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Editor and Publisher

Prof. Aliaksandr Milinkevich

Prof. Mariusz Maszkiewicz

Piotr Rudkouski, PhD

Małgorzata Wierchowska



Free Belarus University

www.volny-uni.eu

Graphic design and cover

Tomasz Spera – Agencja Osobiście

Proofreading

Daria Vashkevich

Typesetting and pre-press preparation

Wind of Change Studio

Contact

journal@volny-uni.eu

piotr.rudkouski@gmail.com

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Foreword of Editor-in-Chief

The Constitution of Belarus and reforms – both those already underway and those still hoped for – are the central theme of this issue of our yearbook. We look at the problem from a legal-constitutional, political-science, and historical perspective alike.

The main inspiration came from the participants of the peaceful revolution of August 2020, which I learned about from Anatol Liabedzka. At that time, Sviatlana Tsikhanouskaya's election campaign set off, among the younger generation of society, an avalanche of interest in a fundamental question – on what law, on what principles, should changes in our state be built. Anatol received invitations to ad hoc discussions organised in Minsk courtyards, and he invited to these open-air debates specialists, lawyers, and constitutional scholars. It was then that he became firmly convinced that, despite the hopeless situation, political emigration, repression at home, and thousands of persecuted fellow citizens, this most important intellectual and conceptual work – building a consensus around the shape of Belarus's future constitution – must not be abandoned.

Anatol invited specialists from abroad and set in motion a mechanism of consultation with the Council of Europe's Venice Commission. This gave rise to a collective volume edited by Dr. Thomas Buchsbaum (former Austrian ambassador to Poland). Today we return to an idea from several years ago and, once again, take up on the pages of the **Free Belarus Journal** the conversation on this fundamental legal-political question for Belarus.

Constitutional reform – initiated in 1990 by a group of deputies to the Supreme Council, among them Viktor Hanchar, Stanislau Shushkevich, and deputies of the Belarusian Popular Front – gained momen-

tum despite the enormous burden of the USSR's political legacy. Prof. Viktor Shadurski writes about this in detail. Disputes over the shape of the constitution proved to be a fundamental problem for the young state. After several decades, it is hard not to agree with the observation that Zianon Pazniak was right when he insisted on building a parliamentary-republic model.

With his rise to power in the democratic and legally conducted elections of 1994, Aliaksandr Lukashenka began – in the spirit of a Bolshevik-style revolt – a systematic dismantling of state institutions, violating both the spirit and the letter of the compromise so painstakingly worked out within the Constitutional Act of independent Belarus.

The constitutional referendum, organised around the aim of strengthening the power of president Lukashenka and held in November 1996, set the country on the road to dictatorship.

I was serving at the time as Consul General in Hrodna, and I well remember the anxiety, even the dread, of my friend Aliaksandr Milinkevich. It was then that he decided to leave his post as deputy mayor of Hrodna and devote himself to work in the third sector. The past months have been, for the editorial team of the Free Belarus Journal, marked by deep sorrow over Aliaksandr's illness and death. I believe that through this organic work we will carry forward the intellectual and organisational activity of our friend. I hope that our modest effort will add to the store of conceptual tools needed for Belarus's future reform.

Thanks to financial support from the European Endowment for Democracy, we are able to present this issue of the **Free Belarus Journal** – in collaboration with the NEXTA channel – through videos, debates, and short clips that summarise our message.

We warmly invite you to join us, stay with us, and follow the **Free Belarus Journal** across our online channels. *Žyvie Bielaruś!*

Prof. Mariusz Maszkiewicz
Editor-in-Chief



In memoriam

The Compass He Left Us: Aliaksandr Milinkevich's Vision for Belarus's Constitution

The following text is an attempt to reconstruct the views and political stance of Aliaksandr Milinkevich on matters concerning the Constitution of Belarus. Last autumn, while preparing the concept for the current issue of the 'Free Belarus Journal', we discussed with Aliaksandr what he considered the ideal shape of a future Basic Law. Milinkevich wished that work on a new Constitution would involve a broad circle of experts. His political experience and the system of values he lived by suggest to us that, were he with us today, he would express the opinions and views set out in the text below.

Legality of power as the only criterion

Throughout his public life, Aliaksandr Milinkevich kept returning to one unchanging principle: power is legitimate only when it derives from a Constitution adopted and amended in accordance with the law, not from the will of a single individual. He applied this principle consistently to every successive change in the Belarusian political system after 1996 – and it was this principle, rather than political tactics or personal dislike of Aliaksandr Lukashenka, that formed the axis of his thinking about the state.

When, in November 1996, a referendum was being prepared to expand the president's powers at the expense of parliament and the judiciary, Milinkevich – then deputy chairman of the Hrodna City Executive Committee – voluntarily resigned from his post. He did not want

his office to lend legitimacy to changes to the political system that he did not consider lawful, and this decision was made before the referendum even took place, based solely on his assessment of the procedure by which it was to be carried out. This gesture, which he repeatedly cited afterwards as a point of reference, illustrated the principle that would define his entire subsequent stance: better to lose one's position than to take part in circumventing the law.

Eight years later, when the referendum of 17 October 2004 abolished the limit on the number of presidential terms, Milinkevich applied the same standard. In an interview for 'Nezavisimaya Gazeta', he explained plainly: the Constitution in force until the day of the referendum clearly limited the presidency to two consecutive terms, and introducing amendments through an illegal vote in effect gave Lukashenka the possibility of ruling the country for life. For Milinkevich, this fact alone – regardless of any other grievances against the authorities – was sufficient reason to demand his resignation. The resolution of the 2005 Congress of Democratic Forces, which put forward his candidacy for president, pointed in the same direction: the 2004 referendum had been called and conducted in violation of the Constitution and the Electoral Code, and the authorities' actions were aimed at changing the country's constitutional order in defiance of its own, previously established rules.

After the presidential election of March 2006, in which he ran as the joint candidate of the opposition, Milinkevich no longer spoke merely of electoral irregularities but of something deeper: he described what had happened as an 'unconstitutional seizure of power'. In an interview with the BBC he stated that Lukashenka had no right to run in that election at all, since the Constitution predating 2004 forbade it – and that the vote itself was, in his view, not a rigged election but a coup d'état. The consequence of this reasoning was his conclusion that no legitimate authority existed in Belarus with which normal political dialogue could be conducted.

Independence as a non-negotiable condition

The second pillar of his stance was an uncompromising defence of Belarus's independence – understood not as an abstract slogan but as a concrete legal reality, enshrined in the Constitution and threatened by the

policy of integration with Russia. Milinkevich sharply criticised the draft Constitutional Act of the Union State of Russia and Belarus, pointing out that the document had been prepared in complete secrecy from society – no one outside a narrow circle of officials had seen it, which in itself he regarded as a warning sign. His assessment of the consequences of signing the Act was unequivocal: it would mean the elimination of Belarus as an independent, sovereign state – something the opposition, as he declared, would never accept.

Commenting at the end of 2006 on the so-called gas war with Russia, Milinkevich recalled that Lukashenka's regime had promised Moscow it would sign the Constitutional Act in exchange for cheap energy resources, but backed out at the last moment – not out of concern for the country's sovereignty, but out of fear of losing sole power in the event of an actual merger of state structures. This observation mattered to him because it showed that even Lukashenka's own defence of independence was accidental and instrumental, rather than stemming from any genuine attachment to the sovereignty of the state.

Milinkevich's defence of independence went hand in hand with a consistent call for neutrality. In a televised address in February 2006, he stressed that Belarus should remain a neutral state, in line with the Constitution's own provision – in his understanding, the Basic Law was thus not merely a set of instructions for the state's internal organs, but also a compass for foreign policy, marking a boundary that no authority should cross without the citizens' consent expressed in an honest referendum.

A democratic order as a goal, not a slogan

Milinkevich did not stop at criticism – it was accompanied by a fairly detailed, consistently repeated vision of what the state should look like after a change of power. At a campaign meeting in Zhodzina in March 2006, he said, among other things: 'I do not like it when one man changes the Constitution to suit himself simply because he wants to rule.' He stressed that he himself intended to drastically curtail the powers of the president, so the Constitution would have to be changed regardless – with the difference that he would not do so single-handedly or from the position of a sitting head of state. Instead, he proposed the establishment of a Constitutional Assembly made up of well-known and compe-

tent lawyers, with the process of change spread out over time rather than carried out with a single stroke of the pen.

At meetings with voters in Minsk he spelled out this project in concrete terms: ‘No one man will hold imperial powers’; ‘there will be no decrees or ordinances placed above the law’. The Council of Ministers was to become independent of the Presidential Administration, which he planned to reduce to the role of a mere chancellery, and the new Constitution was to restore the principle that one person may hold the office of president for no more than two terms. It was precisely this concrete, institutional programme – rather than general declarations about freedom – that constituted, for him, the essence of democratic change.

At the same time, Milinkevich never proposed a simple return to the past. Responding on a Radio Free Europe / Radio Liberty forum to a question about restoring the 1994 Constitution, he cautioned that it was no longer possible simply to go back to it today, even though it had been considerably more democratic than the one in force – too much had changed since then, including an entire body of legislation built on the later amendments he contested. He therefore called for the establishment of a Constitutional Council made up of the best lawyers, which would draft a Constitution more accomplished than that of 1994, with a proper separation of powers – not a copy of the past, but a new, better-constructed legal order, built nonetheless on the same principles: separation of powers, judicial independence, equality before the law, and free media.

Institutions matter more than the letter of the law

Milinkevich was well aware of the trap one can easily fall into by treating the text of a Constitution itself as a guarantee of democracy. He liked to repeat, in this context, a well-known rhetorical question: ‘Did Stalin have a bad constitution? Better than the French one. And so what?’ This remark summed up his conviction that Belarus’s problem lay not solely in the content of its Basic Law, but in the way it was applied and in the absence of a genuinely independent judiciary. A good Constitution without independent institutions, without a real separation of powers, he argued, remains a dead document – just as the Stalinist constitution of the 1930s proved to be dead despite its formally democratic provisions.

From this conviction followed his characteristic emphasis on building institutions rather than merely on the act of adopting a new document: an independent judiciary, a genuinely functioning parliament, and free media – these, not the text alone, were what would make a Constitution truly alive.

This same concern for institutional rather than merely declarative democracy is visible in the project of the so-called ‘Little Constitution’, drafted in 2007 by the circles of the United Democratic Forces with Milinkevich’s active involvement. The document’s full title – the ‘Constitutional Law of the Republic of Belarus on the System and Powers of State Authorities and Local Self-Government Bodies’ – pointed to its practical rather than symbolic character: it concerned concrete solutions for a transitional period, covering electoral law, the division of functions among the branches of power (judicial, legislative, and executive), and the alignment of the state system with European standards. The document, adopted almost unanimously by the Congress of Democratic Forces, was subsequently submitted to the Council of Europe’s Venice Commission – the European advisory body that assesses the compatibility of constitutional arrangements with European standards of democracy and the rule of law. For Milinkevich, submitting the draft for the judgement of an international institution carried a significance that went beyond diplomatic gesture: it was meant to confirm that the alternative constitutional project met the norms recognised in Europe, in contrast to the arrangements introduced by the 1996 and 2004 referendums, which – in the assessment of, among others, OSCE observer missions – violated those very same standards.

A civic, not ethnic, community

The vision of an independent and democratic Belarus that Milinkevich consistently built also had a civic, rather than ethno-national, dimension. Running again for the presidency in 2010, in his platform ‘Let’s Make Belarus a Real Europe’, he called for restoring the principles of the separation of powers enshrined in the 1994 Constitution, together with a reform of the electoral system and local self-government, speaking explicitly of a ‘return to the former Constitution, unlawfully changed in 1996’. Responding at the time to questions from Radio Free Europe / Radio Liberty listeners, he firmly rejected the idea that the right to hold the highest state offices – including the presidency – should belong exclu-

sively to ethnic Belarusians, calling this outright discrimination on ethnic grounds. Instead, he proposed residency and place-of-birth criteria as the condition for standing for the highest offices – a solution typical of a republican, civic understanding of the state, in which state affiliation depends not on ethnic origin but on one's ties to the country and adherence to its law.

Consistency

What stands out most strongly across this sequence of events, stretched over more than a decade – from the voluntary resignation of 1996, through the dispute over the 2004 referendum and two presidential campaigns, to the 'Little Constitution' project submitted to European institutions – is the unchanging nature of the very criterion of judgement. Milinkevich did not shift his position with changing political circumstances: he measured every decision of the authorities against the same yardstick of compliance with the constitutional procedures for changing the law; he grounded every institutional proposal of his own in the same principles of the separation of powers and judicial independence; and he tied every vision of Belarus's future to the same condition: the state's real, rather than merely formal, independence. In this sense, the successive disputes over constitutional referendums, the dispute over the Constitutional Act of the Union State, and the work on the 'Little Constitution' are not separate episodes of his biography, but successive chapters of one, coherent struggle for Belarus to be a state governed by the rule of law – ruled on the basis of a Constitution adopted and amended in accordance with the will of its citizens, not the will of one man.

*Prepared by:
Igor Kuley and Mariusz Maszkiewicz,
based on press materials, interviews, conversations,
and available sources.*

The Roots of the Crisis & Societal Context



The Triumph of Authoritarian Backlash in Belarus (July 1994–November 1996): Preconditions and Consequences, Actors and Institutions

Introduction

Belarus became a de facto and de jure independent state following the final collapse of the USSR in December 1991. Over the course of the following two and a half years – a period that has entered history as the era of ‘unfulfilled hopes’ – Belarus witnessed the emergence of democratic state and public institutions, the founding of political parties, and the expansion of the use of the Belarusian language and the study of national history. It was during this very period that the young sovereign state secured broad international recognition. However, following the first presidential election, held in July 1994, the country’s democratic achievements came under attack from the new head of the executive branch (Shadurski, 2025, pp. 31–54).

Many experts have argued that the principal unresolved problem facing the democratic forces after the proclamation of Belarusian sovereignty was the absence of the political will to hold new parliamentary elections. The opposition forces in parliament, first and foremost the BPF faction, held – not without justification – that the ‘silent majority’ of the 12th Convocation of the Supreme Council, elected back in the Soviet period (May 1990), constituted a potential threat to the country’s national and democratic development, and could also facilitate the rise to power of authoritarian politicians (Zam, 2000, pp. 69–96).

Particularly harsh criticism on this score was directed at the Chairman of Parliament, Stanislau Shushkevich, who in 1992 declined to support the idea of holding a nationwide referendum on the dissolution of the legislature and the calling of early elections. The referendum's initiators believed that a new parliament, elected under conditions of rising political activity within society, would be considerably more democratic than the incumbent one (Navumchyk, 2017, p. 51; Sahm, 1997, pp. 475–487).

An explanation for this stance can be found in the memoirs of the then Chairman of Parliament, Stanislau Shushkevich:

A group of deputies from the Belarusian Popular Front demanded, with almost manic insistence, that I, by virtue of my status as Chairman, place on the agenda the question of the self-dissolution of the Supreme Council and the calling of early elections. The Supreme Council rejected all the usual deputies' initiatives on this matter, and the BPF deputies – Zianon Pazniak foremost among them – either genuinely failed to understand this or deliberately sought to have my exercise of this special prerogative lead to my immediate resignation (Shushkevich, 2012, p. 223).

Another manifestation of political rivalry in Belarus was the protracted delay in adopting the new Constitution. It was not adopted by parliament until March 1994, by which time public discontent with the situation in the country – above all with the economic hardships that were almost inevitable under conditions of transition – had already risen markedly.

Belarus's 1994 Constitution: democratic promise or authoritarian prelude?

Preparation of the draft Basic Law began long before its adoption. As early as 22 June 1990, the Supreme Council of the BSSR established a Constitutional Commission comprising two working groups, which included 61 deputies and 13 legal experts. Drafts of the country's Basic Law were published for public discussion in 1991, 1992 and 1993. They differed substantially both from the 1978 Constitution of the BSSR and from one another. The official draft of the 1993 Constitution of the Russian Federation had a significant influence on the wording of the 1994 Constitution. According to the recollections of deputies, Belarusian leg-

islaters also drew on the Constitution of France as a model (Shadurski, 2024, p. 127).

The principal dispute concerned the future form of government: a president-parliamentary or a parliamentary republic. The introduction of the former was supported not only by representatives of the pro-Soviet bureaucracy, who anticipated seeing the then prime minister, Viachaslau Kebich, in the country's highest office, but also by the so-called 'young wolves' – representatives of a new generation of politicians who sought the election to the presidency of an ambitious yet inexperienced populist, with whose help they hoped to advance rapidly up the career ladder. The most consistent opponents of the presidential form of government were the deputies of the Belarusian Popular Front, led by Zianon Pazniak. They warned that the election of a chance politician to the office of head of state, under conditions of weak democracy and economic crisis, could lead to the establishment of a dictatorship. According to Valiantsin Holubeu, a former member of parliament's Constitutional Commission, had the BPF's version of the Constitution been adopted, Belarus would have become a parliamentary republic with a legislature of 120 deputies (Charter97, 2020).

The numerically large pro-government 'Belarus' faction actively advocated for a Constitution that would grant the future president extensive powers. However, the adoption of the article on the form of government, as well as the provisions on the functions of parliament and local self-government, required a constitutional majority – two-thirds of the votes of the total number of elected deputies – which proved very difficult to secure. Under these circumstances, the new Chairman of Parliament, Miechyslau Hryb, elected following the resignation of Stanislau Shushkevich, proposed – for the first time in the practice of Belarusian parliamentarism – that the most contentious sections of the Constitution be adopted by means of voting by 'signed ballots' over the course of several days. In January 1994, this proposal was successfully carried through the Supreme Council. By the end of February and the beginning of March 1994, the contested articles had been adopted, and on 15 March a majority of deputies voted in favour of the draft Constitution as a whole. Two weeks later, the Supreme Council resolved to hold the election of the first president of the Republic of Belarus on 23 June 1994 (*Argumenty i Fakty*, 2019).

It is evident that the 1994 Constitution was far from ideal. The Belarusian politician Vasil Liavonau, in his memoirs, called it a Constitution of

compromise between eras and generations. In his view, it cannot be claimed that it was a fully-fledged Constitution of a democratic state; a political compromise had been reached at the time of its adoption. In any event, no one anticipated that, in less than three years, the Constitution would be substantially revised (Liavonau, 2003, p. 19).

In the view of the present author, the principal flaw of independent Belarus's first Constitution was its rejection of a parliamentary form of government. As subsequent experience in Belarus and in other countries under similar conditions of development has shown, the shift to a presidential regime – amid weak democratic institutions, a population vulnerable to demagoguery and populism, and widespread expectations of a 'strong hand' – proved to be a serious, and perhaps fatal, mistake on the part of the Belarusian parliamentarians. Parliamentary regimes established and operating on a democratic basis have, although not always, in most cases ensured the stable development of their countries and constituted a serious obstacle to the emergence and consolidation of authoritarian regimes.

Another subjective error on the part of the then heterogeneous body of deputies was the lowering of the age threshold for presidential candidates from 40 to 35 years. Deputies, including supporters of the prime minister, could not fail to see the dangers to the country's development posed by the possible victory, in the presidential election, of an ambitious and unpredictable director of a state farm (*sovkhos*) who had gained popularity through loud but substantively vacuous anti-corruption pronouncements (Shadurski, 2024, pp. 127–128).

The new president's authoritarian turn

As the very first months of the elected president's tenure demonstrated – having triumphed over both the 'party of power' and the representatives of the national-democratic forces – he had no intention of abiding by the constitutional norms that had enabled him to come to power. The new head of state showed a preference for the administrative-command Soviet practices with which he was familiar and accustomed (Karbalevich, 2010; Fiaduta, 2005). Aliaksandr Lukashenka gave figurative expression to his understanding of the president's governing role in the following formula: 'Presidential power in Belarus is the trunk of a tree'. He regarded the legislative and judicial branches as boughs growing from this trunk (Rouda, 2009, p. 137).

