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## Examining the legitimacy and legality of the *ad hominem* term-limit waiver for the incumbent President of the Russian Federation

### Report<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pieter OMTZIGT, Netherlands, Group of the European People's Party

### Summary

The Committee on Legal Affairs and Human Rights stresses the importance of presidential term limits. Institutional checks and balances erode over time as key positions are progressively occupied by the allies of the president and dissenting voices disappear from the president's inner circle. Once presidents have taken the path of severe oppression of the opposition and cruelty against their own people, they risk spending the rest of their lives clinging to office at ever higher cost in order to avoid accountability.

The committee notes that Vladimir Putin has been continuously in power since 2000 and that the changes made to the Russian Constitution enacted in July 2020 would allow him to remain in office as president until 2036. The brutal repression against internal opponents and the war of aggression against Ukraine illustrate the growing cost of the lack of checks and balances in the Russian Federation.

The committee endorses the Venice Commission's finding that the *ad hominem* term limit waiver for the incumbent President violates both the Russian Constitution and international legal principles.

The committee finds that the overwhelming power of the President resulting from the extremely long term in office combined with the lack of any checks and balances such as a strong parliament, an independent judiciary, free media and a vibrant civil society has turned the Russian Federation into a *de facto* dictatorship, which constitutes a threat to international peace and security.

The committee finally considers that the future *ad hoc* international criminal tribunal should investigate all events on the territory of Ukraine from February 2014, starting with the illegal annexation of Crimea, the war in the Donbas region and the downing of flight MH17.

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1. Reference to committee: [Doc. 15446](#), Reference 4634 of 14 March 2022.



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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly stresses the importance of presidential term limits, in particular in countries where the constitution provides for a strong presidency, as opposed to those where parliament is supreme.

1.1. A president together with their political allies usually wields substantial power to nominate allies to high positions in the State, including roles in the court of accounts, electoral bodies, the central bank, the leadership of the armed forces or other security bodies. The checks and balances provided by these bodies may thereby tend to erode over time as these key positions are progressively occupied by the allies of the president. At the same time, dissenting voices gradually disappear from the president's inner circle. Ultimately this has a high cost for the country and for the president, as a range of opinions and a functioning system of checks and balances indubitably contribute to preventing large-scale errors. Presidential term limits therefore ensure that the checks and balances provided by independent institutions do not erode over time.

1.2. Term limits also serve to keep in check those who might be tempted to use their presidential power to curtail any opposition. When they know that their term is finite and wish to live out the rest of their lives in their home country, they have an incentive not to use excessive force against political opponents, for they know that one day one of them may be elected as their successor and they will no longer be able to exercise political power to protect themselves from the consequences of their acts.

1.3. Once a president has taken the path of severe oppression of the opposition and cruelty against his or her own people, he or she risks spending the rest of their life trying to avoid accountability by clinging to office at ever higher cost to their own country, their own people and ultimately themselves.

1.4. For the above and other reasons, the Assembly considers that any country that extends presidential term limits beyond the usual two terms of four or five years is taking a large step away from democracy and the rule of law.

2. The Assembly notes that Vladimir Putin has been continuously in power as President or Prime Minister since 2000 and that the changes made to the Russian Constitution enacted in July 2020 allow him to remain in office as President until 2036, when he will be 83 years old. The growing brutality of repression against internal opponents and the war of aggression against Ukraine show that the cost of the lack of checks and balances in the Russian Federation is indeed becoming ever higher.

3. The Assembly recalls that the European Commission for Democracy through Law (Venice Commission) in its Interim Opinion of 23 March 2021 found that the *ad hominem* term-limit waiver for the incumbent President of the Russian Federation violates both Russian constitutional law and international legal principles.

3.1. The relevant constitutional changes were adopted in an *ad hoc* accelerated procedure not foreseen in the Russian Constitution. The regular constitutional amendment procedure requires the convocation of a Constitutional Assembly and that there shall be specific amending laws on the different changes proposed, rather than a single *en bloc* vote on all amendments. Instead, a novel *ad hoc sui generis* procedure was introduced by the Amending Law. Under this procedure, the President requested the Constitutional Court's opinion on the compatibility with the Constitution of the Amending Law, delivered within seven days. Then a single *ad hoc* "nationwide vote" was held that was not subject to the strict safeguards applicable to referendums.

3.2. The Assembly therefore fully agrees with the conclusion of the Venice Commission that the novel, *ad hoc* procedure used to amend the Constitution creates an obvious tension with Article 16 of the Constitution which safeguards the "firm fundamentals of the constitutional system of the Russian Federation".

3.3. The Assembly also fully shares the Venice Commission's view that "[a] decision to alter or remove presidential term limits should be subject to thorough public scrutiny, as it has a significant impact on the political system, a country's stability and on confidence in the electoral process. In the long term, a reform of these provisions may affect democratic quality or even democratic endurance. A broad consensus, as well as respect for constitutional and legal procedures, are crucial to maintain strong democracy and confidence in institutions and electoral processes."

