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# **“Modernizing” the constitution to preempt a succession crisis? Belarus between Kazakhstan, Azerbaijan and Armenia**

**Maryia Rohava and Fabian Burkhardt**

**24.7.2018**

During the annual state-of-the-nation *Address to the Belarusian People and the National Assembly* on 24 April 2018, President Aliaksander Lukashenka fiercely [rejected](#) the notion that a referendum to amend the country’s 1994 Constitution was imminent. Belarus’ long-time ruler accused the foreign-funded press of peddling constitutional amendments. Opposition politicians calling for a referendum just wanted to provoke a fight and eventually a Ukrainian Maidan. Acting “against the People” by holding a referendum “tomorrow” could lead to the worst-case scenario, “just like in Armenia”, Lukashenka argued. The day before, on 23 April, the Armenian Prime Minister Serzh Sargsyan had [resigned](#) in the wake of street protests later called the Velvet Revolution[\[i\]](#).

Lukashenka’s lengthy digression into the intricacies of constitutional politics in the course of his Presidential Address is remarkable. Insofar as it had been precisely Lukashenka – and not the opposition which has been forced into a permanent state of “ghettoization”[\[ii\]](#) – who has been talking about the need to amend the current constitution – or even pass a new one – for the past four years. What does explain Lukashenka’s flirtation with potential constitutional amendments which peaked in the first months of 2018 until mid-April, on the one hand, and the almost complete turnaround on 24 April, on the other?

After all, his current presidential powers are virtually unconstrained, and the term limit was abolished after the 2004 referendum on the constitutional amendments, which turned him in a *de facto* president for life. Moreover, aged 63, Lukashenka is still relatively young compared to other post-Soviet leaders for life: Kazakhstan’s Nazarbaev, for example (just as Uzbekistan’s Islam Karimov when he died in 2016) aged 78, is 15 years older than the Belarusian leader. In other words, even if we accept that authoritarian leaders outside of monarchies with hereditary succession rules, or without a hegemonic party such as Mexico’s PRI or China’s communist party with institutionalized rules for rotation, need to take care of succession for the sake of their own safety, there is no obvious reason why the succession issue was that urgent as to justify the frequency of references with regard to the Constitution.

Therefore, one might assume that the Belarusian Constitution does have a particular function even though it does not limit executive power and has been violated on numerous occasions. It can be argued that just as in comparable authoritarian regimes,[\[iii\]](#) the Belarusian Constitution has information-related properties which contain a political vision, which defines the nature of the political community, and therefore shapes the identity of the community’s members by signaling and disciplining allies and opponents of the autocrat.[\[iv\]](#) Judging by the discourse on the Constitution in the past four years, there are several tenets at the core of this political vision: the supremacy of the presidency in all spheres touched upon in the Constitution; state sovereignty with regard to the outside world including neutrality in foreign policy, while maintaining constitutional order and stability in domestic politics; Belarus as a social state which guarantees social rights in a paternalistic way, but places the needs of the state and political community over those of the individual; and sovereignty of the people who need to be consulted (at least formally) by referenda if any substantial change was to be probed. However, given the external pressure of a volatile and fast-paced geopolitical environment, and the stalling, or even the end, of the

Belarusian model of economic growth[v], Lukashenka and other state actors have recognized that adapting to ever-changing circumstances was necessary.

### Calling for a change without changing anything

In the course of the past years, Lukashenka has built up public expectations that sooner or later, constitutional amendments were inevitable. On the 20<sup>th</sup> anniversary of the Constitution on 15 March 2014, for instance, Lukashenka **declared** that Belarus had fully “established itself as a sovereign state” by “realizing the aspirations of the Belarusian people of becoming the rightful masters of their home country”. At the same time, “sooner or later, a new constitution needs to be adopted,” – he **argued** insinuating that the current Constitution is a document of Belarus’ “transitional period”. During his speech addressed to the members of Parliament on 7 October 2016, the head of state went even **a step further** by calling for the formation of a “group of wise men and lawyers to analyze the Basic Law”. Although in 2017 and early 2018, Lukashenka frequently mentioned how rapidly the world was changing and that the time asked for adaptations[vi] and “something new,” he never really expanded on *when* and *what kind of* changes were expedient.

