⁹ revealed that (as of **1 September 2011**) **120** federal laws contain **480** new presidential powers (laws, which had previously "delegated" powers to the President but have since lost their effect are, of course, excluded from the list). The number of "delegated" powers is continuously expanding; however, it differs across different temporal periods.

The **growth dynamic** is as follows: during B.N. Yeltsin's presidency (following the adoption of the Constitution), i.e. from 1 January 1994 to 31 December 1999, the federal lawmaker "delegated" **166**²⁰ powers; President V.V. Putin "received" **226** new powers from 1

¹⁵ In reality, not all constitutional powers of the Russian President retain the same potential. As such, the President has little freedom of choice in realising powers related to setting the elections for the State Duma and making decisions regarding letters of appointment and resignation for diplomats and others.

¹⁶ **Partial findings of this analysis were published in: The powers of the Russian President, as Delegated by Legislation.** International Research Conference "Government and Law: 21st century challenges (Kutafin readings)". Theses Anthology. Moscow. 2010. P. 54–59; *Krasnov M.* Legislation-based Powers of the Russian President: Necessity or Servility? *Comparative Constitutional Review*. 2011. 4. In this article, the research findings offer the latest data and, more importantly, are considered from a somewhat different perspective.

¹⁷ 1994 is chosen as a starting point because the Russian Constitution was adopted on 12 December 1993. Elections to the State Duma and Federation Council were held on the same day (if the reader recalls, this was a transitory parliament, as the term for both sets of parliamentarians was set at two years and the Federation Council was formed through direct elections). But the work of the new Parliament began only in 1994.

¹⁸ The analysis of the legislation extends to 1 September 2011.

¹⁹ The analysis was conducted on the basis and with the assistance of the *legal reference software "ConsultantPlus" Professional Version.*

²⁰ In reality, there were slightly more of them, but the laws were changing and the corresponding powers were "attributed" to the following presidents.

January 2000²¹ until 6 May 2008; 88 powers were “delegated” to President D.A. Medvedev from 7 May 2008 until 1 September 2011.

Of course, the statistics alone do not offer us much information. They only provide us with a general picture of the volume of “delegation” of legislative powers. However, it must be noted that a large number of powers that were “delegated” to B.N. Yeltsin by a Parliament that was not favourably disposed to the first President of Russia. So why did Parliament continue to legislatively increase the presidential competency? I believe this happened because parliamentarians perceived additional powers allotted to the head of state as a natural concretisation of the constitutional functions.

General statistics reveal a significant jump in the number of powers delegated to the head of state during V.V. Putin’s presidency. This period is defined by a dynamic increase in the loyalty (servility) of Parliament towards the President. However, this dynamic is not so much illustrated by the number of “delegated” powers, but rather through their content, which I describe below. When considering the number of powers, D.A. Medvedev’s presidency, during which the degree of servility was not reduced, yielded even to the number of powers delegated to B.N. Yeltsin. At the same time, Medvedev’s incumbency was much shorter and most of the powers were introduced in the preceding presidential period.

More illustrative are the number of **powers, which, according to the author’s analysis, do not conform to the Russian Constitution or conform to it conditionally**. Naturally, it is my job to explain why some powers may have been “discarded”. For this purpose, it makes sense to divide the powers into groups.

First group: *powers, which do not conform to the constitutional tasks (functions) of the President*. The lawmaker presented the Russian President with powers in various spheres, including the organisation and activity of governmental bodies (but excluding governmental agencies in the spheres of security, defense, and law and order); budget policy and financial control; culture; science and technology; education, as well as a number of other spheres which could hardly be considered “the presidential sphere of responsibility”. The following powers can be used as examples (these powers and those from other groups are summarised in Table 1):

- participation in regulating *family relationships* (1995);
- determination of coordination procedures for the federal state registration authority and its territorial branches, which served as authorised registration authorities, *for state registration of non-governmental organisations* (2002);
- nomination of candidacies to the State Duma for appointment and dismissal of *the Chairman of the Russian Audit Chamber* and nominations of candidacies to the Federation Council for appointment and dismissal of *the Deputy Chairman of the Russian Audit Chamber* (2004);
- nomination of candidacies for the posts of *auditors to the Russian Audit Chamber* to the Federation Council and State Duma (2007);
- the approval of the list of federal state *post-secondary educational institutions*, which have the capacity to put into action self-implemented post-secondary and post-graduate programmes (2007);
- *appointment and dismissal of chancellors* at the Lomonosov Moscow State and St. Petersburg State universities.