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2. Draft resolution adopted unanimously by the committee on 8 September 2023.

3.4. It also agrees with the Venice Commission in that “[t]o the extent that constitutional amendments strengthening or prolonging the power of high offices of state are proposed... such amendments (if enacted) should have effect only for future holders of the office, not for the incumbent.”

3.5. The Assembly therefore considers in view of the hasty procedure followed for the adoption of the amendments in question, the *en bloc* vote on very disparate issues, including protection of social rights, and the fact that the incumbent himself benefits from these changes, that the international standards summed up by the Venice Commission were clearly not met. The abolition of presidential term limits for the benefit of MM. Putin and Medvedev thus violates not only the Russian constitution, but also well-established international legal principles.

4. The overwhelming power of the President resulting from the extremely long term in office combined with the lack of any checks and balances such as a strong parliament, an independent judiciary, free media and a vibrant civil society has turned the Russian Federation into a *de facto* dictatorship.

5. As the Russian war of aggression against Ukraine and its political and economic consequences show, dictatorships constitute a threat to international peace and security and to the territorial integrity and political independence of their neighbours, within the meaning of Article 2 of the Charter of the United Nations. Dictatorships also destroy the fundamental rights and the social and economic well-being of their own population. It is therefore in the interest first and foremost of the people of the Russian Federation, but also of Europe and the whole world that democracy be restored in the Russian Federation.

6. The Assembly recalls that all States parties to the Statute of the International Criminal Court are legally bound to arrest Vladimir Putin when he enters their jurisdiction on the basis of the arrest warrant issued by the International Criminal Court on 17 March 2023.

7. The Assembly finally reiterates its strong support for the creation of an *ad hoc* international criminal tribunal for the crime of aggression, which is needed in order to hold to account the Russian leadership, including Vladimir Putin, for the original crime enabling all other war crimes and crimes against humanity, namely the launch of the war of aggression against Ukraine.

8. The Assembly considers that the *ad hoc* international criminal tribunal should investigate all events on the territory of Ukraine from February 2014, starting with the illegal annexation of Crimea, the war in the Donbas region and the downing of flight MH17.

## B. Explanatory memorandum by Mr Pieter Omtzigt, rapporteur

### 1. Introduction

1. The subject of the motion for a resolution underlying the present report, which was tabled on 27 January 2022, before the full-scale invasion of Ukraine by the Russian Federation, is the legitimacy and legality of the amendments to the Russian Constitution enacted in July 2020, including an *ad hominem* provision waiving the presidential term-limits. The waiver allows Mr Putin – who has been continuously in power as President or Prime Minister since 2000 – to remain in office as President until 2036, when he will be 83 years old.

2. Since the start of the full-scale Russian war of aggression against Ukraine on 24 February 2022, the question of the legitimacy of President Putin's possible re-election in the next presidential election in 2024 has taken on particular relevance. The authority of President Putin has already been put into question both nationally and internationally, due to the legally and morally reprehensible decision to launch a war of aggression against Ukraine and the obvious miscalculation of the risks involved. President Putin and his visibly reluctant inner circle appearing on television during the meeting of the National Security Council on 21 February 2022<sup>3</sup> clearly underestimated the resilience of the people of Ukraine and their preparedness to fight for their independence and their very existence as a nation. President Putin also underestimated the determination of the Western countries to support Ukraine with weapons and ammunition. In addition, the military setbacks the Russian forces have suffered so far at the hands of the heavily outgunned Ukrainians have shown for all to see the state of disorganisation and corruption of the Russian military. The rebellion by the Wagner group of mercenaries has demonstrated the weakness of President Putin, even if its leader and his main lieutenant have perished in a plane crash in the meantime.

3. Members of the President's inner circle who are aware of the threats to their country posed by the decisions of the President related to the aggression against Ukraine may well avail themselves of the unlawfulness of the amendments to the Russian Constitution enacted in July 2020 – in particular the waiver of the Presidential term limit that allows Mr Putin to run for president again in 2024 and potentially remain in office until 2036 – in order to rid themselves of a leader whose actions are becoming more and more of a threat to the future of Russia, including the welfare of its elites. Such motivation for the more rational elements within the inner circle of power to rid themselves of President Putin could further be strengthened by the increasing momentum of the international community's plans to set up an *ad hoc* international tribunal for the crime of aggression, to hold the political and military leadership of the Russian Federation to account for the unprovoked military aggression against Ukraine.<sup>4</sup> Those who contribute to ending the war would be doing a great service both to Russia and to international peace and security and could expect to be treated more leniently by the future tribunal.