Almost immediately, the president's intention to 'rewrite' the Constitution to suit his own personal interests became apparent. The most vulnerable point of the Basic Law proved to be the balance among the three branches of power, which had not been fully thought through or precisely codified – a deficiency that allowed the president and his associates to interpret the broadly worded constitutional norms to their own advantage. As early as the summer of 1994, structures not envisaged by the Constitution and endowed with broad governing powers were created – the Presidential Administration, the Directorate for Presidential Affairs, and a personal security service – which came to occupy a central place in the system of state governance (Pastukhou, 1998).

In the course of eliminating 'competitive politics', the president succeeded in rapidly and substantially curtailing the powers of local representative and executive bodies, which in democratic countries traditionally constitute a necessary counterweight to central authority. The 'architects' of the new model well understood the role of local authorities in organising election campaigns, as well as their significance in implementing the decisions of central government in towns and villages, and consequently sought to establish full control over them. It must be acknowledged that considerable latitude for action in this direction was afforded to the authoritarian leader by the Constitution of Belarus of 15 March 1994, since Section V thereof failed to fix a democratic mechanism for the formation of local executive bodies, leaving this matter to be regulated by future legislation (Constitution of the Republic of Belarus, 1994). The excessively general norms of the section devoted to local government and self-government complicated the work of the Constitutional Court, whose judges could not rule on the unconstitutionality of particular actions and decisions of the president, even though they well understood that these did not always accord with the principles of constitutional legality (Fadeev, 2006, p. 378).

On 6 October 1994, through a majority of the 12th Convocation of the Supreme Council loyal to him, Lukashenka carried through amendments and additions to the Law of the Republic of Belarus 'On Local Self-Government and Local Economy in the Republic of Belarus' (1991). Under the new wording of the law, the president acquired the right to appoint the chairpersons of the regional executive committees and of the Minsk City Executive Committee – that is, to exercise complete control over personnel appointments within the executive branch (Law 'On Amending...', 1994). The law became the subject of review by the Con-

stitutional Court of the Republic of Belarus, which, in its Ruling No. Z-8/94 of 21 November 1994, found a number of the amendments introduced into it to be inconsistent with the 1994 Constitution, and demanded a return to the previous system (Ruling of the Constitutional Court, 1994).

In response to the Constitutional Court's decision, Lukashenka, on 28 November 1994, issued a decree vesting himself with a 'temporary' right to appoint the chairpersons of the regional executive committees and of the Minsk City Executive Committee (Presidential Decree, 1994).

The following year, the president continued his offensive against the system of local self-government: on 19 September 1995 he issued Decree No. 383 'On Conducting a Reform of the Bodies of Local Government and Self-Government', under which district Councils of Deputies and their bodies in major cities were abolished. Although this and other decrees in this sphere were likewise found by the Constitutional Court to be inconsistent with the Constitution and laws of the Republic of Belarus, their provisions were nonetheless entrenched in practice and, after November 1996, fixed within national legislation (Ruling of the Constitutional Court, 1995).

Thus, in 1994–1995, amid acute political confrontation in Belarus, the foundation of a dictatorial regime was laid: a so-called presidential vertical of power was created, every level of which was dependent on Lukashenka and was appointed above all to ensure the unconditional execution of his directives.

The next direction of the head of state's anti-constitutional activity on the path to the usurpation of power was the establishment of control over the mass media. In December 1994, Lukashenka personally banned the publication of an anti-corruption report by Supreme Council deputy Siarhei Antonchyk, which openly asserted that corrupt individuals had come to occupy senior state posts within the entourage of the new 'uncompromising fighter against corruption'. On the following day, state publications – including the mass-circulation newspapers *Narodnaya Hazieta* and *Sovetskaya Belorussiya* (with a print run of around half a million copies) – appeared with blank white columns in place of the report's text. The democratic forces, not without justification, regarded this as a return of censorship and a gross violation of citizens' constitutional right to receive information. The unlawfulness of the head of state's actions was recorded in the Constitutional Court's first annual message of 27 January 1995 (Message of the Constitutional Court, 1995).

As subsequent events showed, protests against this gross violation of press freedom did not deter the president and his entourage. As early as 2 January 1995, on Lukashenka's personal instruction, the Belarusian Publishing House terminated its contracts with a number of publications (Svaboda, Femida, Gazeta Andreya Klimova) that were noted for their open criticism of Lukashenka and his administration. These publications were forced to print abroad, which significantly increased their costs. The authorities also banned the distribution of the independent press by subscription and through the kiosk network of the state organisation Belsayuzdruk (Strachany Shaniets, 2015).

Strict control by the Presidential Administration was likewise established over television, which in the 1990s was the population's main source of information. Critics of the head of state's policies were deprived of their constitutionally guaranteed right of access to broadcasting. In April 1995, the Constitutional Court of the Republic of Belarus ruled Lukashenka's decisions unlawful, on the grounds that their implementation was leading to a monopolisation of television and radio broadcasting (Message of the Constitutional Court, 1996). This ruling of the court, like other similar decisions, remained unenforced.

The 1995 referendum: manipulation and the erosion of democratic institutions

As dictatorial tendencies intensified in the president's policies, the 12th Convocation of the Supreme Council increasingly moved into opposition to the head of state. This was fostered by the active work of the BPF parliamentary faction and its allies, which provoked serious irritation on the part of the president. Having come to believe in his own impunity, he adopted an insulting and contemptuous manner of dealing with the legislature: 'The Supreme Council is a circus, and I have no intention of abiding by the laws of a circus' (Korotkova, 2001, p. 1).

Under these circumstances, a plan for a forceful blow against both the democratic opposition and all nationally oriented Belarusians took shape within the head of state's entourage. In February 1995, during a meeting with war veterans, Lukashenka announced his intention to hold a referendum, to which it was proposed to put questions on granting the Russian language equal status with Belarusian, as well as on changing the state symbols. On 11 April 1995, deputies of the Supreme

Council, by a majority vote, approved the holding of a referendum and set its date as 14 May 1995. However, they agreed to put to the vote only the question of integration with Russia (Kuryanovich, 2016).

The basis for this decision by parliament was that the Law on the Referendum ('the popular vote'), adopted as early as 13 June 1991, prohibited the submission to it of questions that violated 'the inalienable rights of the people of Belarus to sovereign national statehood, and the state guarantees for the existence of Belarusian national culture and language'. This law, adopted while Belarus was still part of the USSR, represented a genuine achievement of the national-democratic forces, who held that, given the contested nature of Belarusian national identity, it was necessary to enshrine in legislation a specific list of fateful decisions whose submission to a nationwide vote ought to be prohibited. These included, among others, questions of national identity and state sovereignty (Law 'On the Referendum...', 1991).

At the same time, the law also had numerous critics, who regarded such a restriction as an undemocratic norm and saw in it a manifestation of distrust in the capacity of Belarusians to make responsible decisions. Nevertheless, the BPF and its allies had at the time succeeded in defending the proposed formulations. They argued that it was first necessary to overcome the 'sausage psychology', and only thereafter would the holding of such referendums make sense (Levitsky, 2022, pp. 90–91).

Opposition-minded deputies, led by Zianon Pazniak, categorically opposed the very idea of holding the referendum proposed by Lukashenka, since they held – not without justification – that the questions put to it posed a threat to young Belarusian democracy: of the four questions proposed for the referendum, three were aimed at dismantling the symbolic compromises previously reached between the conservative elite and the supporters of national revival (Levitsky, 2022, p. 79).

In order to draw attention to gross violations of the law, 19 deputies representing the Belarusian Popular Front, led by Zianon Pazniak, and the Belarusian Social Democratic Hramada, led by Aleh Trusau, declared a hunger strike directly in the Supreme Council's session hall (Zerkalo, 2023). On the night of 12 April 1995, on the president's personal order, several hundred officers of the OMON and the Presidential Security Service burst into the parliament building. They forcibly removed the hunger strikers from the building, drove them to Minsk's central avenue, and threw them out of police vehicles (Charter97, 2018; Hryb, 2006).

The deployment of security forces against parliament created every ground for initiating impeachment proceedings against the president. However, the majority of deputies in the 12th Convocation of the Supreme Council failed to display the requisite political will. Not only did they refrain from condemning the beating of their colleagues, but, on the evening of 13 April 1995, under pressure from Lukashenka, who was present at the sitting, they resolved to hold a nationwide referendum on all four questions proposed by the president (Shadurski, 2024, p. 185).

The situation surrounding the 1995 referendum and parliamentary elections showed that the 12th Convocation of the Supreme Council, whose term of office was drawing to a close, together with its leadership, failed to display the necessary political resolve in good time and lost any real opportunity to halt the president's increasingly assertive unlawful actions. Assessing events in parliament, the eminent Belarusian writer Vasil Bykau compared Lukashenka's rule to a military junta. He wrote these prophetic words: 'It has already been decided that there will be no parliament in Belarus, there will be no democratic elections, and the remnants of a free press will disappear' (Bykau, 1995, p. 1).

The referendum of 14 May 1995 was combined with the parliamentary elections. According to the design of the presidential administration, this combination was intended not only to inflict defeat on the 'nationalists' on key questions of state-building, but also to produce a Supreme Council composed predominantly of Lukashenka's supporters.

Four questions were put to the referendum:

- Do you agree with granting the Russian language equal status with Belarusian?
- Do you support the proposal to establish a new State Flag and State Emblem of the Republic of Belarus?
- Do you support the actions of the president of the Republic of Belarus aimed at economic integration with the Russian Federation?
- Do you agree with the need to introduce amendments to the current Constitution of the Republic of Belarus providing for the possibility of the early termination of the Supreme Council's powers by the president in the event of a systematic or gross violation of the Constitution?

According to official figures, 4,830,582 people took part in the vote, representing 64.8% of the total electorate. As the representatives of the national-democratic forces had feared, the president obtained the result

he desired on every question: the first question was supported by 75.1% of those who voted, the second by 83.3%, the third by 83.3%, and the fourth by 77.7% (Central Commission Communiqué, 1995).

It was particularly dramatic that a majority of voters supported the demotion of the Belarusian language's status as the sole state language, as well as the rejection of the national symbols – the Pahonia coat of arms and the white-red-white flag. Lukashenka's new language policy made Belarus a unique post-Soviet republic, in which political independence was combined with a further intensification of Russification. The referendum clearly attested to the ruling group's course towards building a Russia-oriented authoritarian state (Bekus, 2023).

Achieving such results, which undermined national identity, would have been difficult without the maximal use of administrative resources – that is, without the active involvement of the vertical of power subordinated to the president. As already noted, by May 1995 Belarus's information space had already been brought, to a considerable extent, under the control of the presidential administration.

The escalation of conflict between the executive and legislature after the 1995 referendum and parliamentary elections

As expected, the opposition of Lukashenka and his administration to the holding of the parliamentary elections (May 1995), which were combined with the referendum, prevented the Supreme Council from being formed at full strength. In the two rounds of voting (14 and 28 May 1995), only 119 of 260 deputies were elected. Under the law, at least 174 deputies had to be elected for parliament to begin its work. Experts drew attention to a striking contradiction: high turnout at the referendum was, oddly enough, combined with low turnout at the parliamentary elections, even though the same electorate had voted in both (Kuryanovich, 2015).

As a result of the political confrontation following May 1995, a political vacuum arose in the country: the old parliament's term of office had ended, while the new Supreme Council lacked the quorum necessary to begin its work. This turn of events suited the president and his administration entirely, since it allowed them to push through their own decisions unhindered. The activity of the 12th Convocation of the Supreme

Council, which legally continued to retain its powers, was deliberately sabotaged by the presidential administration: deputies were deprived of their official transport, and those parliamentarians who worked on a professional basis stopped receiving their salaries and were denied the conditions necessary to carry out their duties (Pastukhou, 2001).

An attempt to convene a regular session of parliament on 8 September 1995, in accordance with the Constitution, ended in failure, as the requisite quorum (at least 100 deputies) was not secured. The disruption of the sitting resulted from pressure exerted by the executive branch on many parliamentarians. The Chairman of the Supreme Council attempted to act through the Constitutional Court, seeking to have the presidential decrees declared unlawful. Through these actions, Miechyslau Hryb was attempting to redress his earlier mistakes (Zerkalo, 2023).

The 13th Convocation of the Supreme Council's move into opposition to the president

The 13th Convocation of the Supreme Council was able to begin its work only after a considerable delay – not until 9 January 1996. For the first time, 180 parliamentarians (85.9%) received deputies' mandates, though, on Lukashenka's orders, not a single representative of the Belarusian Popular Front was among them. An important factor in the new parliament's work was the presence of eight deputies representing the United Civic Party, all elected exclusively in the capital. Despite its small numbers, this cohesive group exerted a noticeable influence on the work of parliament as a whole. Its calls for strict compliance with the Constitution and the law found support among representatives of other parliamentary groups (Fiaduta, Bahutski and Martsinovich, 2003, p. 17).

The new Chairman of the 13th Convocation of the Supreme Council, Siamion Sharetski, sought to establish working relations with the head of state. He even withdrew from the Constitutional Court all the petitions concerning the constitutionality of presidential decrees that had previously been submitted there by his predecessor, Miechyslau Hryb. Deputies supported bills introduced by the president and the government. They agreed to retroactively confirm previously unlawful appointments of government members and heads of the security agencies. Yet even such compliant conduct on parliament's part failed to satisfy the head of state. Even the Supreme Council's limited freedom of action

did not accord with Lukashenka's conception of his own personal power. Pressure on parliament intensified: on instructions from the presidential administration, ministers ignored deputies' inquiries and did not attend sittings of the Supreme Council. All the most important decisions within the executive branch were taken through the president's normative acts, chiefly through decrees. For deputies – including representatives of the Communist and Agrarian factions – such actions became an alarming signal that Lukashenka intended to bring the legislative branch entirely under his control. This turn of events did not satisfy the majority of parliament (Shadurski, 2024, pp. 205–206).

The intensifying confrontation between the executive and legislature in autumn 1996

Throughout 1996, the young Belarusian state sank ever deeper into political crisis, the essence of which lay in a conflict between two opposing projects for its further development. The first envisaged the preservation of the president-parliamentary model, founded on the principle of the separation of powers, political pluralism, and the rule of law. The second project, promoted by Lukashenka and his entourage, envisaged the concentration of power in the president's hands and the subordination to him of the legislative and judicial branches – which amounted to the creation of a super-presidential system of state governance.

To realise his authoritarian plans, Lukashenka decided to make use, for a second time, of a mechanism already tested in May 1995 – a nationwide referendum. On 8 August 1996, he announced his intention to put four questions to a popular vote:

- On a new Constitution (officially: on a new redaction thereof);
- On moving Independence Day from 27 July (the day the 1990 Declaration of State Sovereignty was adopted) to 3 July (the day of the liberation of Minsk from Nazi occupation);
- On retaining or abolishing capital punishment;
- On the free purchase and sale of land.

On 31 August 1996, the mass media published a draft of the new Constitution, prepared by Lukashenka's administration, from which it followed that the proposed amendments would transform Belarus into a super-presidential republic. At its sitting of 6 September 1996, parlia-

ment was compelled to consent to the holding of the referendum and set its date as 24 November 1996 (Lukashenka had originally proposed holding the vote on 7 November). Aware of the danger posed by the president's proposed constitutional changes to Belarus's future, the deputies proposed putting their own questions to the referendum, including an alternative draft of the Constitution. This draft proposed, among other things, the abolition of the institution of the presidency (Czachor, 2009).

Amid the deepening political crisis, on 11 September 1996 the Chairman of the Supreme Council, Siamion Sharetski, issued an appeal to Belarusians: 'People, be vigilant! There is a whiff of fascism in the Republic!' The politician stressed that the draft Constitution proposed by the head of state could lead to the establishment of a personalist regime and a fascist state. In Sharetski's view, although contemporary fascism (neo-fascism) differs from the forms that existed in the 1920s and 1930s, its ideological and political core remains unchanged: pseudo-socialist demagoguery aimed at building a mass social base out of disaffected citizens; a cult of the leader; the total power of the state; comprehensive control over the individual; the division of society into 'ours' and 'theirs'; and the suppression of political opposition and the independent media (Narodnaya Volya, 1996).

The Constitutional Court of the Republic of Belarus, established in April 1994, also stood firmly against the authoritarian backlash in the country. By November 1996, it had found sixteen presidential decrees unconstitutional. In this critical situation, the Chairman of the Court and the majority of its judges conducted themselves as genuine professionals, proceeding from the necessity of strict compliance with the Constitution and the unacceptability of altering the state system through political pressure (Dziuba, 2018).

Disagreement with the president's anti-democratic actions was also voiced by part of the senior state *nomenklatura*. A serious blow to Lukashenka's faction came with the resignation, on 18 November 1996, in protest against his actions, of prime minister Mikhail Chyhir, Minister of Labour and Social Protection Aliaksandr Sasnou, and Deputy Minister of Foreign Affairs Andrei Sannikau. The decision of these three state figures sent a powerful signal to the *nomenklatura* that high office ought to be relinquished for the sake of principle. Andrei Sannikau later recalled that a further twelve members of the government had planned to resign together with Chyhir, but lacked the courage to take this step, justifying themselves on the grounds that they were engaged

in concrete work for the benefit of Belarus and Belarusians. This signal was undoubtedly heard and correctly understood, yet many lacked the character to act likewise (Kuryanovich, 2015a). This resignation, however, proved to be more the exception than the rule: although the events that followed posed a serious challenge to the state *nomenklatura*, the majority of it accepted the coup d'état and the 'new rules of the game'.

Amid the sharp escalation of the political situation, the 13th Convocation of the Supreme Council, making use of its constitutional powers, began preparing impeachment proceedings against the president. On 19 November 1996, a petition signed by 73 deputies, led by the Supreme Council's leadership (against the required minimum of 70 signatures), was submitted to the Constitutional Court, demanding that it issue a ruling on the president of the Republic of Belarus's violation of the Basic Law. As Judge Mikhail Pastukhou noted, representatives of the Supreme Council reached two key agreements with the Chairman of the Constitutional Court, Valery Tsikhinia. First, the case concerning the head of state's violation of the Constitution was to be examined as a matter of urgency. Second, the names of the 73 deputies were not to be disclosed before the court sitting began. Mikhail Pastukhou was appointed rapporteur judge on the case of the president's violation of the Constitution, and promptly prepared a report for the urgent court sitting (Dziuba, 2018; Fadeev, 2006).

The failure of the presidential impeachment procedure

The weak link in the Constitutional Court's resistance to authoritarianism proved to be its Chairman, Valery Tsikhinia, who failed to withstand the psychological pressure exerted by the presidential administration and the security services. On the very day the impeachment document was submitted, Tsikhinia met with the president and promised him that the impeachment case would not be examined before 22 November. An unpleasant fact was that, following Tsikhinia's visit to the administration, the latter came into possession of a list of the deputies who had supported the impeachment procedure. Deputies who had signed the relevant petition immediately came under heavy pressure (Vashkevich and Pastukhou, 2006).