Moreover, contradictions between the Constitution as the **guarantor, core, and foundation** of Belarusian statehood, on the one hand, and ever more frequent calls of the regime for amendments to this very pillar became increasingly evident. Discursively, Lukashenka attempted to dissolve this apparent contradiction by distinguishing between the “Constitution” and the “Basic Law” in reference to one and the same legal document. While the Constitution was this very pillar of stability and sovereignty, rhetorically, the Basic Law was not much different from ordinary laws: “We need to understand that law-making is an ongoing lively process. Like all laws and other regulations, it [the Basic Law] is a living organism which is bound to evolve and not to fall behind the pulsating life out there in the world”, he **remarked** during his annual meeting with the Constitutional Court’s judges on 15 March 2018.

How pliable the official rhetoric was became most obvious in statements of Lukashenka’s mouthpiece Lidziia Iarmoshyna, the chairwoman of the Central Election Commission. In January, she conceded that the Constitution needed to be “**modernized**”, but this kind of “cosmetics” or “renovation” could only be tackled once the basic question of the overall “construction” was decided upon, of course, by the President. But on 28 April 2018, just after Lukashenka had excluded that amendments were to be launched any time soon, Iarmoshyna admitted that the Constitution contained “**a lot of obsolete norms**” but that stability was much more important than modernizing these norms as they do not harm and obstruct the Belarusian society.

Also, no working parliamentary group or even a constitutional commission was set up to debate constitutional amendments or reforms in a systematic manner. Lukashenka did mention constitutional issues when addressing the Parliament, the Constitutional Court or the Central Election Commission, but separately. Naturally, this line of action retained the President’s full organizational and informational control over the process by preventing potential collective action or coordination among other state bodies with regard to discussing changes. The Constitution, therefore, served as an ideal issue to debate and signal a desire for evolution while any attempt of revolutionary change could be dismissed and blamed on oppositional and hostile foreign actors.

### Cementing the supremacy of the presidency?

After the constitutional overhaul in 1996 and the abolishment of term limits in 2004, presidential power has been *de jure* and *de facto* unconstrained. The position of the President above all other state organs is bolstered by a “theory of legal laws”[vii] propagated within the presidential administration and accepted in the judicial community. Laws were constitutional if they follow both the will of President Lukashenka and “the People”. They were considered unconstitutional and subsequently ignored by scholars if they did not.

When swearing in Viktor Rabtsaŭ as new constitutional court judge on 2 February 2017, Lukashenko addressed a critique frequently put forward by Belarusian NGOs and international actors that Belarus needed a human rights ombudsperson. In [his view](#), such a position would be entirely redundant, since the President should be the “main inspector” of compliance with human rights principles in the country. Following this logic, the Constitutional Court was ascribed a supportive, but not constraining or limiting function of the presidency.

The law-making process is controlled by the Presidential Administration, and virtually all bills are initiated by the executive. Presidential decrees (*dekrety*, as opposed to the more mundane *ukazy*) are frequently used as policy initiatives and policy programs. Among others, this practice has been criticized by the OHCHR Special rapporteur on human rights in the [latest report](#): “The legal framework continues to be amended and governed by presidential decrees, which overrule constitutional law”. **Two recent examples** are the 2013-2014 judicial reform and the infamous 2015 Decree No 3 establishing a new tax on unemployment.

**First**, in an effort to foster the Eurasian integration, Lukashenka used his presidential mandate to introduce the judicial reform of 2013-2014 ([Decree No. 6](#) accompanied by ordinances [*ukazy*] No. [529](#) and [530](#)) via presidential decrees bypassing the legislature and public debates. The presidential decree No. 6 dated 29 November 2013 made explicit reference to Article 101 of the Constitution. Article 101 stipulates that the President can issue temporal decrees, which have legislative validity, but they require approval of the House of Representatives and the Council of the Republic. Such temporal presidential decrees should not include changes, additions and interpretations of the Constitution and changes and additions of the legislative program. However, Article 97 clearly assigns the constitutional right to propose legislative bills amending the judicial system, judicial procedures and the status of judges to the House of Representatives.