4. The explicit international recognition of the illegality of these constitutional amendments, which may in fact amount to “unconstitutional constitutional law” (a concept originally developed by the constitutional or supreme courts of the United States, Germany and Austria, and which has been recognised in numerous jurisdictions<sup>5</sup>) would further delegitimise Vladimir Putin's ambition to remain President of the Russian Federation indefinitely, provided that he can continue to suppress any serious political opposition.

5. The question of the legitimacy of the July 2020 constitutional amendments has already been the subject of an Opinion by the European Commission for Democracy through Law (Venice Commission). I will summarise its main findings in chapter 2 of this report. In chapter 3, I will address the more general issue of the need for term limits in presidential systems of government, which has been the subject of another Study by the Venice Commission. It should be noted that both studies of the Venice Commission were produced before Russia was expelled from the Council of Europe.<sup>6</sup>

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3. Security Council meeting • President of Russia (kremlin.ru).

4. See Doc. 15689, “Legal and human rights aspects of the Russian Federation's aggression against Ukraine” and Doc. 15510, “The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”.

5. See: [Unconstitutional Constitutional Amendments \(lawliberty.org\)](https://www.venicecommission.org/).

6. “Interim Opinion on constitutional amendments and the procedure for their adoption” CDL-AD(2021)005, adopted by the Venice Commission at its 126th Plenary Session (19-20 March 2021); see also Study No. 908/2017, CDL-AD(2018)010 “Term Limits – Part I – Presidents” (adopted at the 114<sup>th</sup> Plenary Session on 16-17 March 2018).

## 2. Venice Commission Interim Opinion of 23 March 2021

6. The Opinion in question was requested by the Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) in May 2020 in the framework of its work on the Russian Federation. This request was intended to supplement the earlier opinion requested by the Committee on Legal Affairs and Human Rights on the amendments to Articles 79 and 125 of the Russian Constitution (Opinion CDL-AD(2020)009, adopted on 18 June 2020). This request, made in the framework of the committee's work on the implementation of the judgments of the European Court of Human Rights, had been limited to those (then draft) amendments to the Russian Constitution related to the execution, by the Russian Federation, of the judgments of the Court.

7. The Venice Commission, at the time, benefited from the full co-operation of the competent Russian authorities, including the Constitutional Court, the Ministry of Justice and Parliament.

8. It studied and assessed only the constitutional changes themselves and the procedure followed for their adoption, and not the implementing legislation which was then still under preparation – hence the working title “Interim Opinion”. The Venice Commission's offer of assisting the Russian side also with the drafting of the implementing legislation (see paragraph 189 of the Opinion) was not taken up.

9. The Venice Commission strongly criticises both the procedure in which the amendments were adopted and their content.

### 2.1. Procedural issues

10. As regards the procedure applied for the adoption of the constitutional amendments, the Venice Commission finds that in view of the importance of the amendments and their impact, the regular constitutional amendment procedure should have been applied. The regular constitutional amendment procedure (laid down in the 1998 Law on the Order of the Adoption and Entry into Force of Amendments to the Constitution of the Russian Federation) notably requires the convocation of a Constitutional Assembly and that there shall be specific amending laws on the different changes proposed, rather than a single *en bloc* vote on all amendments. Instead, a novel *ad hoc* procedure in three stages was introduced by the Amending Law. In the first stage – the drafting of the amendments and their adoption by both houses of parliament and the constituent entities of the Federation – followed the normal constitutional amendment procedure, until the entry into force of Article 3 of the Amending Law. In the second stage, from the moment of the entry into force of said Article 3, a *sui generis* procedure established by Article 3 of the Amending Law was triggered. This procedure involved the President asking for the Constitutional Court's opinion as to the compatibility of the amendments with Chapters 1, 2 and 9 of the Constitution and the compatibility with the Constitution of the procedure for the entry into force of Article 1 of the Amending Law (which lists the substantive amendments to the Constitution). The Constitutional Court was required to provide its conclusions within seven days. Once the Constitutional Court's conclusions were given, Article 2 of the Amending Law entered into force and the third stage, governed by Articles 2 and 3 of the Amending Law, namely the *ad hoc* nationwide vote, was launched – a single *en bloc* vote on all amendments that in addition was not subjected to the strict procedural requirements applicable to referendums.

11. The Venice Commission noted that:

*“the ad hoc nationwide vote was subject to much less elaborate and detailed rules than a referendum would have been. This resulted in a substantial reduction of procedural guarantees, which are inter alia designed to ensure a degree of balance in how the issues are presented, and thus increase the legitimacy of the result of the referendum. The Federal Constitutional Law on Referendums would have required sufficient airtime also for opponents of the amendments (Article 59 (9)). Article 60 (5) of that Law would have obliged State institutions to remain neutral. Article 2 of the Amending Law establishing the ad hoc rules for the all-Russian vote ensures airtime to the Central Electoral Commission only and has no provisions on the neutrality of state bodies” [and]*

*“under the rule of law it is inappropriate to introduce a new type of referendum for one particular revision of the Constitution. Even if the all-Russian vote did not replace the vote by the Assembly and the constituent entities of the Federation, the Commission recalls that, as indicated in the 2020 Revised Guidelines on the Holding of Referendums, ‘referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them, for example where the text submitted to a referendum is a matter for Parliament's exclusive jurisdiction’.”<sup>7</sup>*

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7. CDL-AD(2021)005 op. cit., paragraphs 31 and 32.