²¹ Perhaps, in a juridical sense, it is incorrect to consider the beginning of Putin’s presidency from 1 January 2000, as he served as an acting Russian President until his official inauguration in May 2000. However, in reality, the powers were “awarded” specifically to him.

Some may argue that these powers do not contradict the Constitution, as the Constitution sets out presidential functions, such as *the determination of the general direction of domestic and foreign policy* (part 3, article 80) and *provision of coordinated operation and interaction between governmental agencies* (part 2, article 80).

The first one of these functions logically spans *all spheres* of public life, which means that the President is entitled to powers in all spheres. However, even if we ignore the fact that this function contradicts the principle of separation of powers and the logic of a constitutional state, the formulation itself is indicative of the expansion of the “presidential sphere of responsibility”. The Russian Constitution describes only the *determination* of the direction of policy, i.e. it does not imply any other Presidential decisions or actions, apart from setting out such a direction.

The “coordinated operation” function is a dubious one, as, from a constitutional perspective, it is formulated in a way that implies that all governmental life occurs “under the wise guidance” of a given leader. Indeed, some scholars identify the abovementioned function as a function of *political arbitration*²², which is a characteristic of a head of state in a semi-presidential regime. In my opinion, this is a weak argument.

Indeed, the French Constitution directly discusses the head of state’s function of political arbitration. However, the arbitration function cannot (should not) be carried out by a politically committed head of state. Additionally, to a great degree, the term “arbitrator” suggests the function of mediation, i.e. it serves as an analogous term for terms such as “referee” and “mediator”. This meaning of arbitration implies that the parties in dispute *voluntarily request* that the authority figure (body) act as a mediator and take it upon themselves to accept and execute his decision. When considering the head of state, this action “algorithm” is inappropriate, if only because he is the guarantor of the constitutional system and, consequently, he is politically obligated and legally has the right to *use his own initiative* to get involved when the constitutional system’s stability is threatened by a conflict between other agencies of public authority.²³

Finally, the given function is so indefinite²⁴ that it captures *practically any intervention from the Russian President* into the work of other government bodies, both federal and regional. Some try to justify this task (function) by the fact that the President is responsible for the provision of *unity of governmental power*.²⁵ But if we are considering such unity, then we must implicitly assume that constitutional norms, regulating the competency and operating procedures of state power authorities, are not sufficient.

Second group: ***powers, which conform to the Russian Constitution conditionally***. The question of “conditionality” is related to the abovementioned opinion regarding the provision of coordinated operation and interaction of governmental authorities. The question

²² For example, see: *Chirkin V.E. Presidential Power. State and Law. 1997. N 5. P. 20.*

²³ Generally the manifestation of this function of the Russian President is attributed to part 1 of article 85 of the Russian Constitution — on the use of conciliatory measures in disputes between federal and regional subjects or between regional subjects. But this can hardly be considered arbitration for reasons described above, not even mentioning that conciliatory procedures, unlike arbitration, may not even lead to a solution. And it would be somewhat strange if the implementation of the presidential function was limited to such an insignificant power.

²⁴ The author has counted six Russian Constitutional Court decisions, which offer different manifestations of the provision of coordinated operation and interaction. In other words, even the authority that oversees constitutional law cannot determine the precise content of this given task (function).

²⁵ See: *Chirkin V.E. Ibid. P. 18.*

is: *how do we consider* this presidential task (function)? *If* it is a function of providing “unity of governmental power”, then the President’s powers of, for instance, *managing the public service* (civil, military and security²⁶) can be considered substantiated by the Constitution. And there are a number of such powers, granted through legislation.

But *if* we take into account the fact that the President cannot remain politically neutral within the existing framework (although all three Russian presidents have avoided *formal* membership in any party), then the “delegation” of his management of public service (and not just military and security, but also civil) promotes the undermining of the principles of separation of powers (statute 10) and political pluralism (article 13).

Third group: ***powers, which concretise or specify the Russian President’s constitutional powers but, in reality, contradict the Constitution.*** Up until now, we were discussing the expansion of presidential competency on the basis of the excessively broad interpretation of the head of state’s tasks (functions). In this group, we consider *direct distortion of constitutional norms*, which set out specific presidential responsibilities.