The judicial reform resulted in the incorporation of the Supreme Economic Court into the Supreme Court despite the fact that the autonomy of the Supreme Economic Court is granted by Article 34 of the Constitution, and references to the Supreme Economic Court still remain in the Constitution.[\[viii\]](#) In the review of the judicial reform, the Constitutional Court confirmed the validity of these acts referring to Article 109, Paragraph (3): “The judicial system in the Republic of Belarus shall be determined by the law.” Thus, the interpretation of the law and legislative acts was *de facto* expanded to temporary presidential decrees. The Constitutional Court has also recognized that the judicial reform would require constitutional amendments. Thus, it appears that it was this somewhat hurried judicial reform that has opened up the Belarusian leadership to the debate on the Constitution back in 2013-2014.

The **second** example was the [Decree No. 3](#) “On the prevention of social parasitism” from 2 April 2015 which introduced a tax for citizens who did not contribute to funding state expenditure, or did so less than 183 days per year. Therefore, the decree was targeted at unemployed and those employed in the informal economy to prop up state revenue. The reasoning to legitimize the decree was the notion of Belarus as a social state, i.e. contributing financially to social services was portrayed as obligatory. The Belarusian Helsinki Committee argued that the decree violated [at least five articles](#) of the Belarusian Constitution, most importantly Article 41, Paragraph (4) (*de facto* introducing forced or obligatory labor), but also articles 32, 56, and 101.

On the grounds that Decree No 3 violated Article 41 as well as the ILO Convention No. 29 “Convention Concerning Forced or Compulsory Labor, 1930” and 105 “Abolition of Forced Labor”, the oppositional Belarusian Social Democratic Party (Assembly) filed a complaint with the Constitutional Court in July 2015. The Court, however, rejected to review the complaint on the merits as citizens and legal entities are formally not entitled to file a complaint. In the wake of street protests in Minsk and some regions in February and March 2017, the Constitutional Court did [react to electronic citizen complaints](#). While the Court refused to start a constitutional review based on the complaints, it cited legislation and previous decisions of the Court and, therefore, indirectly confirmed the legality of the decree. It made reference to Article 56 of the Constitution and equaled state taxes,

duties and other payments to an “unconditional demand by the state” that citizens must comply with following their duty to “contribute to funding public expenditure”. Hanna Kanapatskaia, one of the two independent MPs elected into the House of Representatives in 2016, tried to petition her chamber to file a complaint with the Constitutional Court, but her request got stuck for three months and was [formally declined](#) by the House in July 2017.

Decree No 3, therefore, once more highlighted the enormous powers of the presidency to make inroads into key tenets of the Constitution – in this case the notion of the social state. As the state bodies entitled to file complaints with the Constitutional Court are loyal to the president, citizens and other legal entities such as parties are de facto barred from checking the presidency, leaving the street as the only option to vent anger. Lukashenka did not repeal the decree, but complaints and protests did have some results. Among the 470,000 citizens obliged to pay the tax by mid-February 2017, only slightly more than 10% had complied. In March, Lukashenka decided to suspend and reconsider some terms of the decree until 2018. An amended Decree No. 1 was passed on 25 January 2018 which will come into force on 1 January 2019, which, however, also contradicts international and domestic norms on forced and compulsory labor [according to an assessment](#) of the Belarusian Congress of Independent Unions.

Overall, there is no reason to doubt that decrees will remain one of the most powerful tools for policy-making by the president. But the apparent lack of feedback mechanisms with the broader population can make its use a costly and, at times, even risky business.