*“[t]he Amending Law also derogated from Article 2 (2) of the 1998 Federal Law N 33-FZ On the Procedure for Adoption and Entry into Force of Amendments to the Constitution of the Russian Federation, which provides that there should be specific amending laws on interrelated topics, rather than a single en bloc vote on all amendments. The Comments [author’s note: by the Russian government side] insist that the amendments are all interrelated with each other and therefore the requirement of Federal Law N 33-FZ is met. The Venice Commission cannot follow this argument as the amendments cover a very wide range of issues.”<sup>8</sup>*

12. Also, according to the Venice Commission, the Amending Law is at odds with Article 135 of the Russian Constitution in that the Constitutional Court’s conclusions and the all-Russian vote foreseen in Articles 2 and 3 were in fact irrelevant for the entry into force of the amendments after their adoption by the two houses of parliament and the constituent entities of the Federation.<sup>9</sup>

13. I should like to point out that the speed with which these amendments were adopted is also quite remarkable: in a speech on 15 January 2020, President Putin proposed amending various provisions of the 1993 Constitution. By decree of the same day, he established a working group to prepare proposals for such amendments. On 20 January 2020, the President submitted the draft Amending Law to the State Duma. Three days later, the draft passed the first reading. On 2 March 2020, the President proposed additional amendments to the Constitution. The draft, with these new amendments, passed the second and third readings in the State Duma on 10 and 11 March 2020. Approval by the Council of Federation followed on 11 March and by the legislative councils of all federal subjects of the Russian Federation on 12 and 13 March. On 14 March 2020, it was enacted by the President of the Russian Federation and published. On the same day, the President sent the request to the Constitutional Court of the Russian Federation to verify the compatibility of the Amendment Law with the Constitution; the Constitutional Court confirmed this on 16 March 2020. The popular vote was originally scheduled for 22 April 2020. It was finally postponed due to the Covid-19 pandemic and took place from 25 June until 1 July 2020. The question put to the vote was simply: *“Do you approve the amendments to the Constitution of the Russian Federation?”*, with no possibility to give different answers to such disparate proposals as the constitutional recognition of social rights, the prohibition of same-sex marriage and the *ad hominem* provision waiving the constitutional term limits for the President.

14. As regards the procedure followed for the adoption of the constitutional amendments, the Venice Commission therefore concluded that:

*“[i]n view of the subject matters which were covered, a Constitutional Assembly should have been convened under Article 135. As a Constitutional Assembly was not convened, the Amendments were adopted, according to Article 136, after their adoption by Parliament and the constituent entities of the Federation. Following these two steps, the Amendments had to enter into force under Article 136. A negative outcome of the additional steps, i.e. the review by the Constitutional Court and the all-Russian vote, could not prevent the entry into force of the Amendments. The procedure used to amend the Constitution creates an obvious tension with Article 16 of the Constitution which safeguards the ‘firm fundamentals of the constitutional system of the Russian Federation’.”<sup>10</sup>*

## **2.2. Substantive issues**

15. The substantive changes adopted following the novel procedure described above concern the following areas, following the order of the explanatory report of the Amending Law:

- the position of candidates/office holders;
- the structure of State bodies, their competences and mutual relationships;
- the protection of social rights;
- the basic values of the State;
- the relationship between Russian national law and international law.

16. In view of the subject-matter of the present report and the fact that the final point (relationship between Russian national law and international law) has already been covered in the Venice Commission Opinion adopted on 18 June 2020 on draft amendments to the Constitution related to the execution in the Russian Federation of decisions by the European Court of Human Rights<sup>11</sup> and in the Assembly’s last report on the

8. Ibid., paragraph 34.

9. Ibid., paragraphs 23, 35 and 37.

10. Ibid., paragraph 37.

implementation of judgments of the European Court of Human Rights,<sup>12</sup> I will limit myself to assessing the first substantive issue, namely the position of candidates and office holders, or more precisely the *ad hominem* waiver of the constitutional term limit of President Putin.

17. The new wording of Article 81 (3) prevents a person from holding the office of the President for more than two terms. But this limit is not applied to current or former Presidents, that is (though they are not named explicitly) MM. Putin and Medvedev. According to Article 81 (3.1), this provision “*is applied to the person having held or holding the post of the President of the Russian Federation without taking into account the number of terms he (she) had held or is holding this post by the time of coming into force of the amendment to the Constitution of the Russian Federation introducing the relevant limitation, and does not exclude for him (her) the possibility to hold the post of the President of the Russian Federation during the terms allowed by this provision*”.