Example: item “f” in article 83 of the Russian Constitution establishes that the President presents the Federal Council with candidates for the appointment of justices to the Constitutional, Supreme and Supreme Arbitration Courts of the Russian Federation. Note, that the Constitution does not specify the rank at which the justices are appointed! However, laws “On the status of judges in the Russian Federation”, “On the Constitutional Court of the Russian Federation”, “On general jurisdiction courts” set out that the President presents the Federal Council with candidates for *chairmen* for the Constitutional, Supreme and Supreme Arbitration Courts of the Russian Federation, as well as their *deputies* and candidates for *members of the Presidium* of the Supreme Court of the Russian Federation and candidates for the *chairman and members of the Board of Appeals* for the Supreme Court of the Russian Federation. I am not discussing the idea of judicial independence here. In this case, I am underlining the direct violation of specifically formulated constitutional powers of the Russian President.

Fourth group: ***powers, which regulate the issues of the Russian President’s administrative powers, as set out by the Constitution*** (there are only three such powers). Here, I am talking about article 89 of the Russian Constitution, which sets out that, among other things, the Russian President *decides the issues* of Russian citizenship, *confers* Russian Federation awards, and *grants* honours. However, in accordance with the laws, the President is now authorised to do the following:

- affirm (i.e. adopt) the Regulation on the Marshall Zhukov State Prize²⁷ (1995);
- affirm the Regulation on the Procedures for Considering Issues of Russian Citizenship (2002);
- determine the procedures for awarding special titles to the employees of the Investigative Committee of Russia (2010).

Most likely, the lawmaker acted on the basis of the following logic: since the Constitution sets out that the “*President decides the issues*”, then he is within his right to also define the rules that condition the solution of these problems. Curiously, the President follows the same logic: article 89 discusses the President’s powers to issue pardons, although the Criminal and the Criminal Procedure Codes of the Russian Federation do not set out the

²⁶ The given examples of public service were taken from the Federal Law “On public service system of the Russian Federation”, dated 27 May 2003. N 58-FZ (3 RF. 02.06.2003, N 22, statute 2063).

²⁷ Strictly speaking, the Russian Constitution does not mention prizes. But I thought that in this case, we can equate them with awards and honours.

President's power to define the rules underlying petitions for pardon. He determined these rules on his own.²⁸

And now, corresponding to the proposed classification of powers, I present the data on the number of presidential powers that do not conform or conform conditionally to the Russian Constitution. For a clearer illustration, the information in the tables is also divided into the different presidential periods.

Table 1

The "delegated" powers of the Russian President that do not conform to the Russian Constitution

Groups of powers		B.N. Yeltsin	V.V. Putin	D.A. Medvedev
Powers, which do not conform to the constitutional functions and general ²⁹ constitutional powers of the Russian President		20	62	19
Powers, which conform to the Russian Constitution conditionally	in relation to managing and directing military and security services	13	9	3
	in relation to managing and directing civil services	3	34	5
Powers, which concretise or specify the Russian President's constitutional powers but, in reality, contradict the Constitution		2	3	10
Powers, which regulate the issues of the Russian President's administrative powers, as set out by the Constitution		1	1	1
Total		39	109	38

Table 2 shows the relationship between the President's powers that conform and don't conform to the Constitution (the latter include those powers that conform conditionally).

Table 2

The relationship between the Russian President's "delegated" powers that conform and do not conform to the Russian Constitution

RF Presidents	Powers that conform to the Russian Constitution		Powers that do not conform to the Russian Constitution	
	Absolute value	%	Absolute value	%
B.N. Yeltsin	125	76	39	24
V.V. Putin	114	51	112	49
D.A. Medvedev	44	54	38	46

²⁸ See: Regulation on the Order of Consideration for Petitions for Pardon in the Russian Federation. Adopted by means of RF Presidential Decree, dated 28 December 2001. N 1500.

²⁹ This term is sometimes used in the literature to designate powers, which resemble functions. These include, for instance, the power to manage foreign policy, to take up the post of the Commander in Chief of the Armed Forces of the Russian Federation, etc.

The last column on the right is quite illustrative: during “Yeltsin’s epoch”, powers, which could be considered questionable from a constitutional perspective, make up a quarter of the overall number of powers “delegated” to the President. During the “Putin epoch”, these powers make up almost half of the overall number, while about half are present during the “Medvedev epoch”.