### **Debating foreign models of constitutional amendments**

There is evidence that Lukashenka and his entourage are actively monitoring constitutional amendments in the post-Soviet space aimed at bolstering the regimes of the incumbents, in particular Azerbaijan, Kazakhstan, and Armenia. This might indirectly implicate that there are clandestine considerations about how to gradually adapt the current institutional setting and therefore to preempt a potential succession crisis.

In July 2016, Azerbaijan's President Ilham Aliyev announced constitutional amendments that were later approved by the Constitutional Court and put to a national referendum on 29 September 2016. [The amendments](#) prolonged the presidential term from 5 to 7 years, introduced the post of First Vice President and Vice President, and strengthened the presidential mandate with the right to dissolve the Parliament. Azerbaijan's model of constitutional changes included even less than a three-month turnaround of amending the Constitution (from announcing the proposal to organizing a national referendum), a package of constitutional amendments presented to the public that removed a number of obstacles with just one plebiscite and a maximized national campaign, opening additional polling stations in Azerbaijani embassies, to legitimize the referendum results.

About the same time, after the Belarusian parliamentary elections in September 2016, the Liberal Democratic Party (LDP), a pro-government party, and its leader Haidukevich proposed changing the terms of office for members of Parliament from 4 to 5 years and extending the presidential tenure from 5 to 7 years by means of a nation-wide referendum which would coincide with local elections in early 2018. Although this initiative evaporated rather quickly, at the time [analysts believed](#) that the LDP's proposal of a referendum had official backing. The prolongation of presidential term limits was discussed with regard to the 2020 electoral cycle when both parliamentary and presidential elections will coincide. Combining a referendum on the extension of presidential term limits with local elections in 2018 could have postponed the next presidential elections [until 2025](#). Another option still in the cards would be an early presidential election in 2019 in combination with a referendum.

The 2017 constitutional reform in Kazakhstan caught Lukashenka's particular interest. During an official meeting with Nazarbaev in March 2017, just a week after the constitutional amendments were signed into law,

Lukashenka commented: “Very often, I observe, analyze and try to learn from the experience and activities (especially during last months) of your government, and above all the President. [...] I think that you are making important steps for Kazakhstan to sustain stability and independence of your country. You are trying to reinforce your reforms, especially those with regard to the government and constitutional amendments, with concrete economic steps. This is a great example for others.”

Contrary to previous constitutional amendments aimed at expanding presidential powers, the 2017 reform redistributed 34 presidential powers between different branches of government, strengthening the role of the Parliament and enhancing the separations of powers principle. Moreover, procedurally the process was much more open and at least formally consultative than the Azerbaijani maneuver. Draft constitutional amendments in Kazakhstan were originally formulated by a special working group, comprised of the members of the government, Parliament, Supreme Court, Constitutional Court, academia and civil society, and were discussed publically prior to the approval of the final draft law by a joint session of Parliament. From the Belarusian perspective, this might indeed look like a viable “operation successor” as part of a Kazakhstani “sustainable system,” where Nazarbaev could at one point take over another position – e.g. as a chairman of the National Security Council – whilst a designated successor would secure his safety until the final power transition.

Lukashenka, himself has alluded on multiple occasions that presidential powers should be distributed among other state organs, most importantly the government to strengthen the “power vertical” for the days “when Lukashenka will be no more”. But this power redistribution, he emphasized, is not going to happen anytime soon.

Lastly, with Armenia’s Velvet Revolution in April 2018, the dangers of tinkering with the country’s institutional design clearly outweighed the perceived advantages. Given that Lukashenka had done away with the presidential term limit long ago, the “Armenian model” of switching from semi-presidentialism to parliamentarism with the President indirectly elected by the Parliament was the least relevant in any case. Besides the more obvious lesson that an allegedly popular president can be toppled by street protests rather quickly and unexpectedly when constitutional amendments are perceived as overt manipulations and feedback mechanisms, such as media and polls, are flawed, the Armenian case might have contributed to shelving once again reforms of the electoral code and the party system.