18. As the Venice Commission points out, “[t]his provision creates an exception for the current and previous holders of the office to stand for two completely new terms, regardless of the number of their past mandates. As this provision applies to two specific persons, this amounts to an *ad hominem* constitutional amendment.”

19. It should be noted that without this amendment, Mr Putin would not be able, in 2024, to run for another 6-year presidential term, as the Russian Constitution limited the presidency to two consecutive terms. Mr. Putin had served two consecutive 4-year terms between 2000 and 2008 and will have completed two consecutive 6-year terms between 2012 and 2024.

### 3. The importance of presidential term limits for safeguarding democracy

20. In its 2021 Interim Opinion, the Venice Commission refers back to its earlier work on the relationship between the limitation of mandates and democracy.<sup>13</sup> It points out that limiting the mandate of the president of a country to one mandate with the right to one re-election is standard practice. In most cases (for example Czech Republic, Finland, France, Latvia, Lithuania, Romania, Slovak Republic) more than two consecutive mandates are excluded; in some countries (for example Austria, Bulgaria, Germany, Poland), no person can run for a third or further term even when it is not consecutive. In some countries, any re-election at all is excluded (for example Mexico, the Republic of Korea and Switzerland).

21. In its 2018 Study on term limits,<sup>14</sup> the Venice Commission pointed out that:

*“[p]residential term-limits are common in both presidential and semi-presidential systems, and also exist in parliamentary systems (both where the Head of State is directly and indirectly elected), while in the latter systems they are not imposed on prime ministers, whose mandate, unlike those of Presidents, may be withdrawn by parliament at any time. In presidential and semi-presidential systems, term-limits on the office of the President therefore are a check against the danger of abuse of power by the head of the executive branch. As such, they pursue the legitimate aims to protect human rights, democracy and the rule of law.”<sup>15</sup>*

22. I cannot but agree with the Venice Commission when it found that:

*“[t]here are good reasons why presidential systems contain strict mandate limits. In a presidential system which grants substantial executive powers to the president, the longer the incumbent remains in office, the more cemented his or her power becomes.”<sup>16</sup>*

*“Term limits aim to protect a democracy from becoming a de facto dictatorship. Furthermore, term limits may strengthen a democratic society, as they impose the logic of political transition as a predictable event in public affairs. They can be “important mechanisms to safeguard against “winner-take-all” politics”. They also keep alive the opposition parties’ hope of gaining power in the near future through*

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11. Opinion No. 981/2020, CDL-AD(2020)009, Opinion on the draft amendments to the Constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights, adopted by the Venice Commission on 18 June 2020 by a written procedure replacing the 123rd plenary session.

12. Doc. 15123, “The implementation of judgments of the European Court of Human Rights”.

13. CDL-AD(2021)005 op. cit., paragraph 49.

14. CDL-AD(2018)010 op. cit.

15. Ibid., paragraph 120.

16. CDL-AD(2021)005 op. cit., paragraph 51.



*institutionalized procedures, with little incentive to seize power in a coup. Term limits therefore aim to protect human rights, democracy and the rule of law, which are legitimate aims within the meaning of international standards.*<sup>17</sup>

*“in the light of the comparative analysis of the constitutions of the 58 countries under consideration, abolishing limits on presidential re-election represents a step back in terms of democratic achievement, at least in presidential or semi-presidential systems. By eliminating an important protection against distortive concentrations of power, abolishing term limits also risks undermining various aspects of the human right to participate in public life.”*<sup>18</sup>

23. Very importantly, and of special relevance to the case at hand, the Venice Commission stressed that:

*“[t]o the extent that constitutional amendments strengthening or prolonging the power of high offices of state are proposed, such amendments (if enacted) should have effect only for future holders of the office, not for the incumbent.”*<sup>19</sup>

24. As we have seen above (paragraph 17), the Amending Law, whilst introducing a two-term limit, creates an exception for the current and previous holders of the office to stand for two completely new terms, regardless of the number of their past mandates. This provision amounts to an *ad hominem* constitutional amendment for the benefit of two specific persons.

25. The Russian authorities, in their replies to the Venice Commission summed up in its 2021 Interim Opinion, stressed that the removal of term limits was adopted by the Federal Assembly, approved by all the constituent entities of the Russian Federation and approved by the sovereign people in a nationwide vote. The term limits should not be applied retroactively by counting the mandates of the current and former Presidents. Another mandate of the incumbent or former president will depend on the will of the citizens expressed in direct elections. The Russian authorities insisted that the constitutional principle of democracy implies the possibility for the people to exercise the right to elect in free elections the person they deem most worthy for the post of the head of state and that the participation of an incumbent does not prejudice an electoral victory. They also considered that the amendments result in a redistribution of public authority between the various branches of power, in particular from the president to parliament. These significant changes justified a transitional rule not to take into account the presidential terms before the amendments. The Constitution provided sufficient guarantees as to parliamentarism, multiparty system, the presence of political competition, the separation of powers, and the provision of rights and freedoms by independent courts, including through constitutional proceedings. The Russian authorities finally pointed out that leaders in other countries (for example Germany’s Chancellor Merkel, Finland’s President Kekkonen and Luxembourg’s Prime Minister Juncker) held office for very long periods.

