

Higher School of Economics  
National Research University  
Faculty of Law

***RUSSIAN CONSTITUTION AS AN ONGOING PROJECT: A  
PROBLEM-ORIENTED APPROACH***

Bachelors' of Law Course

by

Associate Professor **Irina Alebastrova** ([ialebastrova@hse.ru](mailto:ialebastrova@hse.ru))

**(2017-2018)**

**Moscow, 2017**

## I. Course Brief

### 1. Title

**Russian Constitution as an ongoing project: A problem-oriented approach**

### 2. Prerequisite

Compulsory course on Constitutional Law of Russian Federation and at least intermediate level of English are required.

### 3. Course Type (compulsory, elective, optional)

Optional

### 4. Abstract

The course “Russian Constitution as an Ongoing Project: A Problem-Oriented Approach” covers series of topics regarding peculiarities and problems of Russian constitutionalism. It is aimed to research the concepts, structure, history, evolution and issues of practical realization of Russian Constitutions. From those perspectives it analyses the most significant institutions of the constitutional law such as human rights, systems of governance, judicial review, and territorial organization of states.

## II. Course Objectives

The main objectives of this course are the following:

1. Improving students understanding of the constitutional law role in establishing effective government system;

2. Investigation of different directions and ways of historical and modern development of Russian Constitution;
3. Investigation of current Russian constitutional law problems and analysis of possible and real approaches to these problems solutions in Russia comparing with foreign countries.

### **III. Course Learning Outcomes**

Students should gain:

*Knowledge of:*

- The most important directions and ways of the historical and modern evolution of the Russian Constitution and Constitutional Law as a whole and their institutions as well.
- Issues relating to legal regulation of different Russian Constitutional Law institutions and their practical realization.
- Studying different problem-solving approaches.

*Skills and abilities to:*

- Understand the idea of constitutionalism, Constitution, constitutional law and their institutions.
- Recognize and analyze the essence and importance of the differences between the ideas and instruments that were used by the constitutions and constitutional laws of Russian Federation in different times.
- Think systematically in terms of constitutional law and its role for different structures of governance and establishment of democratic and effective government system.
- Evaluate the results and issues relating to the Russian Constitutional Law development in different periods of Russian history and modernity.
- Evaluate the real significance and idea of legal reforms of constitutional institutions, legal and political practice in question as well.

*Students should gain the following competences:*

- To deal with judicial information (to search, evaluate, range and use the information, necessary for accomplishment of scientific and professional tasks).
- To carry out the academic, educational and practical professional activities in the constitutional environment.
- To use technical, comparative and other specific methods.
- To understand and analyse constitutional law issues and search for their solutions.

*Evaluation:*

There will be three parts of the resulting score: The class activity grade, the review work grade and the exam grade. Maximum grade for each part is 10 and maximum resulting score is 10 as well. The resulting score will be calculated in accordance with the following formula:

Resulting score = class activity grade x 0,4 + review work grade x 0,2 + exam grade x 0,4.

The exam is taken place in a kind of written test form.

## **IV. Course Plan**

### **1. Brief Plan**

1. Constitutionalism, Constitution, Constitutional Law and Constitutional Values: General Definitions (Introductory Lesson) (2h.).
2. Flickers of Constitutionalism in Russian History (10 h.)
  - a) Some Unrealized Constitutional Projects (2 h.);
  - b) Realized Constitutional Actions (2 h.);

- c) Constitutions v. Constitutionalism: Anti-Constitutional (Quasi-Constitutional?) Essence of Soviet Constitutions (2 h.);
  - d) Creation of the Constitution of 1993, its General Characteristics, Peculiarities and Evolution (4 h.).
3. Elements of Real and Fake Constitutionalism in Modern Russia (24 h.)
- a) Human Rights in Russia: Problems, Ways of Solution (8 h.);
  - b) Does the Separation of Powers Exist in Russia; or Are There Legal Ways to Transform Yes-Men Bodies into Competitive Branches? (8 h.);
  - c) Russian Model of Public Power Territorial Organization: What Can Be a Way to Responsible (Competitive-Collaborating) Federalism as an Alternative to Predominant Power Organization? (4 h.);
  - d) Political Opposition as the Main Resource for Separation, Replaceability and Responsibility of Powers: Legal Obstacles and Possible Ways of Improvement (4 h.)

### **3. Detailed Plan**

- 1. Constitutionalism, Constitution, Constitutional Law and Constitutional Values: General Definitions (Introductory Lesson) (2h.)
  - a) Constitutionalism, Constitution and Constitutional Law: Similarities and Peculiarities;
  - b) Constitutional Values: Definition and Kinds.
- 2. Flickers of Constitutionalism in Russian History (10 h.)
  - a) Some Unrealized Constitutional Projects (2 h.)
    - The Conditions of Anna Ioannovna,
    - The Manifestos by Nikita Panin,
    - Constitutional projects during Alexander I emperorship,
    - Constitutional projects by the Decembrists,
    - “Loris-Melikov's constitution”,

- Documents by the Russian Constitutional Assembly of 1918,
  - Project by the Constitutional Commission of 1993;
- b) Realized Constitutional Actions in Russian History (2 h.)
- Russian constitutionalism outside and in the remote provinces of Russia,
  - Reforms by Alexander II,
  - Creation and failures of the State Duma in early XX century,
  - Russian Constitutional Assembly of 1917 (elections and failure);
- c) Constitutions v. Constitutionalism: Anti-Constitutional (Quasi-Constitutional?) Essence of the Soviet Constitutions (2 h.)
- The Constitution of 1918: aggressive revolutionary type of the socialist Constitution,
  - The Constitutions of the Soviet Union: weakening aggression, from anti- to quasi-constitutionalism,
  - Peculiarities of the socialist model of the Constitution (constitutionalism, quasi-constitutionalism and anti-constitutionalism features);
- d) Creation of the Constitution of 1993, Its General Characteristics, Peculiarities and Evolution (4 h.)
- The history of creation of current Russian Constitution: Perestroika, the Constitutional Commission, the Soviet Union failure, the Constitutional Conference, different drafts of the Constitution, violent confrontation between the President and Parliament, the referendum,
  - The general characteristics of Russian Constitution of 1993,
  - The amendments to the Constitution,
  - Russian Constitution nowadays: evolution of Russian Constitution of 1993 by way of legislation, judicial and political practice.