In our view, the decisive role in halting the impeachment procedure was played by Russia's so-called mediation mission. On 21 November,

one day before the impeachment question was due to be considered, a 'peacekeeping detachment' arrived in Minsk from Moscow. Acting as 'mediators' in the negotiations between Lukashenka and the parliamentary leadership, which continued throughout the night, were Russian prime minister Viktor Chernomyrdin, State Duma Chairman Gennadiy Seleznyov, and Federation Council Chairman Yegor Stroyev. As an analysis of the unfolding events shows, they were acting on Boris Yeltsin's instructions to support Lukashenka, whose political course broadly accorded with the Kremlin's interests. Several years later, in an interview with Siarhei Navumchyk, Siamion Sharetski, in the presence of witnesses, recalled the events of November 1996. According to him, once the requisite number of signatures for launching the impeachment procedure had been collected, Boris Yeltsin telephoned him and demanded that he take no action against Lukashenka (Navumchyk, 2021, p. 498).

Following six hours of negotiations, on the morning of 22 November 1996, in front of television cameras, Lukashenka and Sharetski signed the Agreement 'On the Socio-Political Situation and Constitutional Reform in the Republic of Belarus'. The clause on halting the impeachment procedure was countersigned by Valery Tsikhinia. Chernomyrdin declared Russia the guarantor of the agreement's implementation. As experts noted, neither Sharetski nor Tsikhinia had the authority to sign such a document unilaterally, absent corresponding decisions by the Supreme Council and the Constitutional Court to halt the impeachment procedure (Kukhanovich, 2022).

The signed document provided that the president would revoke two decrees on the binding character of the referendum, while the Chairman of the Supreme Council and the Constitutional Court would halt the impeachment procedure (in the agreement, this was mildly termed the 'withdrawal of the deputies' proposals' and the 'termination of the case concerning the president's violation of the Constitution'). The parties also agreed to hold the referendum on 24 November in an advisory format, after which the president was to form, within twenty days, a Constitutional Assembly, which was to resolve the question of the new Constitution within three months. Fifty members of the Assembly were to be appointed by Lukashenka, and a further fifty by parliament, in proportion to the number of parliamentary factions. Decisions were to be taken by majority vote. Since Lukashenka already had his own faction, 'Zgoda', in the Supreme Council, the president was, in effect, guaranteed a majority in the Constitutional Assembly in advance. The final clause of the agreement

provided that, pending the adoption of the new Constitution, the president would not dissolve the Supreme Council, and the Supreme Council would not remove the president from office (Referendum 96, 2021).

However, with the Russian side's tacit consent, on the very day the agreement was signed, the 'Zgoda' faction in the Supreme Council, acting on the president's instructions, blocked its ratification – notwithstanding that, only the day before, the document had been signed under Russian guarantees. Following this disruption of ratification, planned in advance by the presidential administration, Lukashenka withdrew his signature from the agreement and declared that the referendum would be binding. The deceived Chairman of Parliament turned to the Constitutional Court with an official request to resume the suspended impeachment procedure. But it was already too late: by that time, eleven deputies had withdrawn their signatures from the impeachment petition (Niezakonny Referendum 1996, 2017).

The consolidation of authoritarian rule after the November 1996 constitutional coup

The referendum took place on 24 November 1996, unlawfully exploited by the head of state to finally establish his authoritarian rule. The democratic opposition, a substantial proportion of Supreme Council deputies, and many independent experts, drawing on specific facts, reported gross violations in the preparation and conduct of the referendum. The criticism concerned the use of administrative resources, pressure on voters, unequal access to the mass media, and violations of vote-counting procedures (Sahm, 1997). Notwithstanding this, the autocrat declared that the referendum had 'passed flawlessly' (Osipov, 2019).

Following the announcement of the referendum results, the powers of the 13th Convocation of the Supreme Council were forcibly terminated. In its place, a House of Representatives was formed from 110 loyal deputies, chaired by Anatol Malafeyeu – the last leader of the Communist Party of Belarus (Law 'On the Termination...', 1996). On the basis of a presidential decree of 11 December 1996, the upper chamber of the new National Assembly of the Republic of Belarus – the Council of the Republic – was also formed (Pastukhou, 2018).

Thus, the new legislative bodies were created not as a result of free elections, but by presidential decision. The principle of the separation

of powers in Belarus definitively lost any real significance. Lukashenka declared that his presidential term was to begin from November 1996 – which, in effect, meant its extension by a further two years.

The deputies of the 13th Convocation of the Supreme Council, led by Siamion Sharetski, who had not been admitted to the parliament created by Lukashenka, refused to recognise the referendum's results and continued to regard themselves as the lawful representation of the Belarusian people. Their capacity to influence the course of events, however, proved very limited.

On 26 November 1996, the Constitutional Court held a sitting. As already noted, by this time certain deputies, under pressure from the authorities, had withdrawn their signatures from the impeachment petition. Although the Court had the authority to examine the impeachment procedure, the judges – who were under intense political pressure – voted to terminate the case. Only Mikhail Pastukhou dissented, holding that the Court's decision contravened every legal norm. A few days later, five judges, including the Chairman of the Constitutional Court, Valery Tsikhinia, tendered their resignations. Tsikhinia called the referendum's consequences a 'legal Chernobyl'. Judge Mikhail Pastukhou refused to resign and was unlawfully dismissed by Lukashenka's decree. The experienced jurist did not accept this decision and lodged a complaint with the UN Human Rights Committee, which found that the Belarusian authorities had violated the International Covenant on Civil and Political Rights (Article 25, read in conjunction with Articles 14 and 2). The Belarusian side once again disregarded the ruling of this authoritative international body (Pulsha, 2013).

The unlawful actions of the head of state and his administration before, during, and after the so-called nationwide referendum of 24 November 1996 were assessed by international democratic organisations and the domestic opposition as a 'coup d'état' (Sahm, 1997). An authoritarian regime was thus definitively established in Belarus, one that persists to this day. Official Minsk's interstate relations with democratic countries deteriorated sharply (Rudkouski and Lichacz, 2025, pp. 61–62).

Conclusion

An analysis of the events of political confrontation in Belarus in 1994–1996 shows that the establishment of an authoritarian regime in Belarus

was neither an accident nor the result of any single decision. It was the consequence of a combination of political, social, institutional, and international factors that gradually led to the destruction of the young Belarusian state's democratic mechanisms.

One of the most serious – and avoidable – mistakes made by the Belarusian political elite of the early 1990s was the introduction of a presidency endowed with exceptionally broad powers. Given weak democratic traditions, the absence of stable party structures, and the incomplete formation of civil society, such a model created favourable conditions for the concentration of power in the hands of a populist authoritarian leader.

The 'effective' advance of authoritarianism following the first presidential election was aided by the creation of a presidential vertical of power that controlled every level of state governance. The heads of regions, state enterprises, security agencies, and most public institutions found themselves dependent above all on the head of state, rather than on the law or elected bodies.

An equally important factor in democracy's defeat was the absence of unity among the democratic forces. The political parties and movements that stood for the country's democratic development failed to work out a common strategy of action or to offer effective resistance to the rise of authoritarianism. Their organisational weakness made it impossible to mobilise broad strata of the population in defence of democratic institutions.

The attitudes of the Belarusian population in the mid-1990s also played their part in the state's political degradation. A substantial proportion of Belarusians retained pro-Soviet and pro-Russian sentiments, associating the resolution of economic and social problems with a return to familiar Soviet-era models and with the arrival of a 'strong hand'. Amid economic crisis and a marked decline in living standards, many residents of Belarus proved receptive to populist slogans and promises of a swift restoration of social stability. Lukashenka's victory in the confrontation with the Supreme Council can be explained, among other things – as Valer Karbalevich has noted – by the fact that his opponents were profoundly demoralised by the president's broad popular support. Moreover, in the political analyst's view, the opposition failed to mobilise citizens for significant mass protests: their high point came, notably, in the spring of 1996, rather than at the moment when this was most needed for effective resistance to authoritarian tendencies (Karbalevich, 2010).

Support from the Russian Federation was of considerable importance in the consolidation of the personalist model of power in Belarus. The Kremlin's political assistance strengthened Lukashenka's position at the most critical junctures of the domestic political confrontation, and contributed to the preservation of his power during the constitutional crisis of 1996.

Thus, in November 1996 Belarus embarked upon a political path that set it markedly apart from the great majority of Central and Eastern European states. The country gradually turned into something of a political anomaly within the region – one in which democratic institutions were preserved chiefly in form, while real power was concentrated in the hands of a single individual and the bureaucratic system he had created.

The experience of Belarus in 1994–1996 shows just how vulnerable young democracies can be under conditions of economic crisis, a weak civil society, an absence of political consensus, and insufficient societal readiness to defend democratic values. It is precisely for this reason that the study of the causes of Belarusian democracy's defeat carries not only historical, but also present-day political significance.

Abstract

One of the most significant events in the early years of the young Belarusian state was the adoption, in March 1994, of the Constitution of Belarus by the 12th Convocation of the Supreme Council. Despite substantial objections raised by politicians and legal scholars regarding the content of the Basic Law, it was, on the whole, democratic in character. As envisaged by its initiators, the Constitution was intended to establish a president-parliamentary republic in Belarus, which – following controlled elections – the then head of government, Viachaslau Kebich, planned to lead. However, the office of first president was won in July 1994 by the populist politician Aliaksandr Lukashenka, who prevailed by a wide margin over both the leader of the Belarusian *nomenklatura* and the representatives of the country's democratic forces.

From the very outset of his mandate, the head of state began to challenge the separation of powers and the other democratic transformations of the parliamentary period. The immaturity of the state's democratic institutions, combined with the low level of socio-political activity among the Belarusian population, enabled the president to car-

ry out a coup d'état in November 1996: in defiance of the existing legal framework, he dissolved the independent parliament and the Constitutional Court, consolidating his personalist regime.

It should be noted that the Supreme Council of the 13th Convocation and the Constitutional Court of the Republic of Belarus opposed the executive's authoritarian course. The conflict between the different branches of power reached its climax at the end of 1996, when the Supreme Council submitted to the Constitutional Court a motion for the removal of the president from office (impeachment). However, Lukashenka emerged victorious from this political confrontation. Several external and internal factors contributed to his victory, including support for the authoritarian leader from the Kremlin, the so-called presidential vertical of power that he had created and kept under his strict control, and considerable support for a 'strong hand' among the Belarusian population. These developments established an authoritarian political system in Belarus that would endure for decades.

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A Political Sham of the Lukashenka Era: What Happened to the All-Belarusian People's Assembly?

The constitutional reform granting vast powers to the All-Belarusian People's Assembly (ABPA) was conceived as a mechanism — an integral part of the process of transferring power and of Aliaksandr Lukashenka's departure from the presidency. The idea was that Lukashenka, having taken the helm of this structure, would retain power. But at some point Lukashenka changed his mind about stepping down and carrying out the 'transfer of power'. Since the Assembly is no longer needed by him, the decision was made to 'freeze' it, turning it into an entirely decorative structure.

A form of imitation of the people's power

The ABPA, as an element of authoritarian corporatism, has been a hallmark of the Lukashenka era from the very outset of his rule. This format flowed from the genesis, nature, and ideology of the regime established in Belarus.

The first ABPA took place in October 1996, on the eve of the historic referendum. It became an important instrument in Lukashenka's struggle with the Supreme Council of the 13th Convocation, which resisted his drive towards one-man rule.

During the first presidential election of 1994, Lukashenka cultivated an image of himself as a 'people's', 'nationally elected' leader, the '*batska*' (father) of the nation. At the same time, a classic totalitarian

ideological construct began to take shape, according to which Lukashenka represents the interests not of a part of society, nor merely of his own supporters, but of the entire Belarusian people – for Belarusian society is said to be in complete unity, free of conflict, with the whole population rallied and consolidated around the leader. Consequently, there can, by definition, be no opposition in the country; there is only a handful of ‘extremists’, a ‘fifth column’. During that first campaign, he vilified all state and political institutions, appealing over their heads directly to the electorate.

However, after Lukashenka’s electoral victory, a fundamental contradiction arose. Lukashenka became president of a country where other state institutions were still functioning and a system of checks and balances was in place. He himself understood his victory as a mandate from the people to do whatever he wished. Yet he soon discovered that laws, procedures and institutional constraints still existed. Parliament found itself in a position of mild opposition, while the Constitutional Court began to strike down presidential decrees.

Thus, Lukashenka turned to his principal device. He would supposedly appeal directly to the people. The ABPA became the mechanism for doing so. The Assembly fitted neatly into Lukashenka’s conception of people’s power and of the ‘*batska’s*’ relationship with the people. The advantage of such a forum – one that supposedly represented the entire population – lay, in Lukashenka’s logic, in the fact that it could be convened without any laws, regulations or procedures whatsoever. No legislation regulated the holding of the ABPA. Complete freedom, no restrictions – anyone could be appointed as a ‘people’s representative’, at will. The ABPA was declared the highest state organ, and its decisions the highest authority. For the people, in whose name the Assembly spoke, are the highest judge, and the people are always right. *Vox populi, vox Dei*.

In addition, the ABPA sessions helped Lukashenka mobilise his electorate and were usually held ahead of presidential elections. This was the principal pre-election PR event for the main presidential candidate, looking like a nationwide blessing for his rule.

There was also an element of Soviet tradition, since Lukashenka cannot step outside the bounds of his own life experience, which was largely formed in the USSR. In his habits and inclinations, he is highly conservative and little given to reflection. In the Soviet Union, congresses

of the Communist Party of the Soviet Union were held once every five years, setting the targets for the next five-year plan. The ABPA likewise adopted five-year plans. This was, therefore, an attempt to turn back the clock, playing on the nostalgia that a significant part of Belarusian society felt for the Soviet era.

Finally, the ABPA served as a means of psychological relaxation for Lukashenka — a session of self-hypnosis, a kind of autogenic training, a source of emotional recharging. The thunderous applause and ovations of the 2,500-strong hall performed the function of psychotherapy. In this way, he reassured himself that his bond with the people remained as strong as ever.

The state media were not sparing with grandiloquent metaphors: ‘a direct conversation with the people’, ‘a people’s *veche*’, ‘the highest form of democracy’, ‘direct democracy’.

On the whole, Lukashenka took great pride in his creation, and often referred to it in meetings with Belarusian officials, citizens and foreigners alike. I think he himself believed in this beautiful fairy tale about the ‘people’s *veche*’. For a dictator lives in his own particular reality, one that by no means fully coincides with the reality in which the country actually exists.

The PR effect of this exercise, however, was not especially great. Lukashenka’s supporters endorsed it, his opponents criticised it. Meanwhile, the uncommitted television viewer saw only a show and tedium in the style of the worst Soviet traditions. That was a deathly dull, archaic remake, a stylised copy of the Soviet-era congresses, with all the official formalism characteristic of them, the universal ‘rubber-stamp approval’, the thunderous applause. It was as though the Brezhnev-era stagnation had returned to Belarus.

This state of affairs with the ABPA would have continued until the end of Lukashenka’s rule, had the political crisis of 2020 not intervened.

Constitutional status of the ABPA

Under the 2022 Constitution, the ABPA was granted constitutional status. It formally became the principal organ of state power in Belarus. This change was a direct result of the events of 2020.

The very idea of constitutional reform as a response to the mass protests appeared in the public sphere at Moscow's instigation, in September of that fateful year. The Kremlin promised Lukashenka its support only on condition that Belarus's ruler make certain gestures towards the outraged populace.

Following the meeting between Aliaksandr Lukashenka and Vladimir Putin in Sochi, Russia's Foreign Minister Sergei Lavrov commented on the outcome from the Russian leadership's perspective. On 17 September 2020, in an interview with the RTVI television channel, he stated: 'As the Belarusian leader has said, following the constitutional reform he will be ready to call early parliamentary and presidential elections. This proposal shows the framework within which a national dialogue is entirely possible'. Moreover, according to Russian experts' assessments, Lukashenka promised Putin that he would carry out this reform within a few months, or half a year.

In other words, the constitutional reform was meant to serve as a means of pacifying society, to play the role of a carrot – a sweetener – held out to an agitated people, a step towards compromise. As if to say: you want change? Well, here is your change. You say we have a dictatorship here? Well, under the new Constitution the president's powers will be limited, and the powers of other state institutions – the parliament, in particular – will be increased. As if to say: the authorities themselves are ready for change; there is therefore no need to take to the streets in protest. Moreover, Lukashenka himself insisted that he did not intend to stand for a further presidential term.

When the draft of the new Constitution appeared, it became clear that the principal purpose of the constitutional reform was, in fact, to create a new state body – the ABPA. In other words, the new Basic Law contained a mechanism for a so-called 'transfer of power'. The qualifier 'so-called' is apt here, for a transfer of power, by its very meaning, denotes the transfer of power to another person or political force. In our case, Lukashenka had no intention of relinquishing power; he sought to remain, while governing the state in a new format.

It is evident that Lukashenka prepared the new Constitution, together with the granting of constitutional status to the ABPA, for his own political purposes. Belarusian society took no part whatsoever in this process. The protest-minded segment of the population does not perceive the constitutional reform as a concession by the authorities.

In other words, the constitutional process did not become a means of compromise or of bridging the rift within society.

The scheme was as follows: Lukashenka leaves the presidency and takes up the post of head of the ABPA. Part of the president's powers, and those of other state institutions, pass to the Assembly. The ABPA thus becomes either a parallel supreme governing body or a superstructure above all the other branches of power. For Lukashenka, this institution was meant to serve as a kind of safety mechanism — a way of controlling his successor as president and of politically embalming himself in power. This was somewhat reminiscent of the model of Nursultan Nazarbayev, who left the presidency of Kazakhstan but continued to govern the state from a new position.

The beauty and the advantage of this new arrangement lay in the fact that, unlike the president, the head of the ABPA does not need to be elected. The All-Belarusian People's Assembly itself is not elected. One can thus govern in the name of the people until the end of one's life, without ever having to run in an election.

The new Constitution states that 'the All-Belarusian People's Assembly is the highest representative body of the people's power of the Republic of Belarus, which determines the strategic directions of the development of society and the state'. The ABPA approves the principal directions of domestic and foreign policy, the military doctrine, and the concept of national security; it approves programmes for the socio-economic development of the Republic of Belarus; it proposes amendments and additions to the Constitution; it has the right to consider the question of the legitimacy of elections; it may remove the president from office in the event of a systematic or gross violation of the Constitution, or the commission of treason or another grave crime; it has the right to introduce a state of emergency or martial law on the territory of the Republic of Belarus; it issues instructions binding on state organs and officials, and exercises other powers. Thus, the ABPA may take up for consideration virtually any question of domestic or foreign policy — or it may not. As it pleases.

The maximum number of delegates to the All-Belarusian People's Assembly is 1,200. The ABPA's term of office is five years, and its sessions are held no less often than once a year. Between sessions, the Presidium operates; a chair of the ABPA is likewise elected.

The Constitution declares the ABPA to be the 'highest representative body of the people's power'. In reality, it is a non-elected organ. It is

formed without elections. Whereas other organs of power – the president and the House of Representatives, for example – are, however formally, at least elected, the ABPA, which claims to be the supreme representative body of state power, is not elected at all.

Previously, when the ABPA was convened, the authorities attempted at least some semblance of popular representation. At certain enterprises, formal meetings were held at which delegates to the ABPA, or authorised representatives to a district assembly, were supposedly elected – scenes that were shown on Belarusian television. Now, however, workforces are not even nominally involved in selecting the ‘delegates’.

A third of the Assembly’s delegates are senior officials, a third are deputies of the National Assembly and of local councils, and a third are representatives of civil society.

As for this last category of delegates, the label should not mislead. The genuine structures of civil society were liquidated after 2020. Their place has been taken by organisations created by, and subordinate to, the authorities – what are known internationally as GONGOs. The list of civil-society entities entitled to elect delegates is determined by the Ministry of Justice. According to its decision, five public associations are authorised to send delegates to the ABPA. These include the Federation of Trade Unions of Belarus, Belaya Rus (not a political party, but a public association), the Belarusian Union of Women, the Belarusian Republican Youth Union, and the Belarusian Public Association of Veterans. Each nominates 80 delegates.