26. In its 2018 Study on term limits, the Venice Commission pointed out that in its member States:

*“term-limits do not apply to the Head of government (usually the prime minister), who technically may be removed at any time, in contrast to the rigid and difficult impeachment procedures under presidential systems. Therefore, the danger of abuse of power by the Head of the executive branch is greater under presidential regimes than in parliamentary ones.”*<sup>20</sup>

27. Even the long terms of office of Prime Ministers in parliamentary systems such as Germany (Chancellors Merkel and Kohl) or Luxembourg (Mr Juncker) did not reach anywhere near the length of Mr Putin’s potential time in office, from 2000 until (under the newly changed rules) 2036, with only the short interruption between 2008 and 2012 when Mr Medvedev acted as President and Mr Putin as Prime Minister. By contrast, the presidency of President Franklin D. Roosevelt, who won four consecutive US presidential elections, gave rise to the introduction of a two-term limit in the United States of America. Similarly, Finland introduced a presidential limit of two terms of six years in the 1990s.

28. The Russian authorities’ argument that the constitutional amendments brought so many changes in the redistribution of power from the president to the parliament that the abolition of the term limit in favour of the incumbent would be justified does not look convincing either. The imprisonment or forced exile of all remaining politicians who truly oppose the existing regime speak for themselves. The Assembly has already studied the case of Alexei Navalny and other political prisoners and is now looking into the fate of Vladimir Kara-Murza. Even the most prestigious institutions of civil society, including Memorial and the Moscow

17. CDL-AD(2018)010 op. cit., paragraph 93.

18. Ibid., paragraph 101 (with further references to earlier Venice Commission documents).

19. Ibid., paragraphs 124 and 128; see also ibid., paragraph 110 (with further references to previous Opinions).

20. Ibid., paragraph 92.

Helsinki Group are closed and their activists in prison or in exile. Especially since the start of the Russian aggression against Ukraine, the State Duma and the Federation Council have completely failed in holding the President and his inner circle to account in any way.

29. Finally, the authorities' assertion made in 2021 that the Russian Constitution provides sufficient guarantees as to "parliamentarism, multiparty system, the presence of political competition, the separation of powers, and the provision of rights and freedoms by independent courts" reads like mockery in light of the accelerating descent into authoritarian rule since then.

30. Interestingly, the 2018 Study on term limits is based on a different perspective than that underlying the 2021 Interim Opinion. However, the Venice Commission arrives at the same result looking at the issue from either perspective.

31. The 2018 Study was prepared in response to a request by the Secretary General of the Organization of American States, who asked the Venice Commission to undertake a study on the right to re-election, to answer four questions in particular:

- Does a human right to re-election exist? If so, what are the limits to this right?
- Do term limits constrain the human and political rights of aspirant candidates?
- Do term limits constrain the human and political rights of voters?
- What is the best way to modify term limits within a constitutional State?

32. By contrast, the 2021 Interim Opinion was prepared following a request by the Assembly's Monitoring Committee, which was worried about the *ad hominem* waiver of the presidential term limit in the Russian Federation, much like the movers of the motion for a resolution underlying this report.

33. In its 2018 Study (paragraphs 94 and 95), the Venice Commission recognised that:

*"[I]n modern democracies, the sovereignty of a nation resides in the people. All state authority shall emanate from the people. No one can therefore argue to be entitled to run for re-election after a first mandate if the constitution provides otherwise. The restriction to the right to be elected derives from a sovereign choice of the people in the pursuit of the above-mentioned legitimate aims of general interest, which prevail over the right of the incumbent president. [...] For the above reasons, it is obvious that limiting presidential mandates for reasons of safeguarding democracy, which together with human rights and the rule of law is a foundational value of the Council of Europe, does not amount to discrimination in the sense of Art. 1 of Protocol 12. Limits on presidential mandates, aiming at securing democracy, i.e. the very same purpose which electoral rights also serve, would not be found discriminatory or unreasonable in the sense of Art. 25 of the ICCPR. Limitation of mandates is not one of the grounds for discrimination contained in international treaties. However, term limits should be neutral and should not be imposed or removed in a manner that would prematurely remove someone from office or secure the continued service of someone currently holding office (i.e., by lifting term limits). This risk may be averted if such changes do not benefit the incumbent."*