## 2. Elements of Real and Fake Constitutionalism in Modern Russia (24 h.)

a) Human Rights in Russia: Problems, Ways of Solution (8 h.)

- Right to life and capital punishment,
- Right to protest and public order,
- Freedom of speech and abuses,
- Right to dignity and domestic violence,
- Right to vote and to be elected (principles of periodic elections, universal and equal suffrage, secret ballot and free expression of will),
- Human rights, State sovereignty and International protection of human rights,
- Right to have Russian citizenship (commercial investments as a foundation of naturalization; perspectives for deprivation of Russian citizenship);

b) Does Separation of Powers Exist in Russia or Are There Legal Ways to Transform Yes-Men Bodies into Competitive Branches? (8 h.)

- The President as the head of the Executive entitled to dissolve the Parliament: does it help to establish check and balances system? How to improve?
- Regulatory powers of the Russian President (why was the decision on sanctions against Russian officials and bodies adopted by the Parliament in the US while one on “contra-sanctions” in Russia – by the President? Which of those is made due to constitutional separation of powers principal ?),
- Ways the upper house of the Russian parliament is assembled. Does the perfect model still have to be found?
- How to reduce majoritarianism inside the Russian parliament?
- Reducing independence of judiciary: legal tendencies;

c) Russian Model of Public Power Territorial Organization: What Can Be a Way to Responsible (Competitive-Collaborating) Federalism as an Alternative to Predominant Power Organization? (4 h.)

- Russian model of separation of powers between federal center and regions,
- Statutory centralization of Russian system of government: detailed federal regulation of regional bodies organization, legal ways of the President impact on the regional election, responsibility of regional powers before the President and federal intervention;

d) Political Opposition as the Main Resource for Separation, Replaceability and Responsibility of Powers: Legal Obstacles and Possible Ways of Improvement (4 h.)

- Do we need regional political parties in our federal State?
- Prohibition to create political parties coalitions in Russia,
- Legal requirements on the number of political party members.

**V. Possible topics for students' papers (including review works and course-works).**

1. Russian constitutionalism outside Russia.
2. Constitutional balances and lack of balances in Russian Constitution.
3. Flashes of the constitutionalism in the Russian history.
4. Peculiarities of human rights regulation in Russian Constitutions.
5. Generations of human rights in Russian Constitutions.
6. Citizenship by investments: Russian and other countries regulation. Does Russia need it ?
7. Peculiarities of social rights in Russian Constitutions.
8. Right to live in Russia (abortion, euthanasia and capital punishment problems).
9. Ombudsman institution in Russia (different kinds and efficiency).
10. Foreign agents in legislation of Russia and foreign countries.
11. Are gender quotas as a mean for promoting women's participation in governance desirable in Russian legislation?
12. Foreigners' voting rights: regulation in Russia and abroad (pro et contra).



13. Immunities and legal equality in Russian constitutional law.
14. Top 5 decisions of human rights protection by Russian Constitutional Court.
15. Referendums in the Russian Federation as a democratic institution: Problems of legal regulation and political practice.
16. Prisoners voting right: regulation in the Russian Federation and other countries; ECtHR positions.
17. Spontaneous public actions: possibilities in Russia and ECtHR positions.
18. Street processions and demonstrations regulations: ways for improvement.
19. Legal regulation of political parties status in the Russian Federation: weak points and ways for improvement.
20. Peculiarities of referendum institution in the Russian Federation.
21. Primaries-2016 in Russia and the US.
22. Elections-2016 in Russia and the US.
23. Attempts of impeachments in Russia & the US in 1999: The reasons and results.
24. Separation & fusion of powers in the United Kingdom and Russia: Comparative analysis.
25. Russian deviations from the constitutional values.
26. Semi-presidential and super-presidential republics: similarities & peculiarities.

## **VI. Reading List**

### **a. Required**

*Pavilionis P*, A New Constitution for Russia <<http://rumiantsev.ru/a795/>>.

*Strashun BA*, Constitutional Law: Notion and Sources // Kutafin University Law Review. 2014. Vol.1. Issue 1. P. 5-22.

## **b. Optional**

*Andreeva G*, Some Thoughts on the Origins of Russian Constitutionalism and the Position of Russia in the Global Constitutional Process // Kutafin University Law Review. 2016. Vol.2. Issue 1. P. 60-81.

*Bartlett W*, The Dangers of Popular Constitution-Making, Brooklyn Journal of International Law. 2012. Volume 38. P. 193-238  
< [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1924958](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924958)>.

*Remington Th F*, Russian Parliament: Institutional Evolution in a Transitional Regime. Chelsea: Sheridan Books, 2001.

*Huskey E*, Presidential power in Russia /. Armonk (N.Y.); London : Sharpe, 1999.

*Ahdieh RB*, Russia's Constitutional Revolution: Legal Consciousness and the Transition to Democracy, 1985-1996. University of Pennsylvania Press, 1997.

## **VII. Methods of Instruction**

- Using interactive educational technologies (problematic lectures, Socrates method, work in small groups);
- Using ratings and accumulative system of control.

## **VIII. Special Equipment and Software Support (if required)**

- Power-point;
- LMS;
- Internet.