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The Standoff over Constitutional Reform in Belarus Leaves the EU and Russia on Opposite Sides of the Barricades

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A Geopolitical Crisis

Constitutions are thought to be of little interest in non-democracies. Unconstrained authoritarian rulers bend and amend them at will, and they are regularly violated. Belarus appears to be a case in point: in 1996, Aliaksandr Lukashenka staged a power grab which many see as a *coup d'état*, and in 2004, he had presidential term limits removed altogether. Forty per cent of constitutional articles are either dormant or trumped by more restrictive presidential decrees or administrative regulations according to Anatol Liabedzka, Sviatlana Tsikhanouskaya's ombudsman for constitutional reform (currently under administrative detention himself). Nonetheless, the current standoff shows that constitutions are crucial focal points for the management of regime succession and conflicts. They help coordinate the elite and send signals to the population and the international community alike, even when the autocrat is not constrained.

Belarus's long-term ruler Lukashenka and the opposition leader Tsikhanouskaya (in line with the *Coordination Council*) pursue irreconcilable goals. Lukashenka aims to divert attention away from the recent fraudulent election and wants to wear down and split the opposition by means of a lengthy constitutional amendment process. Its only goal: to bolster his grip on power. By contrast, the opposition seeks free and fair elections *first* before an open debate on the constitution could eventually be launched.

The EU and Russia officially state that a solution to the conflict should be achieved by Belarusians themselves. But the EU supports Tsikhanouskaya's call for new elections and does not recognize Lukashenka as a legitimate president, while Russia endorsed Lukashenka's constitutional reform as a means to overcome the current crisis. What started as a purely internal standoff over the fraudulent election and state repression is now a *de facto* geopolitical conflict.

Lukashenka's Approach: Constitutional Amendments as Diversionary Tactics

Lukashenka's aim is straightforward: the constitution needs to be changed in order to prevent fundamental change in principle. As early as 2012 Lukashenka announced it was necessary to "reform the political sys-

tem of Belarus." Since then, he has built up expectations that change was imminent without making any credible commitments regarding the what, when and how of the amendments to the institutional framework. In 2014, Lukashenka announced that Belarus had established itself as a sovereign state, that the post-communist "transition period was over". Sooner or later, he said, a new Constitution needs to be adopted.

In 2016, Lukashenka called for a group of "wise men and lawyers" to analyze the Basic Law. Moreover, the Belarusian ruler carefully monitored non-democratic power succession management in the post-Soviet space in Azerbaijan and Kazakhstan. When in 2018 Serzh Sargsyan failed to retain power in the course of Armenia's Velvet Revolution after moving from the presidential into the prime minister's seat, Lukashenka's appetite for constitutional change suddenly waned (<https://presidential-power.net/?p=8485>). But in Spring 2019, Lukashenka announced he had tasked the Constitutional Court to work on suggestions for reform which were then supposed to be implemented at some point after the 2020 presidential elections. At meetings with members of the opposition *Public Constitutional Commission* and the Court's chairman Petr Miklashevich in 2019 and 2020, Miklashevich declined to comment on details of the reform. He was forbidden to do so, he said, by deputy head of the Presidential Administration Olga Chupris, who oversaw the process.

On 28 August at a special meeting of the Permanent Council of the OSCE in Vienna, Belarus presented its plan to exit the crisis by means of constitutional reform. This proposal should be seen in the context of Lukashenka's track record. Lukashenka has been consistently secretive and nontransparent—his secret inauguration on 23 September being the best illustration thereof—and the process is tightly controlled by the Presidential Administration and exclusive: even regime insiders and loyalists have little knowledge or active participation in it. Lukashenka stated that work is underway on the third version of the reform package, but nothing is known about the content of the first two versions. In public, some redistribution of presidential powers to the government and parliament as well as a more active role of political parties—which might also imply including a proportional element into the electoral code—are usually

mentioned as the main content of the reform. The process pursued by Lukashenka includes the following steps: deputies of the House of Representatives are called upon to collect citizen input by 25 October; after a *Nation-wide Discussion* on the amendments, an *All-Belarusian People's Assembly* will be held; and lastly, after a referendum on constitutional changes, new elections are to be held around 2022 or later.