34. From both perspectives, that of the incumbent wishing to run for an additional mandate or that of the defenders of democracy worrying about the overwhelming power of the executive, it is obvious that any change to the presidential term limits must be carefully considered by society as a whole. In the words of the Venice Commission:

*"[a] decision to alter or remove presidential term limits should be subject to thorough public scrutiny, as it has a significant impact on the political system, a country's stability and on confidence in the electoral process. In the long term, a reform of these provisions may affect democratic quality or even democratic endurance. A broad consensus, as well as respect for constitutional and legal procedures, is crucial to maintain strong democracy and confidence in institutions and electoral processes."*<sup>21</sup>

35. Given the rapid-fire procedure followed for the adoption of the amendments in question and the joint treatment of and vote on very disparate issues (see paragraph 13 above), this condition was clearly not met in the case at hand.

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21. Ibid., paragraph 109.

#### 4. Hearing with the President and Secretary of the Venice Commission in April 2023

36. As a visit to the Russian Federation was obviously not feasible and the Venice Commission itself was faced with the refusal of the Russian authorities to co-operate in its further work on this topic, I organised a hearing during the meeting of the Committee on Legal Affairs and Human Rights in April 2023 with the President of the Venice Commission, Ms Claire Bazy Malaurie, and the Secretary of the Venice Commission, Ms Simona Granata-Menghini. At my request, they also presented the positions and arguments brought forward by the Russian authorities while they were still co-operating in the preparation of the Interim Opinion.

37. Ms Bazy Malaurie noted that every time the Venice Commission worked with Russia, they came across legal experts, who in the sophist tradition are very good at undermining concepts which are accepted as standard in the broader legal profession. In its 2021 Interim Opinion, the Venice Commission carefully collected the precise replies that it had obtained in its exchanges with the Russian authorities, legal experts and parliamentarians. These replies showed that the Russian authorities fundamentally disagreed with the Venice Commission's approach following which the constitution shall lay down the basic rules on the separation of powers. Procedurally speaking, the amendments were adopted following a procedure which does not exist in the Constitution, in particular the "popular vote", which did not correspond to a proper referendum. Ms Bazy Malaurie explained that, to her surprise, with regards to the separation of powers, the authorities' replies showed that in Russia the President is not considered as belonging to any of the three branches. This is so despite the President's and the Presidential Administration's broad executive powers, which should be balanced out by another power. The President can overrule the Duma when nominating the Prime Minister, and the "multi-party system" and the "independent judiciary" referred to by the Russian interlocutors simply do not exist. The President even has the right to revoke Constitutional Court judges when they show a "lack of dignity" in the exercise of their function. Ms Bazy Malaurie noted that the Venice Commission never received explanations of what qualifies as "dignity" or lack thereof or what would trigger a revocation. She added that the Federation Council was indeed somewhat strengthened by the amendments, but at the same time its composition had become more "centralised" by the President's right to appoint new members, for life. Once the President stands down, he automatically becomes a member of the Federation Council and enjoys a very special immunity regime, for life.

38. Ms Granata-Menghini noted that the Venice Commission had previously come across the issue of term limits in other constitutions, in the context of checks and balances. Excessive powers and time in power lead to a distortion of political pluralism, checks and balances, and the non-existence of a level playing field for elections. From the opposite perspective, a study commissioned by the Organisation of American States examined whether term limits exert an undue interference with the human rights to vote, to elect and to be elected. The European Court of Human Rights had stressed the importance of non-discrimination in this context, as in the *Sejdić and Finci* case on elections in Bosnia and Herzegovina. The Venice Commission did not find any trace of a "right to be re-elected" or to run for re-election; in providing for a specific electoral system or term limits in the Constitution, the People are sovereign. Different Constitutions present different modalities (for example maximum number of consecutive terms, maximum number of years in power). On the question of a potential violation of the rights of voters who cannot choose to keep a president as long as they would like, Ms Granata-Menghini noted that the right to take part in genuinely free and fair elections may be negatively affected through excessively long term limits, where the president has been in power for so long as to make numerous appointments that affect the "independence" of other State bodies. The Venice Commission therefore did not agree with the practice of some Latin American constitutional courts which found that some constitutional provisions relating to term limits violated international standards. Any constitutional amendment requires broad consensus, wide consultations, and full respect of the amendment procedure. Rules cannot be changed *ad hoc*, *ad personam* or in haste. Constitutional courts should have the power to review the procedure followed to adopt constitutional amendments. If the courts are to review the content, this needs to be clearly set out in advance. Finally, referenda on the one hand tend to add legitimacy. On the other hand, they may be used to bypass parliament and the constitutionally prescribed procedure. Referenda must follow strict rules and standards. By contrast, the Russian Federation used a much simpler procedure with greater opportunities for one-sided campaigning. Term limits also imply that the incumbent can eventually be called to account – and the incumbent is aware of this and acts accordingly. Therefore, extending immunity beyond the term limit frustrates the very aim of having term limits prescribed in the Constitution.