Thus, the Assembly’s delegates are not representatives of the people, but supporters of Lukashenka. The ABPA is a very crude imitation of popular representation.

It should be noted that the ABPA is not, in principle, designed for day-to-day state governance. Twelve hundred people, gathering for a session once a year, are not merely incapable of taking important decisions – they cannot even seriously discuss matters of state policy.

There was therefore a need to create some kind of permanently functioning structure to which the ABPA could delegate its powers. Such a structure was named the Presidium of the ABPA.

At the ABPA’s first session in its new status, in 2024, Aliaksandr Lukashenka was, as expected, elected chair of the institution for the entire five-year term. Moreover, the very first of his powers is defined in a most curious manner: he is to exercise ‘general leadership’ of the As-

sembly. That is, he is not merely to organise its work or oversee the implementation of the ABPA's decisions; he is specifically to 'exercise general leadership' – a formulation that can be interpreted as broadly as one likes.

Transit is cancelled

And so, after the process of constitutional change had been launched and all the earlier plans had been realised – culminating in the adoption of a new Basic Law of Belarus at the 2022 referendum – an unexpected turn of events occurred. As noted above, the constitutional reform had been conceived as a mechanism for transferring power and an integral part of Lukashenka's departure from the presidency. The idea was that Lukashenka, by taking the helm of the All-Belarusian People's Assembly, would retain power and be able to control the next president. This, in essence, was the central idea behind the constitutional reform.

But after some time, Lukashenka thought better of stepping down and carrying out the transfer of power. He concluded that the protest movement had been suppressed and that the situation in the country was fully under control. His earlier promises to step down could simply be abandoned.

And Russia is no longer insisting on Lukashenka's departure. Moscow needs a reliable ally during the war in Ukraine, and any change of leadership at such a time represents an additional risk.

Moreover, the events in Kazakhstan in January 2022 demonstrated the failure of Nursultan Nazarbayev's project of sharing power with president Kassym-Jomart Tokayev. Taking advantage of popular protests, the incumbent president stripped the former leader of all his powers. It is reasonable to assume that these events made a strong impression on Lukashenka.

Perhaps the realisation dawned on Lukashenka that, should disagreements arise between a new president and the head of the ABPA, the Assembly might not remain a docile instrument in his hands. A sitting president would have more resources and levers of influence over the Assembly's delegates.

However, the constitutional changes have already been made, and turning back is difficult. Thus, a paradoxical situation has arisen. The new Constitution is designed for a new president, yet Lukashenka has

no intention of relinquishing that office. As a result, he retains all his former power, though it is now spread across two posts, or centres, which he controls: the presidency and the chairmanship of the ABPA.

Aliaksandr Lukashenka therefore faces a problem: what to do with the ABPA? Since the Assembly is of no use to him now, the authorities have decided that there is no point even in maintaining the pretence that it is a functioning organ of power. As a result, nothing better has been devised than to 'freeze' it, turning it into an entirely decorative construct.

A fairly important indicator of the ABPA's actual place and role in Belarus's political hierarchy is the composition of the Assembly's Presidium.

Aliaksandr Kosinets was elected Deputy Chair of the ABPA. At the time, he held the post of aide to Lukashenka. For him, this was an honourable exile. The appointment of a man with the status of a respected pensioner as Deputy Chair of the ABPA shows that, in reality, despite the grandiloquent compliments paid to the Assembly, Lukashenka does not rate this institution particularly highly.

The same can be said of the composition of the Assembly's Presidium as a whole. The ABPA convenes once a year. Between sessions, its functions are to be performed by the Assembly's Presidium. Beforehand, given the ABPA's immense constitutional powers, the view was expressed that this organ – the Presidium of the ABPA – would now become the central institution towards which real power would begin to flow: something akin to a Security Council, bringing together the heads of the main government agencies, above all the security services, or something resembling the *Politburo* of the Communist Party Central Committee in Soviet times. And among the members of the ABPA's Presidium, it was thought, one should look for the figure who might become Lukashenka's successor.

However, the actual composition of the ABPA's Presidium contradicted these expectations. Those appointed ('elected') to it were people from the middle ranks of the *nomenklatura*. Only the heads of the Brest and Hrodna regions could be classed as bureaucratic 'heavyweights'. If a Soviet-era comparison is to be drawn, then this is not the *Politburo*, but rather something closer to the Presidium of the Supreme Council of the USSR – that is, an entirely decorative organ formally representing the regions and various social groups. There are no people with ambitions to exercise independent political power. In other words, such a compo-

sition cannot lay claim to any share of power or constitute an alternative centre of governance. Against this grey background, the figure of the chairman, Lukashenka, stands out all the more clearly as the one who will govern in the name of both the ABPA itself and its Presidium.

An important indicator of the ABPA's real role was the fact that seven months passed between the creation of the Presidium and its first session. This took place on 19 November 2024. The question discussed at the session was one posed by Aliaksandr Lukashenka himself: what to do with this institution, where to put it or how to keep it out of the way, so that it does not get in the way or become a nuisance. He himself created a new structure, granted it constitutional status, and now seemed unsure how to fit it into the political system.

Lukashenka formulated the problem as follows:

I must say what troubles me greatly concerning the All-Belarusian People's Assembly. I have decided to hold today's session of the Presidium in an expanded format, since we need to resolve the main question (perhaps it is not even to be resolved, since it has already been resolved in the Constitution): we must all understand that the ABPA must not hinder anyone from working... We – I mean the ABPA and the Presidium – do not in any way hinder or pressure any organs of power. Everyone attends to their own business. This has been settled practice among us for decades, and everyone understands it. But to believe that our highest representative body, the ABPA, stands above and has the right to do whatever it wishes in the country – one cannot live with such an approach. Let me repeat once more: no duplication, no pressure. The ABPA must take its rightful place.

It is worth noting that in the official media, Lukashenka is not referred to as Chairman of the All-Belarusian People's Assembly – only as president. This underscores, once again, the secondary, unimportant status of this institution.

Thus, today the ABPA is, for Lukashenka, a kind of suitcase without a handle: a pity to discard, yet unclear why one should carry it.

Yet the inclusion of the ABPA within the system of state governance is not such a harmless matter. In the future, after Lukashenka's departure from power, the existence of such an institution could create major problems.

Above all, global experience shows that in personalist regimes, the departure of a dictator, as a rule, provokes a political crisis, since mechanisms for the transfer of power are lacking.

The main problem is that, in such systems, the principal state institutions do not function. In Belarus, the National Assembly with its two chambers, the Constitutional Court and the Supreme Court, and the local councils exist largely as imitations of functioning institutions. The government, too, functions strictly within the narrow limits set by Lukashenka. Only the repressive bodies operate effectively.

And it is into this dysfunctional system that Lukashenka has now introduced yet another element: the All-Belarusian People's Assembly. Thus, the system of one-man rule – as simple as a cart shaft in its essence – becomes unnecessarily complicated. An authoritarian system of governance, by its very nature, cannot be complex: it is democratic systems that are complex, multi-layered, multi-levelled, and pluralistic. Authoritarianism, by contrast, must be homogeneous, unambiguous, equipped with rigid mechanisms that facilitate control, and resting on the slogan: 'I'm the boss, you're the fool.'

Lukashenka himself seems to sense where such a system might lead. At that same session of the Assembly's Presidium on 19 November 2024, he rightly observed that the system of governance functions normally only so long as one and the same person holds both the chairmanship of the ABPA and the presidency. 'But afterwards, we could create major problems for ourselves,' he warned.

Here, Lukashenka is right. While he governs, all of Belarus's state institutions – the government, parliament, Constitutional Court, Supreme Court, and others – are mere decorations, with no real power. Lukashenka alone is the only genuinely functioning centre of power.

But once Lukashenka disappears, for whatever reason, the entire political system he has constructed will enter a period of crisis. State institutions – the president, parliament, ABPA, Security Council, and Constitutional Court – will begin competing for power. The ABPA, in its new status, could finally throw the system of governance off balance – a system that will in any case be destabilised once its main pillar, the sole ruler, is removed. The new system of power is, by its very definition, likely to generate conflict.

But therein lies the problem: the Constitution was not written to ensure political stability in the country, but to preserve power in the hands of a single individual: Lukashenka.

Abstract

The All-Belarusian People's Assembly, as an element of authoritarian corporatism, has been a hallmark of the era of Aliaksandr Lukashenka since the very beginning of his rule. At first it served to imitate popular representation. Under the 2022 Constitution it was given constitutional status and formally became the principal body of state governance in Belarus. The constitutional reform granting vast powers to the Assembly was conceived as a mechanism, and an integral part, of the process of power transit and of Lukashenka's departure from the presidency. It was assumed that, by heading this structure, he would retain power and control the activity of other state institutions. After some time, however, Lukashenka changed his mind about leaving office and carrying out a transit of power. As he no longer needs the Assembly, it has been decided to 'freeze' it and turn it into a purely decorative construction.



Constitution Through the Eyes of Public Opinion

Belarusians' Attitudes toward the Draft Constitution
Prepared by the Office of Sviatlana Tsikhanouskaya

In November 2021, the Belarusian Analytical Workroom (BAW) conducted a nationwide sociological survey examining Belarusians' attitudes toward the Draft Constitution for a New Belarus (hereinafter: Draft Constitution) prepared and proposed by the Office of Sviatlana Tsikhanouskaya.

Survey Methodology

The survey was based on a nationally representative sample of the adult population of Belarus. The principal methodological characteristics were as follows:

- Sample size: 1,000 respondents;
- Survey method: CATI (Computer-Assisted Telephone Interviewing);
- Sampling design: a micro-model of Belarusian society based on respondents' sex, age, educational attainment, type of settlement (urban/rural), and region of residence;
- Respondents were selected using random digit dialling (RDD), whereby telephone numbers were generated through a computerised random-number procedure.

A sample size of 1,000 respondents has long been considered the standard for nationwide public opinion surveys in Belarus and is widely used in international survey practice.

Development of the Draft Constitution

The Draft Constitution was developed under the leadership of Anatol Liabedzka together with the Public Constitutional Commission, which consisted of thirty members. Among them were Miechyslau Hryb, Mikhail Pastukhou, Aliaksandr Dabravolski, Alena Eskava, Leu Marholin, Aliaksandr Vashkevich, and other Belarusian constitutional experts. The drafting process also involved consultations with approximately 50 leading European constitutional scholars.

Public awareness of the Draft Constitution prepared by the Tsikhanouskaya Office

A total of 35.1% of respondents reported that they had heard about the Draft Constitution (see Figure 1). Given the current media environment in Belarus, this represents a substantial level of public awareness. Indeed, it may reasonably be described as remarkably high.

Independent media outlets in Belarus operate under extremely restrictive conditions. At any moment, they may be designated as ‘extremist’ or even ‘terrorist’ organisations by the authorities. Moreover, merely accessing or sharing content produced by such media may expose citizens to severe legal consequences, including criminal prosecution and imprisonment. Against this backdrop, the finding that more than one-third of the adult population was aware of the constitutional initiative represents a significant level of public outreach.

Preferred political model

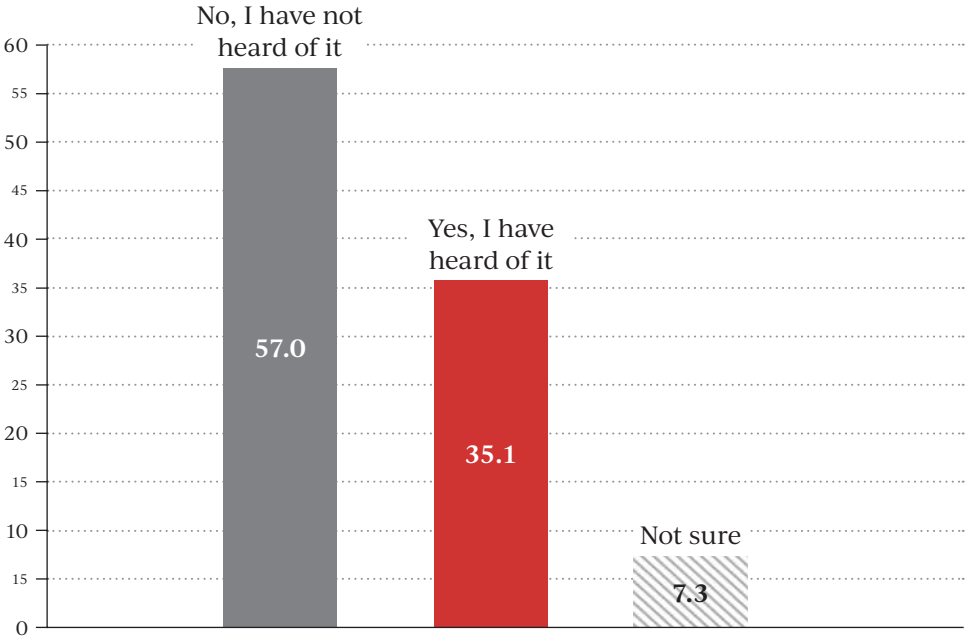
The most significant finding of the study, however, emerged from the block of questions concerning respondents’ preferred political model for Belarus. This question was designed to identify the constitutional and political system that Belarusians would consider most desirable for their country.

The question was formulated as follows: ‘What should be the political model of Belarus?’

Respondents were then offered several alternative models from which to choose (see Figure 2).

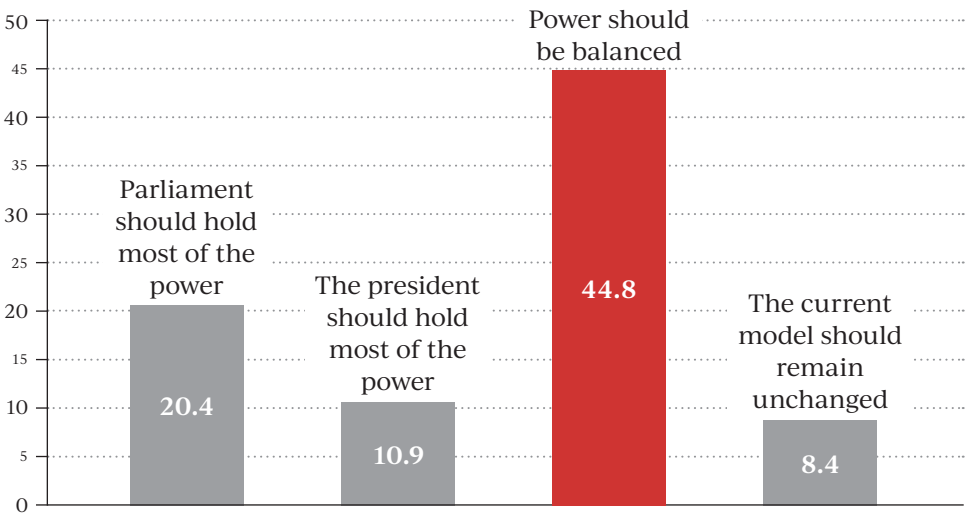
Figure 1. Public awareness of the Draft Constitution prepared by the Office of Sviatlana Tsikhanouskaya (%)

‘Have you heard about the Draft Constitution for a New Belarus (the People’s Constitution), prepared by supporters of change and Sviatlana Tsikhanouskaya’s team?’



Source: BAW

Figure 2. Preferred political model of the Belarusian state (%)



The survey revealed a clear baseline preference regarding the institutional design of a future Constitution. The largest proportion of respondents (44.8%) selected the option stating that ‘political power should be balanced among the Parliament, the president, and the Government’.

This finding reflects a long-term shift in Belarusian public consciousness – from a preference for a highly centralised system of personal rule towards support for the constitutional principle of the separation and balance of powers.

The result indicates that, over many years, public dissatisfaction has gradually grown with the excessive concentration of political authority in the hands of a single individual and with the extreme centralisation of political decision-making. Nearly one-half of Belarusians now express a preference for a political system based on institutional checks and balances rather than on the dominance of a single centre of power.

At the same time, this shift has not resulted in equally strong support for a purely parliamentary model of government. Only 20.4% of respondents stated that political power should belong exclusively to Parliament.

In other words, the transformation of public opinion has not produced a complete swing of the political pendulum from presidentialism to parliamentarism. Rather, the findings suggest that, as of November 2021, Belarusians primarily favoured a balanced distribution of power among the principal state institutions, while only every fifth respondent supported transferring full political authority to Parliament.

Support for the option stating that ‘the president should hold the greater part of political power’ was expressed by only 10.9% of respondents – just over one in ten Belarusians.

The other particularly important finding concerns support for preserving the existing political system. Only 8.4% of respondents agreed with the statement that ‘the current political model should remain unchanged’.

From the perspective of political sociology, this is an important result. It suggests that, by late 2021, public support for maintaining the institutional status quo had fallen to a very low level. Put differently, about one in twelve adult Belarusians expressed a preference for preserving the existing constitutional and political order.

Three figures that help explain contemporary Belarus

Among the many findings generated by long-term public opinion monitoring in Belarus, there are three indicators that, in my view, are particularly important for understanding the country's political culture and public consciousness.

The first is the proportion of Belarusians who support the idea that Belarus should become part of the Russian Federation as one of its constituent entities. Across numerous nationwide surveys conducted by the BAW, this figure has consistently stood at around 4%.

The second is the proportion of respondents who opposed the possible deployment of Belarusian troops to Ukraine following Russia's full-scale invasion. According to five nationwide representative surveys conducted by the BAW during the war, 85% of Belarusians – a clear majority – rejected the prospect of Belarusian military participation in the conflict.

The third is the finding reported in this study: only 8.4% of respondents supported preserving the political model that existed in Belarus in 2021.

Taken together, these three figures provide a concise empirical portrait of key features of Belarusian public opinion: limited support for incorporation into Russia, strong opposition to direct Belarusian military involvement in the war, and very low support for preserving the existing political model.

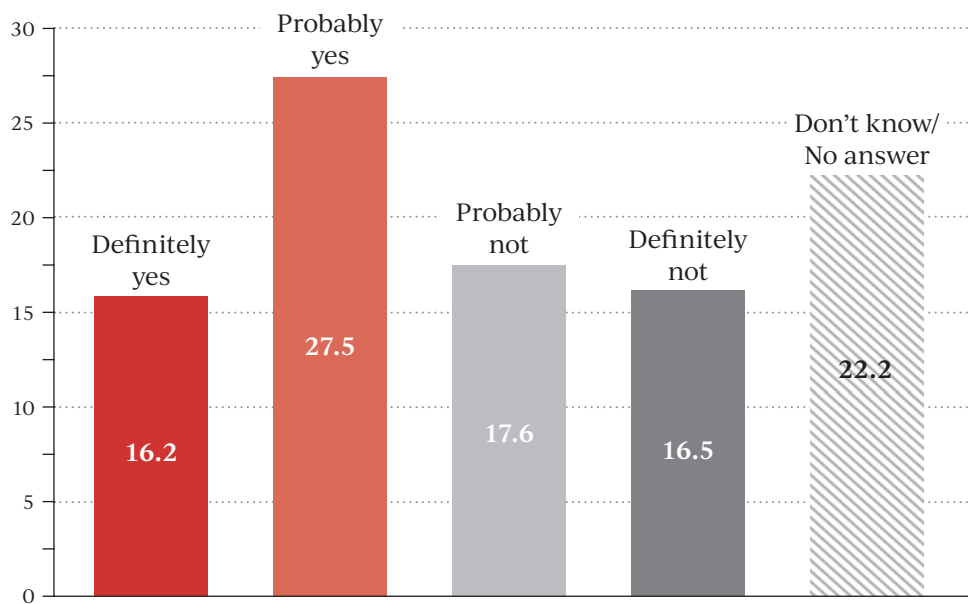
Attitudes toward the Constitution in force in 2021: a classical split

The next question explored respondents' assessments of the Constitution that was in force at the time of the survey.