Lukashenka has close to zero credibility when it comes to the content (reducing presidential powers) and process (making it more inclusive) of the reform. His visit to the KGB detention facility on 10 October to meet political prisoners was never meant to be the beginning of a dialogue. The goal was to co-opt Viktor Babaryka and his representatives in the *Coordination Council* and therefore split the opposition through 'divide and rule'. Since 20 August, a criminal case has been opened against the *Coordination Council* for harming national security (Art. 361 of the Criminal Code); on 16 October, Belarusian authorities confirmed there is an international arrest warrant out for Sviatlana Tsikhanouskaya, a move supported by Russia.

Russia Sees Lukashenka's Constitutional Reform as a Mechanism to Stabilize the Situation

Russia's President Vladimir Putin and Foreign Minister Sergei Lavrov supported Lukashenka's pursuit of constitutional reform on multiple occasions. On 02 September, Lavrov stated: "In this respect, we assess [...] the initiative of President A.G. Lukashenka to conduct a constitutional reform as very promising. We think [...] that such a political process could become a useful platform for a national dialogue, could contribute to overcoming the current situation, and could guarantee the normalization of the situation, the stabilization of society." (https://www.mid.ru/ru/vizity-ministra/-/asset_publisher/IcoYBGcCUgTR/content/id/4308072). When hosting his Belarusian counterpart on 14 September in Sochi, Putin called Lukashenka's constitutional reform proposal "logical, timely, reasonable." Lastly, Putin's press secretary Dmitry Peskov lauded Lukashenka's visit to the KGB prison as an "inclusive dialogue."

This rhetoric appears to suggest that Russia unequivocally supports Lukashenka's plans. In reality, Russia's stance on Belarus is more complicated, as the Kremlin faces a dilemma. Lukashenka's firm grip on power over decades also meant that Lukashenka was the 'only game in town' for Russia to negotiate bilateral relations with. Lukashenka nipped any alternative channels of communication in the bud. The short stint of the hardliner Mikhail Babich as Russian ambassador in Minsk from August 2018 to April 2019 demonstrated how protec-

tive Lukashenka was of his monopoly on power. On the other hand, 'Lukashenka fatigue' is certainly widespread in Moscow: it is well understood that Lukashenka is a geopolitical adventurer whose own interests do not always align with those of Russia, and that his domestic standing is on more shaky ground than ever before.

A tedious constitutional reform process over months or even years equals a protracted 'civil war of attrition' that will be costly both for Lukashenka and the opposition. Moscow is likely to do just as much to keep Lukashenka on top of the process. Moreover, it will try to keep its support as cost-efficient as possible and will seek to make use of Lukashenka's weakness to chip away at Belarusian sovereignty in further negotiations of the bilateral road maps. In the meantime, a protracted constitutional reform process gives Moscow the opportunity to reach out to potential alternatives to Lukashenka to whom it could jump ship if/when the time is ripe. A redistribution of presidential powers to the government, parliament and political parties would mean that alternative centers of power—and therefore interlocutors—could emerge. Moscow, however, has a preference for a strong presidency as it needs only one single reliable interlocutor to do business with. Therefore, even if a 'negotiated power transition' scenario emerged, Moscow's interests would not align with those of the opposition since the negotiated transition would most likely be 'intra-elite'.

The Belarusian Opposition Is United: Free and Fair Elections before Constitutional Reform

Proposals for constitutional reform are a traditional element of opposition politics in Belarus, one such example being the 2013–2015 *People's Referendum* campaign. Even though the Babaryka, Tsikhanouski, and Tsepkala campaigns and later the united opposition candidate Tsikhanouskaya are what one might call the 'new' opposition, they share many commonalities with the 'old' opposition parties and movements.