39. In reply to the discussion, Ms Bazy Malaurie confirmed that the Russian President enjoys total immunity under Russian law. Once he is no longer President he will be a member of the Federation Council and as such continue to enjoy functional immunity. *De facto* and *de jure*, he will always enjoy both functional and

personal immunity. This cannot be challenged under the amendments which preclude any proceedings being brought against a president or former president. She also drew attention to another new provision of the Russian Constitution providing for “support” for the Russian population and culture.

## 5. Conclusions

40. Term limits serve to keep in check those who might be tempted to use their presidential power to curtail any opposition, and they protect checks and balances that erode over time as presidents become gradually cut off from critical voices. Presidents who know their term is finite and who presumably want to live out the rest of their lives in their home country have an incentive not to use excessive force against political opponents, for they know one day one of them may be elected as their successor and they will no longer be able to exercise political power to protect themselves from the consequences of their acts.<sup>22</sup>

41. I therefore strongly feel that term limits are not just allowed in a democracy (from the point of view of the ruler’s rights), but they are necessary to preserve the rights of the people. Term limits mean that the president, and definitely the president in his or her last term, has more incentives to be preoccupied with the challenges facing the country and with securing their place in history and helping their political allies retain the trust of the people, rather than with brutal suppression of the opposition.

42. It should be noted that once a president has taken the path of severe oppression of the opposition and cruelty against his or her own people, he or she knows there is no way back. Relinquishing office then means risking to be held accountable for their misdeeds; to avoid this they attempt to spend the rest of their lives clinging to office at ever higher cost to their own country, their own people and ultimately themselves.

43. That is why a country which takes a big step towards extending term limits beyond two periods, takes an equally big step away from democracy and the rule of law. Other States, including member States of the Council of Europe, were too slow to realise the risks attached to these constitutional changes and too quick to accept the outcome of the deeply flawed procedure including the “popular vote”.

44. A president, together with his or her political allies, usually wields substantial power to nominate allies to high positions in the State, be it the highest courts, the electoral body, the auditors’ office, the armed forces, the central bank or other institutions. It is the function of these State institutions to keep presidential powers in check. These checks and balances tend to erode over time when a president remains in office, as he or she will nominate friends and allies to those key positions. Dissenting voices will also disappear from his or her inner circle. Ultimately this has a high cost to the president, too, as the system of checks and balances exists to prevent large-scale errors. This can unfortunately be observed in Russia: President Putin clearly no longer received reliable information and advice on the effective power of the Russian armed forces and the Ukrainian people’s will (and ability) to resist, let alone on the legal and moral aspects of starting a war of aggression when he decided to invade Ukraine. This is exactly the type of large-scale error and crime the system of checks and balances is intended to prevent.

45. In the draft resolution, I have summed up the main findings of this report in such a way as to send a strong signal to the international community and to Russian society, which should understand that the waiver of the presidential term limit in favour of President Putin is neither legitimate, not even in accordance with Russia’s own Constitution, nor in line with international standards designed to protect checks and balances preventing a descent into dictatorship with all its nefarious consequences for Russia and its neighbours.

46. Regarding the consequences that need to be drawn from these findings, the Assembly may wish to consider, first of all, to invite the competent Russian constitutional bodies, namely the State Duma, the Federation Council and the Constitutional Court, to reverse the *ad personam* waiver of the presidential term limit for Mr Putin and Mr Medvedev. Secondly, the Assembly may wish to invite the international community as a whole to minimise contacts with Mr Putin, which should be limited to those that are unavoidable on humanitarian grounds and in the pursuit of peace. This should apply, in particular, after the expiry of his current mandate in 2024. Thirdly, the Assembly should recall that all States Parties to the Statute of Rome of the International Criminal Court are legally bound to arrest Mr Putin, should he enter their jurisdiction, on the basis of the arrest warrant issued by the International Criminal Court on 17 March 2023. This arrest warrant was based on war crimes allegedly committed by Mr Putin by overseeing the deportation, to Russia, of a large

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22. The murder of Boris Nemtsov, the leading contender for President Putin’s succession, may well be a case in point. As shown in the report by our colleague Emanuelis Zingeris, this murder, right in front of the Kremlin wall, could have never even happened, let alone remain unelucidated, had the system of prevention, investigation and prosecution of crimes been allowed to function normally (see [Doc.14902](#), “[Shedding light on the murder of Boris Nemtsov](#)”).

number of Ukrainian children from the temporarily occupied areas of Ukraine. Finally, the Assembly should use this opportunity to reiterate its support for the creation of an *ad hoc* international criminal tribunal for the crime of aggression and to welcome the progress made in this respect. Such tribunal should be able to investigate events starting from the illegal annexation of Crimea in 2014 onwards and therefore also the war in the Donbas region and the downing of flight MH17.