At first glance, the distribution of responses appears to indicate that the existing Constitution enjoyed somewhat greater public support than opposition. When the positive categories are combined, 43.7% of respondents agreed that the Constitution reflected the current needs of citizens, society, and the state (16.2% 'definitely yes' and 27.5% 'rather

yes'). Conversely, 34.1% expressed the opposite view (17.6% 'rather no' and 16.5% 'definitely no').

Figure 3. Does the Existing Constitution Reflect the Current Needs of Citizens, Society, and the State? (%)



Source: BAW

However, the interpretation of the 'don't know/no answer' category requires particular attention. In the political environment that prevailed in Belarus in 2021, responses to politically sensitive questions were likely to be affected by social desirability bias and concerns about expressing politically disapproved views.

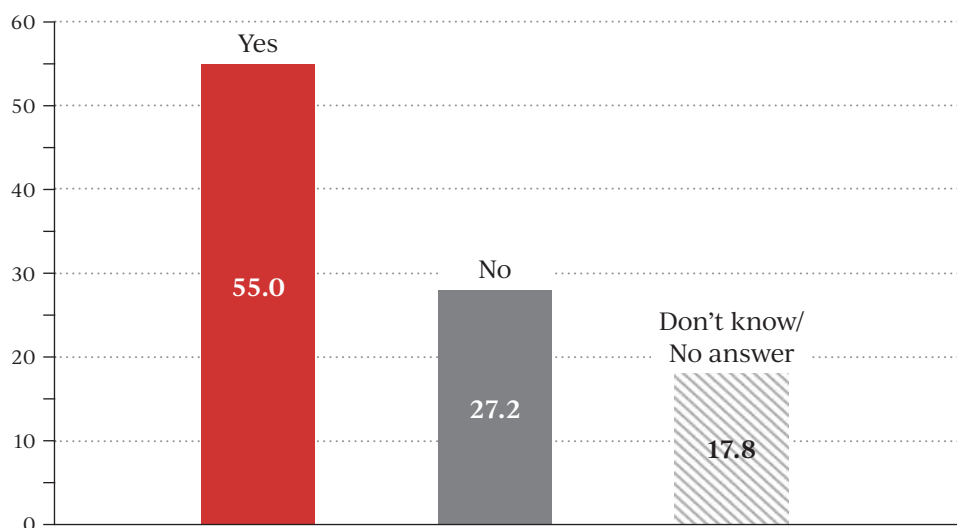
It is therefore reasonable to assume that a substantial proportion of those who selected 'don't know/no answer' were, in fact, reluctant to reveal their genuine attitudes towards the existing Constitution. If one assumes – conservatively – that approximately half of this group actually held negative views but were unwilling to express them explicitly, the overall picture changes considerably.

Under this assumption, public opinion exhibits what might be described as a classical split. Approximately 43.7% of respondents expressed a positive evaluation of the Constitution, whereas the estimated proportion holding a negative assessment rises to approximately 45.2%. In other words, Belarusian society was almost evenly divided over its assessment of the constitutional framework in force in 2021.

Demand for a new Constitution

The survey also included a direct question concerning the perceived need for constitutional reform: ‘Do you believe that Belarus needs a new Constitution?’ The results are presented in Figure 4.

Figure 4. Do you believe that Belarus needs a new Constitution? (%)



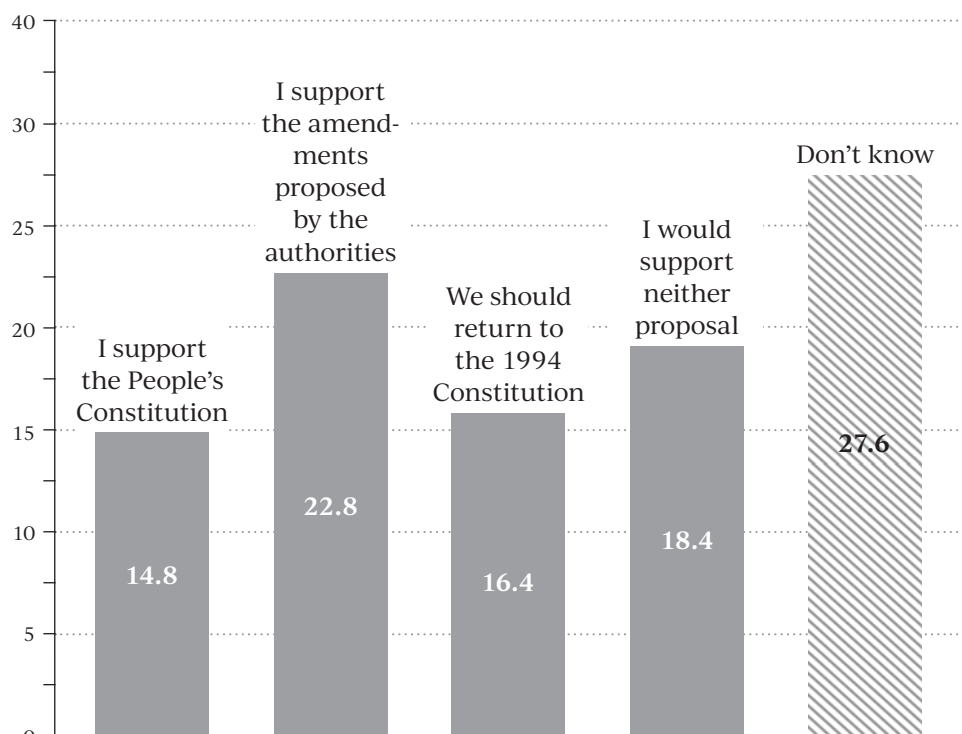
As shown in Figure 4, a clear majority of respondents (55.0%) stated that Belarus needs a new Constitution. This proportion is twice as large as the share of respondents who believed that a new Constitution was unnecessary (27.2%).

These findings indicate a clearly expressed public demand for constitutional reform. From the perspective of public opinion, they provide clear evidence that, by late 2021, Belarusian society had developed a substantial demand for a new constitutional framework.

Preferred constitutional alternative

Respondents were also asked which of the competing constitutional options they would support. The question was formulated as follows: ‘Which constitutional option would you support: the People’s Constitution proposed by the supporters of democratic change, or the constitutional amendments proposed by the authorities?’ The distribution of responses is presented in Figure 5.

Figure 5. Would you support the People's Constitution proposed by supporters of change, or the amendments proposed by the authorities?



Source: BAW

This section of the survey is probably the most challenging to interpret. The responses reflect not only attitudes toward specific constitutional provisions but also the broader political climate that prevailed in Belarus in the aftermath of the events of 2020.

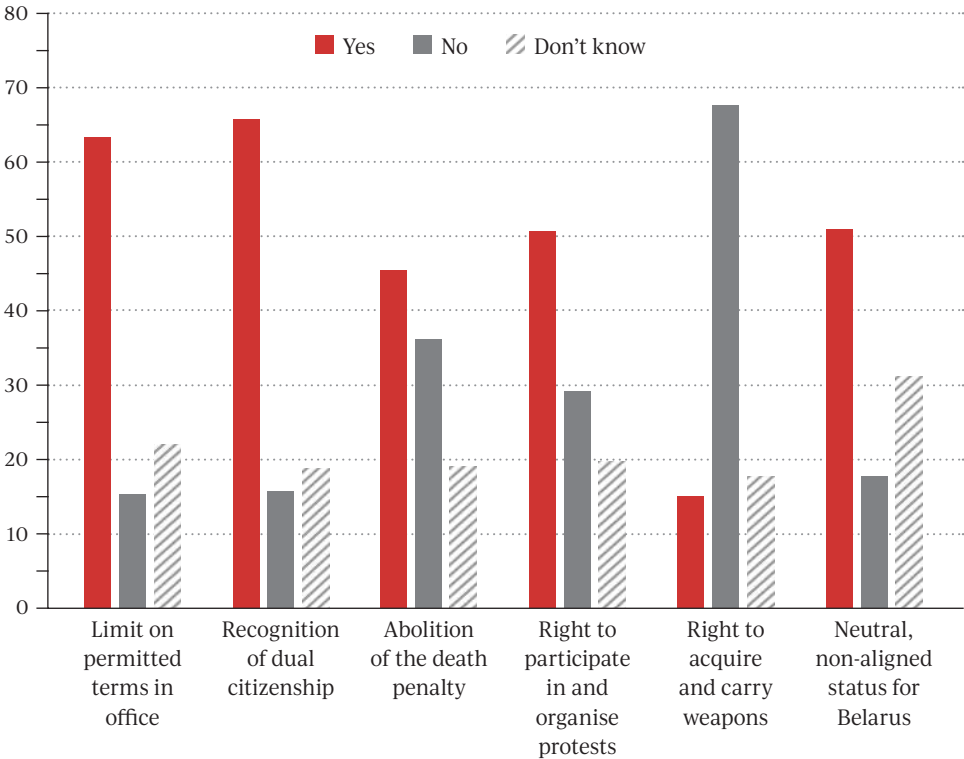
Attitudes toward the key provisions of the Draft Constitution proposed by the Tsikhanouskaya Office

The findings reveal that the legacy of the 2020 political crisis remained highly salient in public consciousness.

To measure respondents' attitudes toward the principal provisions of the proposed Constitution, the following introductory question was used: 'Let us imagine that there is a new People's Constitution contain-

ing a number of new rules and provisions. For each of the following, please indicate whether you fully support it, rather support it, rather oppose it, or completely oppose it.’ The results are presented in Figure 6.

Figure 6. Let us imagine that there is a new People’s Constitution containing new rules and provisions. For each one, please say whether you would support it. (%)



Term limits for elected public officials

One of the strongest findings concerns the proposal to limit the number of terms that elected public officials may serve in office. A clear majority of respondents (63.2%) either fully supported or rather supported the introduction of term limits. In other words, approximately two-thirds of the Belarusian population expressed support for the principle of regular political rotation in elected office.

From the perspective of democratic theory, regular turnover in political leadership is a key institutional feature of democratic governance.

The survey results therefore indicate that a substantial majority of Belarusians supported a mechanism intended to prevent the long-term concentration of political power and ensure the periodic renewal of political leadership.

It is also noteworthy that only a relatively small proportion of respondents opposed this proposal, while a comparatively large share did not express a definite opinion.

Recognition of dual citizenship

Public attitudes toward the recognition of dual citizenship closely resemble those observed for term limits for elected officials. Approximately two-thirds of respondents (65.7%) expressed support for incorporating this provision into a new Constitution (43.5% ‘fully support’ and 22.2% ‘rather support’). By contrast, only 15.7% opposed the proposal (5.6% ‘rather oppose’ and 10.1% ‘completely oppose’).

This high level of support can be understood in the context of the political situation prevailing in Belarus in 2021. Following the mass repression that followed the events of 2020, thousands of Belarusians were forced to leave the country or seriously considered doing so. Under these circumstances, the possibility of retaining Belarusian citizenship while acquiring citizenship of another state acquired considerable practical and symbolic significance. Public support for dual citizenship therefore reflected not only legal considerations but also the social consequences of political repression and forced migration.

Abolition of the death penalty

Support for abolishing the death penalty amounted to 45.4% of respondents (34.8% ‘fully support’ and 10.6% ‘rather support’).

Although this exceeded the proportion of respondents opposing abolition, it nevertheless remained below the 50% mark. From this perspective, public opinion in 2021 appeared to be approaching – but had not yet reached – a level of support that could be expected to produce a majority in favour of abolition in a nationwide referendum.

At the same time, support for abolishing capital punishment was higher than that recorded in previous nationwide surveys, suggesting

a gradual shift in public attitudes toward greater acceptance of this important human rights principle.

The right to participate in and organise peaceful protests

Once again, the survey reveals the enduring impact of the events of 2020 on Belarusian public consciousness.

A majority of respondents supported the constitutional guarantee of the right to participate in and organise peaceful protests. The combined positive responses reached 50.8% (37.6% ‘fully support’ and 13.2% ‘rather support’), while 29.2% expressed opposition (7.4% ‘rather oppose’ and 21.8% ‘completely oppose’).

These findings suggest that, even after the extensive repression that followed the mass protests of 2020, a substantial proportion of Belarusians continued to regard peaceful assembly as a fundamental democratic right deserving constitutional protection.

At the same time, these figures should be interpreted with caution. By 2021, expressing support for politically sensitive rights had become increasingly risky. Consequently, responses may have been affected by social desirability bias, with some respondents reluctant to reveal their genuine views under authoritarian conditions.

The right to acquire and bear arms

Public opinion concerning the right to acquire and bear arms differed markedly from attitudes toward the other constitutional provisions.

Unlike the United States, where firearm ownership has deep historical and constitutional roots, Belarus has developed a very different political culture and historical memory. The country’s experience of devastating wars, repeated military occupations, and large-scale human losses has contributed to a predominantly cautious and negative attitude toward the widespread civilian possession of firearms.

Accordingly, the survey revealed that opposition to including such a right in the Constitution clearly outweighed support. This finding appears to reflect broader cultural and historical patterns rather than simply attitudes towards the constitutional proposal itself.

Belarus's neutral and non-aligned status

Support for maintaining Belarus as a neutral and non-aligned state represents one of the most stable and persistent features of Belarusian geopolitical consciousness.

This finding is consistent with numerous nationwide surveys conducted by the BAW over many years. Across these studies, neutrality has repeatedly emerged as one of the dominant preferences of Belarusian public opinion regarding the country's foreign policy orientation.

Rather than reflecting geopolitical indecision, this preference appears to express a broader societal aspiration to avoid involvement in military confrontations between competing international blocs and to preserve Belarus's political sovereignty and security.

Conclusions

The findings of this survey extend beyond public attitudes toward a particular Draft Constitution. They also constitute a valuable barometer of Belarusian public opinion at a critical moment in the country's political development.

The survey revealed a relatively well-defined and internally coherent set of democratic attitudes in Belarus. This point deserves particular emphasis, as one frequently encounters arguments claiming that Belarusians are somehow 'not ready' for democracy, or that the country's political culture is determined by supposedly unique Slavic traditions, an inherent preference for authoritarian rule, or a distinct 'special path' of development.

The empirical evidence presented here does not support such interpretations.

Instead, Belarusian public opinion demonstrated broad support for a number of fundamental democratic principles, including the separation of powers, regular political rotation through term limits, constitutional limitations on executive authority, the protection of fundamental civil liberties, the right to peaceful assembly and protest, and, increasingly, the abolition of capital punishment. At the same time, respondents expressed a strong preference for preserving Belarus's sovereignty through a neutral and non-aligned foreign policy.

Taken together, these findings suggest that, by late 2021, a substantial proportion of Belarusian society had already developed a coherent normative vision of democratic constitutional order. The survey indicates that public demand extended beyond dissatisfaction with existing political institutions and reflected a broader aspiration for constitutional democracy, institutional checks and balances, the rule of law, and the protection of fundamental rights.

Subsequent political developments, however, followed an entirely different trajectory.

In retrospect, this survey represents one of the last nationwide sociological studies conducted in Belarus before social desirability bias became a dominant methodological challenge in research on politically sensitive issues. As political repression intensified, respondents increasingly faced strong incentives to conceal their genuine opinions, thereby reducing the reliability of direct survey measurements. Consequently, the findings presented here provide a particularly valuable snapshot of Belarusian public opinion immediately before the methodological environment changed fundamentally.

Abstract

This article examines Belarusian public opinion toward the draft Constitution prepared by Sviatlana Tsikhanouskaya's Office following the 2020 political crisis. Based on a nationally representative survey of 1,000 adults conducted in Belarus in November 2021 using computer-assisted telephone interviewing and random digit dialling, it analyses attitudes toward the proposed Constitution, political institutions, constitutional reform and democratic principles. The findings reveal a clear preference for the separation and balance of political power: 44.8% favoured balanced powers among parliament, the president and the government, while only 8.4% supported preserving the existing political model. A majority (55.0%) believed Belarus needed a new Constitution. Beyond attitudes toward a specific constitutional draft, support for term limits, dual citizenship, peaceful protest and civil liberties suggests that a substantial segment of Belarusian public opinion was already oriented toward a democratic political and societal order. The findings thus provide empirical evidence of societal readiness for constitutional democracy.



Civil Justice in the Shadow of Autocracy

No reform begins with a blank slate. It takes place within an institutional environment shaped by previous rules, accumulated practices, and expectations about how public institutions actually work. A constitution can change quickly; the expectations surrounding it usually do not.

In this article we examine the Belarusian judiciary from the early 1990s to 2020, with particular attention to the quarter-century of Aliaksandr Lukashenka's rule preceding the political crisis of 2020. The period matters not only because it encompasses the consolidation of the authoritarian power, but also because it covers the experience through which a large share of the adult population learned what they could normally expect from courts and judicial system. By 2020, many adults had spent their formative years, and most of their adult lives, within this environment. What they acquired was more than a set of opinions about a particular government: it was a lesson in when formal rules could be relied upon, when a court was worth approaching, and where the limits of legal protection were likely to lie.

The longer-term significance of the 1990–2020 period lies in institutional persistence. As North (1997, pp. 23, 26) argued, formal rules co-exist with informal constraints – conventions, norms, and established ways of interpreting and navigating the institutional environment – which change more slowly than the rules themselves and shape how citizens understand and use new institutions. A new constitution may establish judicial independence, equality before the law, and procedural safeguards almost immediately; citizens will nevertheless approach these institutions with ideas already formed about whether legal rules are dependable, whether formal procedures are worth pursuing, when personal connections matter, and whether the state can be relied upon to respect legal boundaries. Such expectations do not disappear quick-

ly: they constitute the ‘institutional memory’ of a legal order. Political socialisation research generally identifies adolescence and early adulthood as especially formative for durable institutional attitudes (Oskamp and Schultz, 2005, p. 339), and cohorts socialised under the pre-2020 order will make up a large part of the adult population for decades.

To examine these expectations, we bring together four strands of evidence. The World Values Survey (WVS) and European Values Study (EVS) provide a broad comparative measure of ‘declared trust’ in the judicial system. The surveys of the Independent Institute of Socio-Economic and Political Studies (IISEPS) move from declared trust to ‘practical expectations’: what respondents thought the courts would actually deliver in the way of fair decisions, legal protection, exposure to arbitrary action by state institutions, and equality before the law. The monitoring surveys of the Institute of Sociology of the National Academy of Sciences of Belarus extend the domestic series to 2020 and make it possible to compare the courts with the Constitutional Court. Finally, the World Justice Project (WJP) and the Bertelsmann Transformation Index (BTI) assess from outside how civil justice actually functioned and how the judiciary stood in relation to executive power. The sections follow that order. Our purpose is not to determine whether Belarusian courts before 2020 were simply ‘good’ or ‘bad,’ but to identify what kind of legal order citizens actually experienced – and what that experience means for the institutional starting point of reform.