After all, it was the Armenian ruling Republican Party that had nominated Serzh Sargsyan and later lost power to a coalition of parliamentary factions around the new Prime Minister Nikol Pashinyan. From the perspective of Lukashenka, transforming the pro-regime platform Belaia Rus’ into a proper party of power now accompanied by a change of the electoral system from majoritarian first-past-the pole single member districts to a proportional system with party lists carries more disadvantages than simply maintaining the status quo. The Central Election Commission’s larmoshyna has made it clear on numerous occasions that amendments to the election law to a proportional or a mixed system would also require constitutional amendments such as the removal of citizens’ right to recall elected deputies (Article 72). Finally, Lukashenka remarked that firmly grounding the notion of the multi-party system in the Constitution would precede any steps of turning Belaia Rus’ into a party. A proper party system, however, would result in “endless debates”, and it was far from clear whether Belarus was ready for this sort of “fist fight”.

## Conclusions

Over the last years, the Belarusian President, Aliaksander Lukashenka, has been building up public expectations that amending the Constitution was inevitable.

The reality is different. Despite numerous statements, the Constitution has remained unscathed since 2004. The discussed two examples of the 2013-2014 judicial reform and the infamous 2015 Decree No 3 establishing a new tax on unemployment are just the tip of the iceberg of the law-making done by presidential decrees.



However, they showed that touching the Constitution is unnecessary as presidential power can be *expanded* by laws or decrees. Nevertheless, as the cases of Kazakhstan and Armenia revealed, dealing with the succession issue would involve *a decrease and redistribution* of presidential powers to other state organs, mainly to the legislature and the government. In the presidential discourse, however, the Constitution is firmly associated with stability, state sovereignty, security, and an evolutionary path of state-building. Opposition groups who have been campaigning for a constitutional referendum such as Gavary Praŭdu (Tell the Truth) can thus easily be denigrated as subversive and anti-Belarusian.

In the absence of independent public opinion surveys, there is a vacuum of reliable comparative data that measures regime support. This is not only problematic for researchers working on Belarus[ix], it seems that the regime also struggles to measure people's attitudes and support for the government and its policies. Given recent events in Armenia of yet another "color revolution" in the post-Soviet space, freezing the status quo and postponing the successor issue by talking about constitutional changes while changing nothing so far has proved to be a successful recipe, at least from the perspective of the Belarusian ruler.

**This is a guest post by Maryia Rohava, University of Oslo, and Fabian Burkhardt, Research Centre for East European Studies, University of Bremen**

## Notes

[i] In December 2015, constitutional changes were designed to transfer significant powers from the Armenian president to the Prime Minister. The presidential term limit prevented Sargsyan from getting elected as President for the third time. By getting appointed by the ruling Republican Party as Prime Minister on 11 April Sargsyan hoped to remain in power, but in vain.

[ii] Bedford, S., & Vinatier, L. (2018). Resisting the Irresistible: 'Failed Opposition' in Azerbaijan and Belarus Revisited. *Government and Opposition*, online first: <https://doi.org/10.1017/gov.2017.33>.

[iii] Ginsburg, T., & Simpser, A. (Eds.). (2013). *Constitutions in Authoritarian Regimes*. Cambridge University Press.

[iv] Ungated version: Burkhardt, F. (2016). [Belarus](#). In *Constitutional Politics in Central and Eastern Europe* (pp. 463–493). Springer VS, Wiesbaden.

[v] Dabrowski, M. (2016). [Belarus at a Crossroads](#) (No. 2016/02). *Bruegel Policy Contribution*.

[vi] Frear, M. (2019). Belarus under Lukashenka. Adaptive Authoritarianism. Routledge.

[vii] Partlett, W. (2012). The Dangers of Popular Constitution-Making. *Brooklyn Journal for International Law* 38(1), p. 228.

[viii] Kazakevich, A. (2008). [Belarus](#). *Nations in Transit Country Reports 2018*. Freedom House.

[ix] Rohava, M. (2018). Identity in an Autocratic State: Or What Belarusians Talk about When They Talk about National Identity. *East European Politics and Societies* 32(3), pp. 639–668.