Until now, I had considered the problem of expanding presidential competency from the basic point of formal compliance with the Russian Constitution. But it is equally important to understand the *nature of the new powers*, which had been delegated to the head of state by the lawmaker. In this regard, the *regulatory and administrative powers* are quite revealing (see Table 3).

Table 3

Regulatory and administrative “delegated” powers of the Russian President

Type of powers	B.N. Yeltsin	V.V. Putin	D.A. Medvedev	Total
Regulatory powers	62	92	30	184
Administrative powers	17	44	23	84

As discussed above, the **regulatory** powers of the Russian President are the powers related to the issuing of normative legal acts. Most frequently, the laws determine the *procedures* (and sometimes *the conditions and timelines*) that allow to implement any type of normative law like, for example, the procedure for awarding special titles to staff at the security authority; the procedures and conditions for posting staff; the procedures and timelines for delivering reports on various achieved and planned indicator values from the head of the federal subject to the President. Sometimes, the law speaks directly to the form of the normative legal act (in this way, the Russian President adopts³⁰ the *Regulation* on the Federal Bailiff Service, its structure and number of personnel). At the same time, it must be noted that a relatively large number of powers related to procedures of various *lists* — posts, authorities and organisations, types of products, etc. — were not considered as regulatory, although, to some extent, they can be addressed as such.

The Russian Federation President’s regulatory powers are recorded in various ways in the laws, with a varied degree of generalisation: in addition to the specific regulatory powers, one also comes across “the right to participate” in the regulation of certain public relationships (this is typical of various types of codes, including the Customs Code, the Forestry Code, the Water Code). There are also various general formulas, such as the “enactment of normative legal acts in such-and-such sphere” (for example, the sphere of mobilisation preparation and mobilisation).

When considering the array of legislation, the President’s **administrative** powers can be said to imply not only his prerogatives for making appointments, setting the terms of appointment (endowing with powers), and dismissal of various officials, managers and members of consultative, overseeing and other authorities, organisations and establishments, but also his prerogatives to introduce class rankings in the public service, military and special titles, to institute disciplinary proceedings or extend term of office, etc. Regulatory powers in administrative policies were not considered as administrative powers in this

³⁰ The term “adopts” should not mislead: frequently, it is used as a synonym for “approve”.

case. Take, for example, the conferment of a public service class rank by the President. An actual public servant of the Russian Federation of the 1st, 2nd or 3rd class was interpreted as an administrative power, while *the procedure* of awarding and maintaining the class ranking within the federal public service wasn't.

The importance of the President's administrative powers comes from the fact that he is presented with critical levers in one of the most important spheres for the bureaucracy (and not just for them). These levers allow entry into the formal "elite", and also pose a threat for the removal of this desired "status" from those who have it. And this extends beyond public servants or those serving in government posts to the chancellors of the country's two biggest state universities, and heads of several government corporations. One can argue that it is the President's administrative powers that, in the grand scheme of things, comprise the biggest factor in the unbalanced powers of the Russian President. And, as we can see, the lawmaker has appreciably expanded an already extensive set of administrative powers of the head of state.

Summary

The legislative delegation of powers, which concretize his constitutional functions, to the President is not in itself an unusual phenomenon. Such powers allow the head of state to fulfill his constitutional duties more effectively. However, there are plenty of powers within the "delegated" legislation that can hardly be explained by referring to the Constitution, although there are likely to be jurists ready to take on that challenge.

I am not saying that the process of expansion of presidential competency as a result of "gifting" powers to him, a process that is dubious from a constitutional perspective, is not compatible with Russia's status as a rule of law state. There are more pragmatic reasons against the expansion of presidential competency in such a manner.

The great number of spheres where, it is presumed, the new powers of the head of state will be realised, require a fairly multidivisional and comprehensive state machinery, which would result in a greater number of specialists in different areas. It is understood that the head of state (for example, in his role of overseeing the space programme) would act through the corresponding bodies of executive power. But, firstly, even then, someone in the president's administration must understand the issues at hand, at least in order to prepare the President's recommendations to the agencies and his ability to supervise their implementation, etc. Secondly, in this way, executive power further reduces its independence, as guaranteed by the Constitution. And, thirdly, the expansion of presidential competency inevitably means the increase in the degree of duplication and competition with the Government and other federal authorities of executive power (ministries, services, agencies). As a result of this, the President's ability to carry out the functions of a politically neutral institution, whose responsibility is to ensure *the stable development of the state in a constitutional and legal regime* rather than to solve executive problems that are generally politicised by party positions, is reduced.