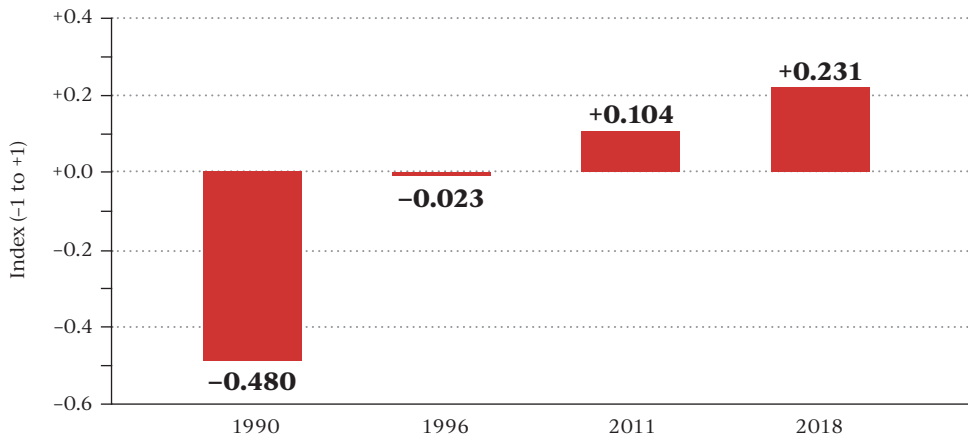
1. WVS/EVS: Trust in the judicial system

The WVS/EVS project provides a broad measure of public trust in the judicial system. Respondents were asked to assess a range of public and social institutions using four substantive response categories: ‘a great deal,’ ‘quite a lot,’ ‘not very much,’ and ‘none at all.’ The judicial system was one item in a longer list that also covered institutions and organisations ranging from churches and the armed forces to trade unions and other associations. Unless otherwise indicated, all percentages and confidence-index values reported in this section are based on the EVS/WVS data (WVS, 2022).

In Belarus, the distribution of responses shifted substantially over time. The share reporting either ‘a great deal’ or ‘quite a lot’ of trust in the judicial system rose from about a quarter in 1989–1993 to 57.1 per cent in the 2017–2022 wave, whose Belarusian fieldwork took place in

2018. The moderate category drove almost the whole of that increase: ‘quite a lot’ grew from roughly a fifth of respondents to nearly a half, while the strongest form of confidence remained close to one in ten. At the other end of the scale, outright rejection halved. Figure 1 summarises these shifts as a Confidence Index.

Figure 1. Confidence Index for the judicial system in Belarus in 1990–2018 (WVS/EVS)



Source: WVS/EVS 1981–2022 time series, E069_17 (Confidence: Justice System/Courts); weighted results.

Note: Confidence Index = (Trust – Distrust) / substantive responses, where Trust combines ‘a great deal’ and ‘quite a lot’ and Distrust combines ‘not very much’ and ‘none at all’. ‘Don’t know’ and ‘no answers’ are excluded from the denominator. The index ranges from -1 to +1.

The WVS/EVS evidence thus shows a relatively high and, over time, increasing level of declared trust in the Belarusian judicial system. At the same time, the measure is broad. It does not tell us what respondents understood by ‘trust,’ whether they were thinking about routine encounters with the courts or politically sensitive cases, or what they expected the courts to do when formal legal rules came into conflict with stronger interests. Nor does it establish that respondents regarded the judiciary as politically independent.

These limitations do not diminish the significance of the finding. They identify the question that the next layer of evidence has to answer: what did this declared trust actually rest upon? The IISEPS surveys allow us to move from a general assessment of the courts to more concrete expectations about fairness, legal protection, arbitrary state action, and equality before the law.

2. From general trust to practical expectations: IISEPS

The IISEPS surveys let us examine the broad WVS/EVS picture in greater detail. From the late 1990s through the mid-2010s, IISEPS repeatedly asked respondents about the courts: some questions closely resembled the broad WVS/EVS measure of institutional trust, while others focused on practical expectations about what courts could actually deliver. The distinction matters, because a general question about trust does not specify whether respondents are thinking about routine court proceedings, the fairness of judicial decisions, protection against state authorities, or the influence of money and connections. IISEPS provides separate measures for these dimensions and makes it possible to establish what a general willingness to trust the courts could coexist with.

Unless otherwise indicated, all public opinion metrics, percentages, and index values reported in this section are drawn from national survey data published in the quarterly bulletins of the IISEPS (IISEPS, 1998–2016).

2.1. Trust in the courts: a more continuous domestic picture

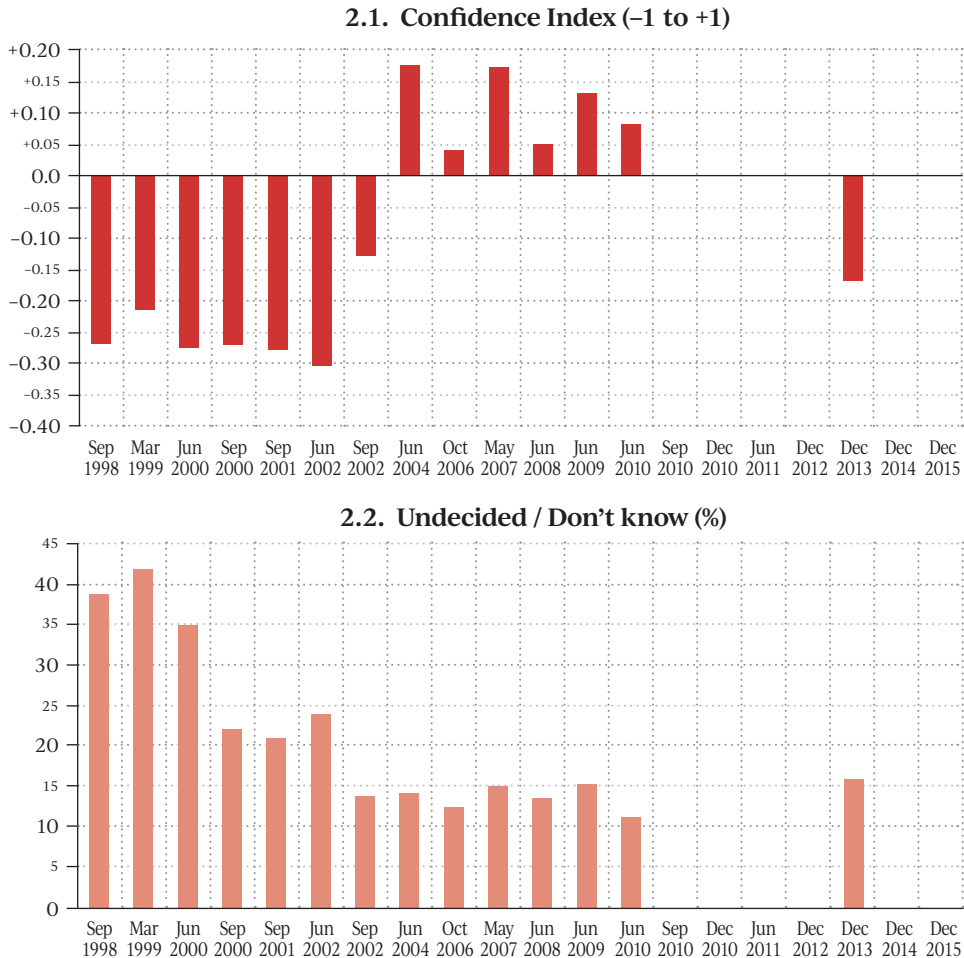
IISEPS repeatedly asked respondents: ‘Do you trust the following state and public institutions? – Courts (the judicial system).’ The question closely resembles the WVS/EVS measure, but the IISEPS series provides a much more continuous view of changes within Belarus over time.

The early observations are notable for the large proportion of respondents who did not express a substantive judgement: in the waves of 1998–1999, roughly four in ten answered ‘hesitate/do not know.’ Because the Confidence Index is calculated among those who did take a position, this share is reported separately in panel 2.2 rather than absorbed into the index. Among respondents who answered substantively, the early assessments were markedly negative, and the series reaches its lowest point in September 2002 (–0.304).

This uncertainty diminished substantially over the following years, and the balance changed markedly in the second half of the decade. The index turned positive for the first time in October 2006 (+0.173) and remained positive, though unsteady, through 2010, with trust hovering around one half of respondents. By December 2013, the pattern

had shifted again: trust had fallen to about a third and distrust had risen to roughly a half, returning the index to -0.169 . The two final observations, in December 2014 and December 2015, record the trust share only – IISEPS did not publish the corresponding distrust figures, so neither wave can be placed on the index – and the partial rebound of 2014 is not sustained in 2015. Figure 2 shows the full IISEPS series.

Figure 2. Confidence Index for courts in Belarus and the percentage of Undecided / Don't Know (IISEPS)



Source: IISEPS

Note: Panel 2.1. Confidence Index = (Trust – Distrust) / substantive responses. Undecided and ‘don’t know’ responses are excluded from the denominator and are shown separately in panel 2.2. The index ranges from -1 to $+1$. Six waves (September 2010, December 2010, June 2011, December 2012, December 2014 and December 2015) report the trust share only; no distrust figure was published, so no index can be calculated and these waves are left blank.

The series thus points to considerable variation in public assessments of the courts. Its broad movement is compatible with the longer-term pattern visible in WVS/EVS, but we should not treat the two sources as interchangeable: their timing and questionnaire designs differ, and WVS/EVS provides the broader comparative benchmark while IISEPS makes it possible to observe domestic change more closely. The main implication is that the relatively high levels of trust observed in some periods did not amount to a fixed or unconditional attitude towards the courts. Trust could become more widespread, but it could also retreat substantially within a few years. To understand what respondents meant by trust, we must thus turn from questions about whether courts could generally be trusted to questions about what they were expected to do.

2.2. Can a fair decision be obtained?

IISEPS also asked a more concrete question: ‘Do you think it is possible to obtain fair decisions under the current Belarusian judicial system?’ This moves the respondent from a general assessment of the institution to an evaluation of a specific judicial outcome.

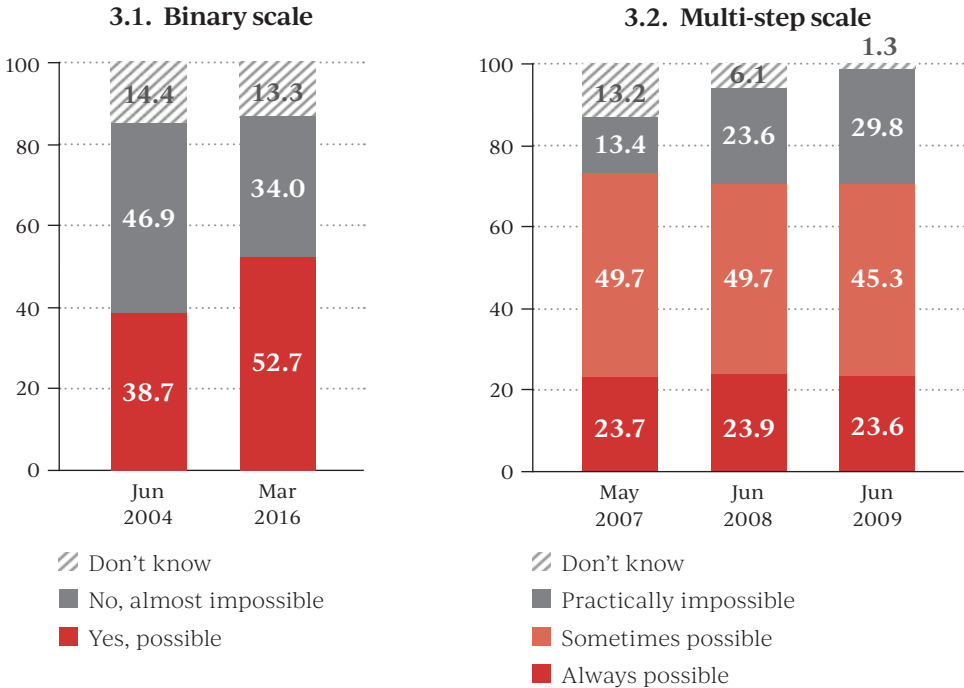
The results depend in part on the response format. When respondents were offered a binary substantive choice, a plurality in June 2004 considered a fair decision almost impossible (46.9 against 38.7 per cent), whereas by March 2016 the balance had reversed in favour of those who thought it possible (52.7 against 34.0 per cent). On several other occasions IISEPS used a more differentiated scale, allowing respondents to distinguish between a fair decision being ‘always’ possible, ‘sometimes’ possible, or ‘practically impossible.’ Here the middle position was consistently the most common, chosen by about half of respondents in each of the three observations between 2007 and 2009, while roughly a quarter regarded fair decisions as always attainable. The share describing them as practically impossible more than doubled across the same three waves.

Figure 3 presents the two response formats.

The pattern is more qualified than the broad category of institutional trust might suggest. The most common expectation was neither that fair decisions were always attainable nor that they were virtually impossible, but that they were possible under some circumstances – and the sceptical end of the scale grew over the three comparable observations. We should interpret the parallel fall in ‘don’t know’ responses cautious-

ly, because the wording and response structure varied across observations. These figures do not form a clean time series, but they do indicate that the dominant expectation was more conditional than a simple trust measure would imply.

Figure 3. Perceived possibility of obtaining a fair court decision (%)



Source: IISEPS

Note: The two panels use different response formats and should not be read as a single continuous time series.

This conditionality matters for interpreting the WVS/EVS results. A respondent could regard the courts as institutions that generally worked and still refrain from assuming that a fair result would follow automatically in every case.

2.3. Legal protection and exposure to arbitrary state action

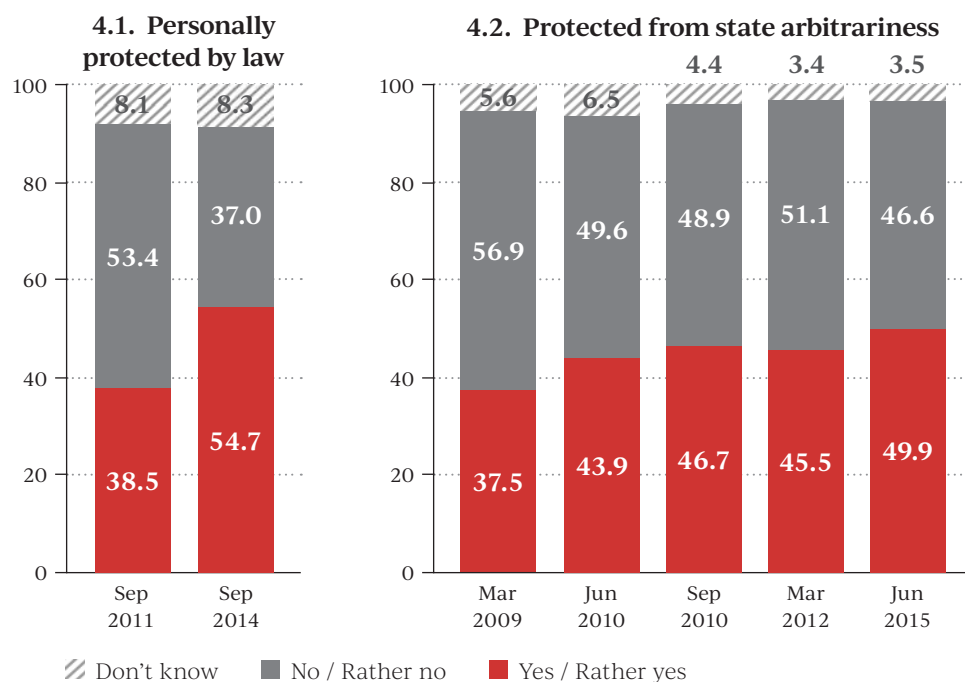
A further set of IISEPS questions concerns legal protection from the individual’s point of view. In September 2011, a clear majority said that they did not personally feel protected by the law; by September 2014, the balance had reversed, with 54.7 per cent saying that they did.

The wording of this question is broad. ‘Protection by the law’ denotes no more than some form of legal security, while connoting the far stronger idea that the state itself is bound by law; the item does not specify which feature of the legal system the respondent has in mind, and the gap between the two readings is precisely what the next question makes visible.

IISEPS also asked a more specific question: whether respondents felt protected from possible arbitrary action by government authorities, the police, traffic police, tax authorities, courts, and other state institutions. Here the pattern was much more stable. Between 2009 and 2012, the share who felt unprotected, or rather unprotected, remained around one half, at its highest in March 2009 (56.9 per cent); even in June 2015 the negative response was still close to one half.

Figure 4 presents the two measures side by side.

Figure 4. Perceived legal protection and protection from arbitrary state action (%)



Source: IISEPS

Notes: Each column totals 100% and shows the response distribution. Panel 4.1 asks whether respondents personally feel protected by law; Panel 4.2 asks whether they feel protected from possible arbitrary action by public authorities and state institutions.

The contrast is revealing. General perceptions of being protected by law could change substantially between survey dates. However, when the question named identifiable state institutions as the possible source of arbitrary action, negative responses remained persistently high.

This suggests that the two questions captured different aspects of legal security. A person could feel broadly protected within a functioning legal and administrative order while remaining uncertain that the state itself was reliably constrained in the exercise of its authority. Confidence that the law provides a degree of everyday security did not, in other words, imply confidence that legal institutions could protect citizens against discretionary state power – a distinction that matters for the later discussion of judicial independence. Citizens could experience the courts as useful institutions for resolving ordinary problems without regarding them as a dependable counterweight to the executive.

2.4. Equality before the law, money, connections, and official status

The most concrete ISEPS questions concerned equality before the law. Respondents were presented with several statements and could agree with more than one of them. One statement expressed the formal principle of legal equality: ‘All citizens are equal before the law, and anyone who violates it will be punished.’ Two others referred to possible ways around that principle: people with money and connections being able to avoid punishment, and people holding high positions being able to do the same.

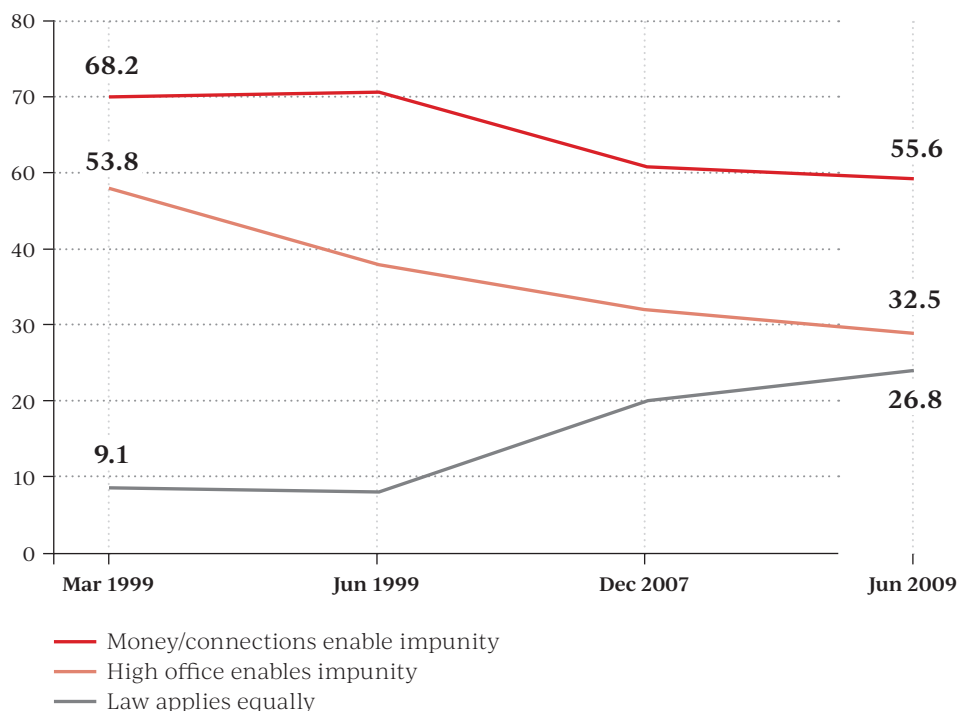
The formal equality proposition attracted fewer than one respondent in ten in the two surveys of 1999. Its share rose over the following decade, reaching just over a quarter by June 2009, but even at the end of the observed period it remained a minority position.

