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# Commentary on the Constitution of the Russian Federation<sup>1</sup>

It is reasonable and appropriate to consider the reviewed book not only as a compilation of theoretical reflections on constitutional norms, but also as a digest of the legal positions of the Constitutional Court, which reveal and interpret the meaning of identified norms. The sources of these positions are, foremost, the resolutions adopted by the Court in relation to inquiries regarding the interpretation of specific statutes of the Constitution. At the same time, the authors of the Commentary invoke other decisions of the Court, and also provide a spectrum of normative material. The specificity of the given book derives in large part from the fact that the majority of its authors work for the secretariat of the Constitutional Court. Their work rests on the synthesis and analysis of seventeen years of practice of the Court, including the last six years, up to 1 August 2008 (when the book was submitted for publication).<sup>1</sup>

The Commentary features positions that are the result of the official and the doctrinal interpretations of the Constitution. The latter reveal the specific dynamic of Russian constitutional-legal thought, making them significant from theoretical and practical points of view.

For instance, let's consider an issue that affects our public life in multiple ways: *the implementation of the principle of separation of powers*. The author of the commentary on article 10, which formulates this principle, posits that "the two-patterned contradiction in Russia — 'for' and 'against' the separation of powers, alongside the opposing tendencies of federalism and unitarism, centralisation and decentralisation, democracy and bureaucracy — in some way, explains the imprecise, compromising character of statute 10 of the Russian Federation Constitution. It sets out that 'governmental authority is implemented...' (as such, in accordance with article 3, authority is implemented by the people of the Russian Federation, and not any body of government). [...] However, deviations from the principle of separation of powers have been occurring more frequently in recent years, gradually forming a system of constitutional law that, at times, does not correspond with the existing fundamental principles and important resolutions of the Constitution, and does not adhere to the conciliatory procedures set out by the Constitution (for instance, see p. 1, st. 85), nor to the addition of changes to constitutional amendments, nor the revision of the Constitution itself" (pp. 70–73).

And then there is the commentary on article 102, which consolidates the competency of the Federation Council. Paragraph "j" of part 1 of this statute sets out that the Federation Council appoints and dismisses the deputy Chairman of the Accounts Chamber and half of its auditors. Amendments to the federal law on the Accounts Chamber, added in

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<sup>1</sup> Review of "Commentary on the Constitution of the Russian Federation" (edited by *Lazarev L.V.*, 3<sup>rd</sup> edition, Moscow, Prospect, 2009).

2004 and 2007, set out that the appointment of all the above-mentioned posts (not dissimilar from the appointment of the Chairman of the Accounts Chamber and the other half of the auditors by the State Duma) are implemented *upon the recommendation of the head of state*. The commentary is written cautiously; however, the author's position is clear: "Previously, the Regulations of the Federation Council provided that candidates for the position of the deputy Chairman of the Accounts Chamber and half its auditors were proposed by the committees and commissions of the Federation Council. The Federation Council Commission on Coordination with the Accounts Chamber offered an opinion on each nominee, formulated the list of nominees and presented it to the Federation Council. This procedure, in our opinion, answered the purpose of the Accounts Chamber as a body representing the Federation Council, which is responsible for exercising control in implementing the federal budget. The federal budget is implemented under the supervision of the Government of the Russian Federation, which is headed by the President of the Russian Federation, and the control of the Accounts Chamber as a Federal Council agency should in no way be dependent on the personnel decisions of the President" (p. 601).

The commentary on article 14 of the Constitution, which sets out the secular character of the Russian state, also merits attention. This section specifically takes into account the decisions of the European Court of Human Rights. It is easy to agree with the statement that "if constitutional equality of rights of religious citizens and religions is observed, then the fact that one or another religion is quantitatively predominant should not conflict with the rights and freedoms of the individual in this sphere" (p. 90). Most importantly, the commentary on article 14 continues, no one church should aspire "to create for itself a favourable legal position on a federal or regional scale, using the centuries-old tradition of part of the population and semi-official support from the governmental authorities" (Ibid.).

We emphasise these sections because their subjects represent Russia's constitutionalism's most unhealthy issues today. First of all, this concerns the problem of the separation of powers and the function of the checks and balances mechanism. The fundamental point of any real constitution is its ability truly to restrain political power. Nonetheless, we believe that Russian constitutionalism still maintains solid development potential.

The sections of the Commentary that are dedicated to statutes that set out the foundation of the judicial system of the Russian Federation merit special interest, from our point of view, due to their characterisation of the conditions (formulated by the Plenum of Russia's Supreme Court) of direct application of constitutional norms.

In identifying sections of the work that could be deemed controversial, we draw attention to the commentary on p. 3 on article 80, which sets out the function of the head of state in setting out the direction of internal and foreign policies. The commentary on this constitutional norm posits that "due to the special position of the head of state, elected by the people, his official policy views must be acknowledged as general conceptions of lawmaking" (p. 498). This begs the question: for whom and in what sense are "the official policy views of the President" necessary? The answer to this question results in some difficulties, foremost, due to the various peculiarities of the construction of the norm itself, which was the subject of serious discussions in October 1993, when this project was developed by the Constitutional Council.

It must be noted that the Commentary on the Constitution is not only analytical in nature, but is also an information and reference publication. Within the scope of the com-

mentaries on the statutes of the Constitution, it is also appropriate to include a precise list of the subjects of the Federation, which have become participants in the universalisation processes. It is also appropriate that the commentary on article 11 of the Constitution mentions the functioning agreements on division of powers and functions between the bodies of government of the Federation and some of its subjects.

Thus, it appears that Russian lawmakers will be able to find a variety of topical subjects related to the Constitution for further consideration in the reviewed work, while practicing jurists will have at their hands a well-structured tome of normative material. Every one of the identified aspects of the Commentary on the Constitution is interesting and important.