First, they share the rejection of the 1996 constitution and call for a reform process based on the 1994 constitution, with presidential term limits and proper separation of powers as core demands (<https://democracy-reporting.org/lukashenkos-offer-what-to-think-of-constitutional-reform-in-belarus/>). For example, Viktor Babaryka and his lawyer Maksim Znak proposed a constitutional referendum in June, one day after Babaryka was arrested. Second, beside content, there is also personal continuity with the 'old' opposition. Tsikhanouskaya's representatives for constitutional reform are Anatol Liabadzko, the former long-term chairman of the *United Civic Party*, and Mechislau Hryb, the chairman of the Belarusian Supreme Council from 1994 to 1996 affiliated with the *Belarusian Social-Democratic Party (People's*

Assembly). Together with former Constitutional Court judge Mikhail Pastukhou, they have been active in the *Public Constitutional Commission* since 2019. One project of the *Coordination Council* and the election monitoring platform *Golos* is to collect verified electronic votes for the strategy “free and fair elections first, constitutional reform later” (<https://golos2020.org/constitution>). The campaign *Svezhy Vetsjer*, promoted by *Coordination Council* core member Andrey Yahorau, also petitions to boycott any constitutional change as it perceives Belarusian sovereignty as endangered (<https://канстытуцыя.бел/>). Russia might not only be interested in keeping Lukashenka in power or in negotiating a power transfer, but also in fundamentally undermining Belarusian sovereignty by sneaking in a provision on the priority of the Union State over the Belarusian constitution. Indeed, according to Art. 61 of the Union State Treaty, in the course of deeper integration, the basic laws of both member countries would need to be amended.

What sets the ‘new’ opposition apart from the ‘old’ is that it has managed to stay surprisingly united despite unprecedented pressure by the authorities. Ideational and personal continuity with the ‘old’ opposition, as well as their united position of non-recognition of the August presidential election and of Lukashenka’s constitutional

reform plans, explain why Lukashenka forced presidium members of the *Coordination Council* abroad or arrested them. It also explains why the opposition’s *People’s Ultimatum*, which demands Lukashenka step down before a national strike is announced, set 25 October as the date for the fulfillment of its demands: this is the deadline Lukashenka set for citizen suggestions to his constitutional reform plan.

The stakes are high, and the EU and Russia find themselves on opposite sides of the barricades. Calls upon the OSCE to become a neutral mediator in the conflict between Lukashenka and the opposition are naive at best. Russia (in the person of prime minister Viktor Chernomyrdin) already once mediated in a constitutional crisis in 1996. The result: it was only Russia that recognized the 1996 constitutional referendum, while the EU and US rejected it as a *coup d’état*. The effect the 1998–2002 Advisory and Monitoring Group of the OSCE (<https://ifsh.de/file-CORE/documents/yearbook/english/99/Wieck.pdf>) had on Lukashenka and the future trajectory of the regime is visible to this day. Whether history will repeat itself this time will largely depend on the courageous Belarusian people themselves.

About the Author

Dr Fabian Burkhardt is a research fellow at the Leibniz Institute for East and Southeast European Studies in Regensburg. His research focuses on executive politics and elites in authoritarian regimes, with a regional focus on Russia and Belarus. He contributed a country study on Belarus for an edited volume on constitutional politics in Central and Eastern Europe (https://link.springer.com/chapter/10.1007/978-3-658-13762-5_19) and published on concepts of the Belarusian nation among regime, opposition, and civil society actors (https://link.springer.com/chapter/10.1057/9781137489449_7).

At a Loss: The Kremlin Has No Winning Belarus Strategy

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Well in advance of the Belarusian presidential elections, it was quite clear that Moscow would make an unequivocal choice in favor of the incumbent, Alexander Lukashenko. This forecast could be safely made from two arguments.

First, the Kremlin cannot be expected to agree to resolve the question of who should be in power in Belarus through free and fair elections, let alone through popular protest. That could create a precedent for Russia itself, and therefore, ought to be ruled out from the outset. Second, despite his ability to occasionally frustrate

Russia, Lukashenko is generally a partner with whom Moscow can confidently engage. So long as he stays in control in Belarus, the country will not build a trust-based relationship with the West and will not start the economic and political reforms necessary to make Belarus more resilient and less structurally dependent on Russia for economic assistance.

For these reasons it should not have come as a surprise that Moscow placed its diplomatic, economic and information resources behind the self-declared “winner” and even promised to provide police reinforcements if