The alternative propositions were much more widely accepted. In 1999 roughly two thirds of respondents agreed that money and connections could help someone avoid punishment – roughly seven to eight times the share that endorsed formal equality in the same waves – and the figure remained above one half in the later observations. Belief in the protective effect of high official status was also widespread, although it declined over the period, from more than a half in March 1999 to around a third in June 2009. Figure 5 shows the changing balance between these views.

These findings do not imply that respondents considered formal law irrelevant. Rather, they indicate that respondents did not regard formal equality as the only, or necessarily the decisive, determinant of legal outcomes. Alongside the formal rule, they recognised a set of practical considerations – money, connections, and hierarchical position – that could affect whether the rule would apply in the same way to different people.

The result is consistent with the broader pattern emerging from the IISEPS evidence: Belarusians could regard courts as functioning institutions while holding cautious practical expectations about the conditions under which justice would actually be obtained. This is the pattern we call ‘conditional reliance on law.’ The practical question was not simply whether the law existed, but whether it could be relied upon when circumstances became less routine or when the interests of more powerful actors entered the picture.

Figure 5. Perceptions of equality and unequal treatment before the law



Source: IISEPS

Note: Respondents could select more than one statement. Percentages therefore represent the share agreeing with each statement independently and do not sum to 100%.

3. A longer view to 2020: the Institute of Sociology monitoring series

The two sources used so far leave a gap at precisely the point where it matters most for the argument of this article. The IISEPS series ends in 2016, and the Belarusian fieldwork for the most recent WVS/EVS wave was carried out in 2018 as a single observation. Neither provides a continuous view of the years immediately preceding the crisis of 2020. Neither, moreover, lets us place the courts alongside the other state institutions with which citizens deal more frequently.

The monitoring surveys of the Institute of Sociology of the National Academy of Sciences of Belarus make it possible to address both limitations. These surveys were conducted twice a year, in spring and autumn, on republican quota samples of between 1,500 and 2,100 respondents, and they cover the period from 2006 to 2020. The institutions covered include the Constitutional Court of the Republic of Belarus, the judicial bodies, and the police (militia).

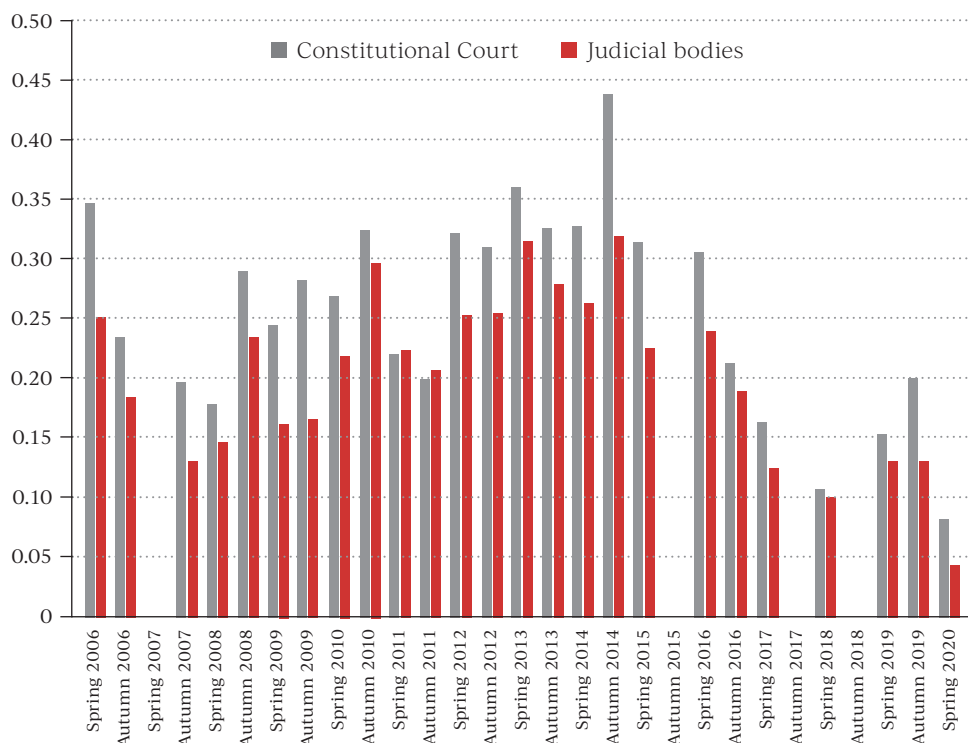
The Institute of Sociology reports its results as ‘coefficients of trust’: the difference between the share of respondents who said that they trusted a given institution and the share who said that they did not, with respondents answering ‘difficult to say’ excluded from the calculation. This is the same construction as the Confidence Index used above, and we thus present the series here on that scale and under that name. That equivalence assumes that undecided responses are excluded from the base of the published coefficient and not merely from the subtraction; were they included in the base, every value in the series would be lower by a constant factor, which would affect comparison with the other sections but not the direction of the series or the ranking of the institutions within it. The excluded share was substantial – commonly between a quarter and a third of the sample – so the index says nothing about how many respondents held no view at all. What it offers in exchange is a compact indicator of long-term movement: a positive value means that expressed trust outweighed expressed distrust, and a value close to zero that the two were in approximate balance.

Let us keep two qualifications in view. The first is the general caution applying to survey evidence collected in an authoritarian setting, with the additional consideration that the Institute of Sociology is itself a state academic institution; the effect of this on responses cannot be

measured directly. The second is that quota samples do not support the calculation of conventional sampling errors, so we should not over-interpret small differences between adjacent waves. The value of the series lies in its direction and in the relative position of the institutions, not in individual observations.

Three features of the series stand out. The first is the stability of the ranking. The Constitutional Court recorded the higher index in every wave except the two of 2011, in which the judicial bodies stood marginally above it. The more trusted of the two is thus the institution with which ordinary citizens are least likely to have direct dealings.

Figure 6. Confidence Index in the Constitutional Court and judicial bodies in Belarus, 2006–2020 (Institute of Sociology, NASB)



Source: Institute of Sociology, National Academy of Sciences of Belarus; semi-annual monitoring surveys, republican quota samples of 1,500-2,100 respondents.

Note: Confidence Index = (Trust – Distrust) / substantive responses, where Trust and Distrust are the shares expressing trust and distrust respectively. ‘Difficult to say’ responses are excluded from the denominator and typically accounted for between a quarter and a third of the sample. The index ranges from -1 to +1. Waves for which no observation is available are left blank and are not interpolated.

The second feature is that both series remained positive throughout. At no point in fifteen years did the share of respondents expressing distrust in the Constitutional Court or the judicial bodies exceed the share expressing trust. In this respect, the series is consistent with the general picture obtained from WVS/EVS and, for the second half of the 2000s, with ISEPS as well.

The third feature is the trajectory. After a decline in 2006–2007 and several years of fluctuation, both series rose through the first half of the 2010s and reached their maxima in 2013–2015. A sustained fall followed: by spring 2018, both had dropped to around +0.10, and the final observation reversed a partial recovery in 2019. In spring 2020 – before the presidential campaign and the protests of that summer – the index stood at +0.083 for the Constitutional Court and +0.045 for the judicial bodies, the lowest value recorded for either institution across the whole series. Figure 6 shows the series.

The relationship between this series and ISEPS merits attention, since the two overlap between 2006 and 2016. On the common scale they agree closely in the second half of the 2000s: the ISEPS Confidence Index for the courts and the Institute of Sociology's coefficient for the judicial bodies lie within a few hundredths of each other in the corresponding waves of 2006 and 2007. In the second half of the period, however, the two series move in different directions – most sharply in 2013, when ISEPS recorded a clearly negative index and the Institute of Sociology a clearly positive one.

Several factors may contribute to this divergence, and the data available do not let us separate them. The question wording differs – ISEPS asked about 'courts (the judicial system),' the Institute of Sociology about the judicial bodies – and the two instruments handle undecided respondents differently. The organisations conducting the fieldwork also differ in a way that is unlikely to be incidental: one was an independent institute working under increasing pressure and, in the later years, from outside the country; the other is a state academic institution. We cannot treat either series as the corrected version of the other. What we can say is that the discrepancy is not a constant offset between two instruments: we should not place the levels on a single scale, while each series remains informative about the direction of change within itself.

A similar caution applies to the comparison with WVS/EVS, whose 2018 Belarusian fieldwork yields a distinctly higher index than the spring 2018 wave of the Institute of Sociology. Response format best

explains the residual difference. The WVS/EVS instrument offers no explicit ‘difficult to say’ option and directs lukewarm respondents into one of the four substantive categories, most of them into ‘quite a lot’: only about seven per cent of Belarusian respondents gave no substantive answer, against roughly thirty per cent in the Institute of Sociology surveys – a difference of more than fourfold. If we treat those additional respondents as people who would otherwise have declined to answer, the plausible range for the WVS/EVS index in 2018 comfortably contains the Institute of Sociology value. The two measurements are thus consistent with one another, but we cannot read them as measurements of the same quantity at the same level. What each series supports is a reading of direction and of relative position among institutions.

Two further implications follow. The first concerns the Constitutional Court. Of the two institutions, it is the one with which ordinary citizens have almost no direct contact, and the one whose capacity to constrain the executive was most thoroughly circumscribed by the constitutional arrangement established after 1996. However, it recorded the higher index in nearly every wave. Hardly can that trust have rested on the experience of watching the Court hold state power to account. The result thus supports, from a different direction, the argument developed in Section 2: we should not read declared trust in judicial institutions in Belarus as a judgement about judicial independence.

The second implication concerns timing. The erosion of trust in the courts did not begin with the crisis of 2020. It is visible from 2016 onwards and had brought the index for the judicial bodies close to zero by the spring of 2020, several months before the presidential election. The institutional starting point for any future reform is thus not the relatively settled equilibrium of the mid-2010s, but a legal order whose public standing had already been weakening for several years.

4. External assessments: functional civil justice without judicial independence

The survey evidence becomes easier to interpret when we set public perceptions alongside independent assessments, which measure two different things: ‘judicial effectiveness’ and ‘judicial independence.’ The World Justice Project’s Civil Justice factor captures a range of characteristics that affect the practical operation of civil justice – access, discrimina-

tion, corruption, unreasonable delay, enforcement, and improper government influence – and is thus not synonymous with judicial independence.

Belarus performed relatively well on the WJP's aggregate Civil Justice measure throughout the period examined. In the 2016 Rule of Law Index, it ranked 30th globally and first in the Eastern Europe and Central Asia regional group; in 2019, it ranked 47th out of 126 countries and second in the region. The aggregate concealed a serious weakness, however: under the subfactor measuring whether civil justice is free of improper government influence, Belarus scored only 0.28 in 2019 – little more than a quarter of the scale maximum, and far below the top-half global placement that its aggregate score secured (WJP, 2016, pp. 29, 85; WJP, 2019, pp. 23, 61).

The combination of these results is more informative than either in isolation. We can rule out two readings: that of a judicial system simply dysfunctional, and that of a judiciary institutionally independent. A third fits the evidence much better – a system capable of delivering relatively effective civil justice while remaining vulnerable to government intervention.

The BTI assessments point in the same direction. The 2016 report described the Belarusian judiciary as heavily dependent on the executive at both regional and national levels, with executive officials able to intervene in, and influence verdicts in, cases deemed socially, politically, or economically important to the regime – while noting that in 'non-political' cases a fair trial was usually possible provided that no state body was involved in the suit. The 2018 and 2020 assessments retained essentially the same distinction (BTI, 2016, pp. 10–11; BTI, 2018, pp. 10–11; BTI, 2020, pp. 11–12).

This helps explain how relatively high levels of declared trust in the courts could coexist with doubts about equality before the law and protection from arbitrary state action. The two attributes come apart in practice: a court can be accessible, procedurally regular, relatively fast, and capable of producing an enforceable decision without being able to act against the executive on equal legal terms. For ordinary users, the practical features of the system are likely to have been far more visible than its constitutional position. Most encounters with courts concern family disputes, labour conflicts, property, debt, inheritance, or other routine civil and administrative matters, and in such cases a citizen's experience may quite reasonably have been that the court was a func-

tioning institution. The limits of judicial independence become consequential when a dispute directly implicates state authority or interests that the executive regards as important.

The weakness of the Belarusian legal order of this period was thus not necessarily its capacity to administer routine justice. It was the absence of a reliable institutional boundary beyond which the judiciary could confront the executive on equal terms.

The institutional legacy of 1990–2020 is thus more specific than a culture of distrust in law. It is the conditional reliance on law identified in Section 2: expectations about where legal rules can normally be relied upon and where their force becomes conditional — expectations that influence whether people use formal procedures at all, how much effort they invest in them, and whether they seek alternative ways of resolving a conflict.

Conclusion: Implications for constitutional and legal reform

A reformer entering a post-authoritarian Belarus would not be starting with a population that had learned that courts were simply useless. Nor would the reformer inherit a judiciary with no institutional capacity. The evidence points instead to an already functioning legal infrastructure whose principal structural weakness was its relationship to state power.

This has two implications. First, we should not conceive judicial reform exclusively as institutional replacement. Much of the practical capacity that citizens had learned to rely upon may be worth preserving: procedural routines, accessibility, the ability to process large numbers of ordinary disputes, reasonably predictable enforcement, and the professional practices required for day-to-day adjudication. The Civil Justice performance recorded by the WJP and the BTI evidence concerning non-political cases suggest that reformers should not dismiss this capacity simply because the judiciary lacked political independence.

Second, reform must change the dimension in which the previous system was weakest: the relationship between courts and political authority. Formal guarantees of judicial independence are indispensable, but their credibility will depend on repeated practical demonstration that courts can apply them when the state itself is a litigant, a regulator,

or an interested party. The challenge is thus not merely to establish judicial independence in constitutional text, but to make its exercise visible and credible in practice.

This is where institutional memory becomes directly relevant. A constitutional text can establish new competences and safeguards almost immediately, but citizens will initially interpret those reforms through expectations formed under the previous order. Someone who has learned that ordinary civil litigation can work while politically sensitive disputes are different will not revise that expectation simply because a new constitution declares judicial independence. The same consideration applies to the judicial personnel inherited from the previous system, whom the available evidence does not justify treating as a homogeneous body of corrupt, incompetent, or politically committed actors: the functioning of routine civil justice suggests that professional competence and political subordination should be treated as analytically distinct questions, even though competence alone says nothing about a judge's political independence.

The broader legacy of 1990–2020 is thus a dual one. Belarus may inherit both the institutional capacities that made ordinary justice workable and the expectations that conditional reliance on law has left behind; reformers should not discard the first merely because of the second, and they cannot overcome the second merely by rewriting the constitutional text. The challenge is not to build Belarusian civil justice from scratch, but to transform a legal system that could already function in routine matters into one in which the same reliability extends to conflicts involving public power. Citizens had reasons to use and sometimes trust the courts, while also learning that the protection offered by formal law had boundaries. Constitutional and legal reform will have to preserve the institutional capacity that made ordinary justice workable while moving those boundaries outwards — until the reach of formal law no longer stops where public power begins.

Abstract

What had Belarusians learned about their courts by 2020, and what does that experience imply for the institutional starting point of constitutional and legal reform? The authors draw on four strands of evidence: the World Values Survey and European Values Study, the surveys

of the Independent Institute of Socio-Economic and Political Studies, the monitoring series of the Institute of Sociology of the National Academy of Sciences of Belarus, and external assessments by the World Justice Project and the Bertelsmann Transformation Index. Together they show that ‘declared trust’ in the judiciary was comparatively high and rose for much of the period, while ‘practical expectations’ remained markedly more cautious: respondents thought fair decisions possible only sometimes, persistently doubted protection from arbitrary state action, and widely believed that money, connections and official position affect legal outcomes. External assessments describe the same configuration from the other side – a civil justice system that worked reasonably well in routine matters while remaining subordinate to executive power. The legacy of the period is thus not a culture of distrust in law but ‘conditional reliance on law,’ and the erosion of that reliance began several years before 2020.

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- establishing the International Belarusian Archive in 2013;
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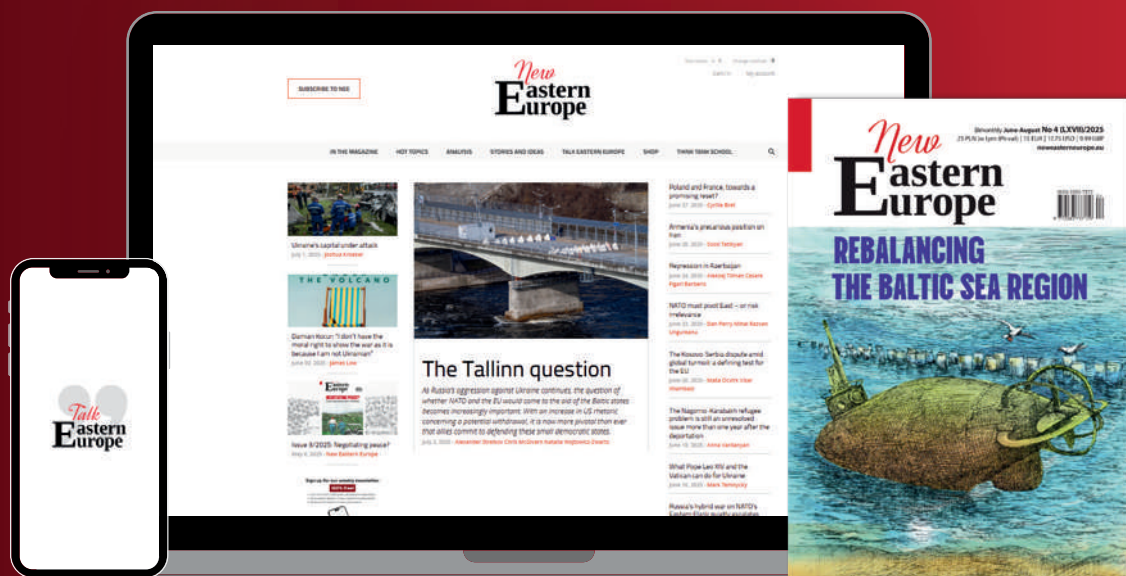
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Designing the Constitutional Architecture



Blueprints of the Belarusian House in the European Quarter

Introduction.

The Constitution as an answer to the question: What should the new Belarus be?

In the history of every country, a moment arrives when society must answer not only the question ‘What dissatisfies us?’ but also the more difficult one: ‘What do we want to build instead?’

For Belarus, this moment arose with particular urgency after the events of 2020. Millions of people took to the streets demanding change. This was not merely a protest against a specific political situation. It reflected a deeper demand for a change in the very model of the state – for a system in which the individual, together with his or her rights and freedoms, would stand at the centre.

Yet any genuine change requires an answer to the central question: what should Belarus become after the dictatorship?

How should power operate? What powers should the president, the parliament and the government hold? How is judicial independence to be guaranteed? How is the individual to be protected from state abuse? How can a system be created in which power does not become the property of a single individual or a narrow group?

Without answers to these questions, any alternative remains no more than a slogan.

It was precisely for this reason that the Draft Constitution for a New Belarus (hereinafter: CNB) came into being – conceived not merely as a legal document, but as an attempt to draw up a blueprint for the future Belarusian house.

When a person builds a house, they do not begin with the decoration of the walls, but with the design. The foundations, the structure, the utilities and the security arrangements are determined first. The same holds true for the state. The Constitution is its basic design: it determines how power is to be organised, what rights citizens possess, and what limits the state must observe.

The CNB is an attempt to produce precisely such a design — a blueprint for a country built on the principles of the rule of law, the separation of powers, the protection of human rights and European standards of governance.

1. From the first ideas to a draft of a new state model

Discussion of the need for constitutional change in Belarus began long before the events of 2020.

Already in the mid-2000s, representatives of Belarus's democratic forces spoke of the need to overcome the constitutional crisis that had arisen following the gradual concentration of power in the hands of the presidency.

One of the first steps in this direction was the drafting of the Little Constitution of Belarus. On 26–27 May 2007, the Congress of Democratic Forces of Belarus was held, attended by 681 delegates. The forum adopted the 'Little Constitution of Belarus' — a document conceived as a provisional constitutional law pending the adoption of a fully-fledged new Constitution of the Republic of Belarus.

The draft was discussed beforehand within expert circles and disseminated through independent media and online resources (in particular 'Nasha Niva' and 'Tovarishch'). It was the work of experts, politicians and representatives of civil society.

The central idea of the Little Constitution was that Belarus should move from a personalised presidential model towards a system founded on a balance of powers.

The draft envisaged:

- strengthening the role of parliament;
- making the government accountable to representative bodies;
- developing local self-government;

- protecting human rights and freedoms;
- abolishing the death penalty;
- creating mechanisms for a genuine separation of powers.

This was the first conceptual step towards understanding that the problem of Belarus lay not merely in individual political decisions, but in the very architecture of the state system.

2. From the idea of change to the Public Constitutional Commission

The next important stage took place in 2019.

On 15 March, Constitution Day of Belarus, the ‘European Dialogue’ centre organised a round table devoted to possible scenarios for the country’s development following the 2020 presidential election.

Participants discussed various possible developments. Among them was a scenario in which the authorities would attempt to preserve the existing system through force and subsequently introduce imitative changes through limited constitutional amendments. This gave rise to the question: ‘What should the proponents of change do if the authorities attempt to use the Constitution merely as an instrument for preserving the existing system?’

The answer was a proposal to prepare an alternative draft of constitutional reform. To this end, a Public Constitutional Commission was established. It comprised around thirty people:

- former deputies of the 12th and 13th Convocations of the Supreme Council;
- judges of the first composition of the Constitutional Court;
- representatives of political parties;
- independent experts.

The Commission was chaired by Miechyslau Hryb – former Chairman of the Supreme Council of the Republic of Belarus of the 12th convocation, whose signature appears beneath the Constitution of 1994. His deputies were:

- Mikhail Pastukhou – a judge of the first composition of the Constitutional Court;

- Anatol Liabedzka – coordinator of the Supreme Council of the 13th Convocation and director of the ‘European Dialogue’ centre.

From the outset, the Commission established the guiding principle of its work: constitutional reform should be grounded in the legitimate Constitution of 1994 and should develop ideas laid down in earlier work, including the Little Constitution of 2007.

The events of 2020, however, fundamentally changed not only the country’s political situation but also the understanding of what the future Constitution should be. The political crisis revealed a profound gulf between formal constitutional norms and the actual functioning of the state system. It became evident that Belarus needed not cosmetic changes to its façade, but a complete reconstruction of the state house.

Not a repair of the old system. A new design.

3. The Constitution as a social demand: how Belarusians began drawing up the blueprints of their own future

The Constitution is not merely a set of legal norms. It is, above all, an answer to the question of how society wishes to live, what rules it is prepared to accept, and what kind of state it should have.

It was precisely for this reason that one of the guiding principles in the work on the CNB was the understanding that this document could not be produced solely by experts in offices. It had to be born out of dialogue with society.

The autumn of 2020 became the moment when it grew clear that Belarusians harboured not only a demand for change, but also a desire to work out what the country should become after that change. This came about unexpectedly. A single telephone call marked the beginning of a large social process. A stranger invited me to come to Liabiazhy – a district of Minsk – to talk about ... the Constitution for a New Belarus.

At that time, the subject of the Constitution might have seemed remote from people’s everyday concerns – for many, something complicated and legalistic, intended solely for politicians and experts. I expected to see a small group of people, perhaps ten or fifteen, interested in such a specific topic. Reality proved altogether different. Around two hundred people gathered in Liabiazhy.

Nor was this simply a meeting of listeners. People organised the space themselves: there was coffee, tea, a microphone, an open discussion. For several hours, conversation ranged over the most fundamental questions concerning the country's future political order:

- what Belarus's political system should be;
- whether the institution of the presidency is needed at all;
- what powers the head of state should hold;
- what role parliament should play;
- what the government should be like;
- how mechanisms for holding power to account should function.

This was not a conversation about particular politicians. It was a conversation about the rules governing the country's life. It was then that it became clear how mistaken it was to claim that people were not interested in the Constitution and in state-building.

When society is given the opportunity to influence its own future, it is willing to take part in shaping it. This meeting became, in its own way, the starting point for a broad public dialogue around the CNB.

4. From a single meeting to nationwide discussion

After the meeting in Liabiazhy, a new stage began – the presentation and discussion of the draft across Belarus. The project team visited around thirty regions of Belarus. These were not formal, box-ticking events. Open meetings took place in towns and cities of every kind, where people could ask questions, put forward their own proposals, argue and offer their own visions: Mahiliou, Babruysk, Smarhon', Hrodna, Barysau, Maladziechna, Navahrudak, Brest, Homiel, Orsha, Vileyka ...

This was an attempt to hear voices from across Belarus. The halls brought together people of every age, with differing life experiences and political views. What united them was a single wish: to understand what the future state might be.

In this way, the CNB became not merely the product of the work of lawyers and experts. It became the outcome of a broader conversation within Belarusian society.

5. Constitution behind bars: a dialogue that repression could not stop

A special place in this history belongs to the period of political repression, when many participants in the process themselves came under persecution.

In the autumn of 2020 came my first arrest – fifteen days of detention. In the spring of 2021, a second arrest followed, this time for thirty days. The places of detention were the notorious Akrestsina prison and the Baranavichy facility known as ‘Baranki’. But even there, the conversation about Belarus’s future did not stop.

Indeed, under these conditions it acquired a particular significance. During my second period of detention, I organised twelve extended discussions with my cellmates. These were heated conversations lasting three to four hours. In cells designed for four, some 15–16 people were held, and they avidly discussed:

- what the state should be like;
- how the laws should operate;
- how to prevent a repetition of the situation in which power becomes uncontrolled;
- what guarantees the individual should have vis-à-vis the state.

Later, many of those who took part in these conversations recalled that time as one of the most important periods of their lives. This is a highly telling fact. Even under conditions of deprivation of liberty, people continued to think not only about their own problems, but also about the country’s future.

And this once again confirmed the central idea: the demand for a new Belarus existed not only among politicians or experts. It existed, and continues to exist, within society itself.

6. International expert review: the CNB as a modern legal project in a European context

From the very outset of work on the CNB, its drafters faced a dual task.

On the one hand, it had to be a document shaped through the participation of Belarusians themselves – through discussions, debates and citizens’ proposals.

On the other hand, it had to be a modern constitutional project that met established international standards and took into account the experience of countries that had undergone democratic transformation.

One of the key principles of the work was therefore openness to international expert review. The aim was not to invent some unique model of state organisation that had no precedent elsewhere. On the contrary, the task was to draw on the best achievements of contemporary constitutional thought and adapt them to Belarusian realities.

For a strong Constitution is not merely the outcome of political will. It is also the outcome of professional legal analysis and the synergy between domestic experience and international expertise.

7. European constitutionalists in the work on the CNB

Around fifty leading European constitutional experts were engaged in the process of preparing and reviewing the draft.

Among them were specialists from various countries: Lithuania, Poland, the Czech Republic, Germany, Moldova, Austria, Georgia, Ukraine, and other European states.

These were countries that had themselves undergone difficult stages of transforming their state systems, creating new legal institutions and transitioning to modern models of democratic governance.

The experts assessed various aspects of the draft:

- the structure of state power;
- the balance between state institutions;
- mechanisms of checks and balances;
- guarantees of human rights;
- the role of parliament;
- judicial independence;
- the system of local self-government.

For the drafters of the CNB, this represented an opportunity to obtain an independent view from people with practical experience of constitutional design and institution-building.

8. Cooperation with Austria: professional assessment at the European level

A separate strand of work took the form of cooperation with the Austrian Ministry of Foreign Affairs. Over the course of a year, leading specialists in constitutional law were engaged within the framework of this cooperation.

Many of them had experience of working within the Venice Commission – the European Commission for Democracy through Law of the Council of Europe, one of the most authoritative international bodies in the field of constitutional law.

The work took the form of regular online discussions, during which specific provisions of the draft CNB were examined.

This was not a general conversation about the principles of democracy. It was professional work on a specific text.

The experts helped answer practical questions:

- how power should be balanced;
- what mechanisms would prevent any single institution from acquiring excessive power;
- how to guarantee the stability of the state system;
- how to protect the rights of citizens.

As a result, the international expert review became, in effect, a form of ‘quality control’ for the draft.

9. The Venice Commission: an exceptional legal response

Of particular significance was the legal feedback received from the Venice Commission on the political system embedded in the CNB. This was an important, and in a certain sense unique, step.

Traditionally, the Venice Commission prepares its opinions at the request of:

- governments of states;
- parliaments;

- international institutions, including the Parliamentary Assembly of the Council of Europe.

In the case of the draft CNB, a particular format of interaction was employed. The very fact of such an assessment was of great significance. It showed that the draft was regarded not merely as a domestic political proposal, but as a document that could be evaluated within the framework of pan-European legal approaches.

For the drafters of the CNB, this also became an important argument in discussions with opponents. The issue was not merely political aspiration, but a specific legal model that had undergone expert scrutiny.

10. Popular and European at the same time

Thus, two important elements were combined in the CNB.

The first was public participation. Thousands of people were able to voice their proposals, ask questions and influence the shaping of the future state model.

The second was professional and international expert review. The draft was assessed by specialists with experience in modern constitutional design.

It was precisely this combination that was meant to make the CNB not merely a political statement, but a fully-fledged project of state transformation. The CNB was created as a document that simultaneously emerged from Belarusian social demand and conformed to the pan-European legal tradition.

For the CNB to become a document that unites rather than divides, a transparent and open process of work on it was organised.

Firstly, dedicated channels of communication with the public were established:

- the websites <https://kanstytucyja.online/> and <https://narodnaja.com/>;
- the Facebook group ‘Constitution of the Republic of Belarus’, <https://www.facebook.com/groups/ConstitutionBelarus>;
- the Telegram channel ‘Constitution’, https://t.me/konstituciya_bel;
- the Telegram bot ‘Honest Choice’, @vybor_by_bot;
- the ‘Constitution’ playlist on the AHP-TV YouTube channel, https://www.youtube.com/playlist?list=PLjDrmJKLzrjst_LQEaFf-BPZm70ct-Vmo-

Secondly, a partner coalition of democratic forces was formed, through which links were established with the partners' own communication channels.

Thirdly, events were organised in various formats of public discussion — round tables, debates, presentations and press conferences — which were broadcast live and allowed participants to ask questions.

In the space of just nine months of 2021, around twenty public discussions were held, seven educational videos were produced, and around 150 publications were issued. At least 1.5 million people saw, heard or read these informational materials. The working group received around three thousand proposals and critical comments from citizens and experts, including international experts.

Every three months from the beginning of 2021, the working group published a revised version of the Constitution incorporating the proposals received up to that point. In early November 2021, the draft People's Constitution was deliberately circulated for review to various bodies: parliament, local authorities, other state bodies and institutions, civic and business organisations, and individual experts.

Surveys were also conducted, forming an important part of the feedback process. At the end of 2020, the 'Golos' platform ran a survey on the conditions necessary for introducing changes to the Constitution of Belarus, in which 463,594 people took part. In August 2021, the 'Honest People' community carried out a public survey on the people's draft Constitution, in which 8,361 people took part. According to a survey conducted by the Belarusian Analytical Workroom in November 2021, 35.1% of respondents stated that they were aware of, or had read, the CNB draft.

These figures alone provide a substantial basis for describing the draft Constitution as a popular one.

11. From the draft Constitution to the legal foundation of new Belarus

The creation of a Constitution is not a one-off act. A state's basic law cannot exist apart from a system of laws that develop its principles and translate them into practical mechanisms. It was for this reason that work on the CNB did not stop once the first version of the document had been prepared.

From the outset, it was clear that the new Constitution should not be merely a text with fine phrases about human rights and democracy. It had to become the foundation for a genuinely functioning state system.

This requires specific laws determining:

- how state institutions will operate;
- how elections will be organised;
- how the judicial system will function;
- how citizens' rights will be protected;
- how local self-government will operate.

For this reason, once the main work on the CNB draft had been completed, a decision was taken to continue the process.

12. Four readings: the Constitution as an open process

In total, the draft CNB went through four readings. Each stage was an opportunity not only to present an updated text, but also to take account of new proposals, comments and the outcomes of discussions. This approach was fundamentally different from the tradition whereby constitutional changes are prepared by closed working groups and then presented to society as a ready-made solution.

In the case of the CNB, the process followed a different logic:

- first, discussion;
- then, analysis of the proposals;
- then, revision of the document.

This corresponded to the central idea of the project: the CNB had to be not only legally sound, but also socially recognised.

13. Work after 2022: the Constitution as a living document

The main work on the draft was completed in 2022. It was decided, however, not to bring matters to a close. The door remains open for proposals and discussion. This is a fundamentally important point, since the

state and society do not stand still. Social conditions, economic realities and the international context all change. The legal system must therefore develop as well.

It was clear that it would be impossible simply to incorporate into the text of the Constitution every question arising in society. The Constitution must set out fundamental principles, while specific mechanisms must be elaborated through a system of laws.

One example is the work with the Congress of Local and Regional Authorities. Experts from the Congress prepared comments and proposals on the 'Local Self-Government' chapter of the CNB, and discussion of these proposals is currently under way.

14. From the Constitution to a package of reforms

For this reason, the next stage became the drafting of organic laws and legislative concepts intended to develop the provisions of the CNB. Organic laws are those laws that directly ensure the operation of the constitutional model.

They answer the question: 'How exactly will the principles set out in the Constitution work in practice?'

During this period, 13 draft laws and legislative concepts were prepared, drafted and discussed. These included documents concerning the future reform of state institutions, citizens' rights, and the mechanisms by which the new system would function.

Thus, the CNB became not only a draft of the basic law, but also the foundation for a broader package of transformations.

15. From the blueprint to construction

If the Constitution is the blueprint of the future state house, then laws are the engineering solutions that make it possible to build that house. A state governed by law cannot be created by a single document alone.

A complete system is required:

- the Constitution;
- laws;

- independent institutions;
- procedures;
- a culture of accountability among those in power;
- people ready to implement the planned reforms in practice.

For this reason, work on the CNB continues. Its purpose is not merely to propose a new Constitution, but to prepare a comprehensive legal foundation for Belarus's transition to a new model of statehood.

16. The positive alternative

What is the positive alternative?

It is a vision of a new Belarus that has passed through discussion, deliberation, consultation and expert review, and has found its embodiment in the CNB, in draft laws, and in concepts for the necessary reforms.

The positive alternative is a point of entry into Belarus. It is an answer to the question of whether it is already possible today to work with Belarusians inside the country under conditions of its drift towards totalitarianism. And that answer is unequivocal: yes, it is possible.

A concrete example is the concept of lustration. As long as no such document existed, Lukashenka's propaganda frightened officials with the prospect that, after a change of power, persecution and revenge awaited them. Once the concept appeared, officials had a reason to read it, since it concerned them directly – together with their families and their futures. The document therefore offered an alternative to fear: a concrete and predictable framework for what might follow a change of power.

The draft laws and reforms we have prepared allow people to see the future not through fear, but through greater clarity and predictability.

The positive alternative is a point of entry into Europe.

In the Warsaw Declaration, adopted at the New Belarus conference in Warsaw, we stated that our goal is Belarus's accession to the Council of Europe and the European Union. To achieve this goal, we must be predictable and comprehensible to our European partners and friends.

They must know what the political system of the new Belarus will be, how elections will be organised, what economic reforms lie ahead for the country, and how an independent judicial system will function.

We propose to go both to Belarusians and to European capitals with a roadmap for European integration, the most important part of which is the positive alternative for a new Belarus.

The positive alternative is a valuable resource of time.

We shall have little of it – perhaps a year and a half. Within this time, it is necessary to make the principle of the separation of powers a reality, to carry out judicial reform, and to set effective local self-government in motion.

The positive alternative is an agenda for possible negotiations with that part of the ruling elite that regards Belarus as a value rather than as an instrument for retaining power.

17. By way of an epilogue

Looking back over the whole history of the creation of the CNB, several principal conclusions emerge.

First, the CNB has shown that a social demand for a new model of statehood exists in Belarus.

Second, it has demonstrated that this model can be not merely an idea, but a concrete legal project.

Third, it has created a foundation for a future transition – through the Constitution, laws and reforms.

But most importantly, the CNB changes the very approach to thinking about Belarus's future. The country's future should not be defined by uncertainty. It should be guided by a design. Just as a person, before building a house, first draws up blueprints, so a nation, before creating a new state, must have a vision of what it is building. The CNB is precisely such a set of blueprints.

Abstract

The essay examines the history, logic and significance of the Draft Constitution for a New Belarus (CNB) as an attempt to create a legal basis for the democratic transformation of Belarus. The author traces the development of constitutional thought among Belarusian democratic forces, from the 'Little Constitution' of 2007 to the establishment of the Public

Constitutional Commission and the present CNB draft. Particular attention is paid to the open mechanism of its drafting: public discussions, thousands of proposals from citizens and experts, four readings of the draft, public opinion surveys and continuous refinement of the text. A second key element was international expertise: European constitutional scholars were involved in the work, and the draft received legal feedback from the Venice Commission. The essay presents the CNB as a combination of Belarusian public demand and European legal standards. A separate section is devoted to the transition from the constitutional draft to a system of organic laws and reforms: thirteen related drafts and concepts have been prepared. The CNB is thus treated not only as the text of a Basic Law but as a comprehensive project of state transformation and a 'positive alternative', intended to make the future New Belarus predictable for society and for European partners.



The Transition to a Parliamentary Republic as a Constitutional Mechanism for Reducing the Risk of New Authoritarianism in Belarus

Introduction

The Belarusian constitutional crisis is usually described through the political events of the 1996 referendum, the abolition of presidential term limits in 2004, the political crisis of 2020, and the constitutional amendments of 2022. Behind this chronology, however, lies a deeper institutional problem. The super-presidential model of power that has taken shape in Belarus means that almost any political conflict is ultimately resolved not through legal procedures and inter-institutional interaction, but through the president's position. The question of the future Constitution of the Republic of Belarus therefore lies not only in who will occupy the highest offices after the democratic transition, but also in whether the new rules will be capable of precluding a repetition of the same logic of authoritarian power under different political figures.

This article proceeds from the premise that the principal constitutional lesson of the Belarusian experience is the danger of a super-presidential model in a society with a weak party system, dependent courts, suppressed local self-government and limited mechanisms of public oversight. Under such conditions, the office of the president ceases to be confined to the function of heading the executive and becomes an instrument for concentrating key state powers. The institution of the presidency thereby acquires the capacity to control the Government, the parliamentary majority, the judiciary, the Prosecutor's Office, the security and law-enforcement agencies, and the personnel

vertical – and, ultimately, to shape the very interpretation of the Constitution.

The Draft Constitution for a New Belarus (hereinafter: CNB), prepared by the Public Constitutional Commission in the version submitted for public consultation on 17 January 2025, proposes a different logic of organising power. The president is retained as head of state but no longer acts as sole head of the executive. The Government becomes the highest collegiate body of executive power, politically accountable to Parliament – the *Sojm*. The *Sojm* participates in the formation of executive power primarily through the appointment of the prime minister, whereas the formation of the Government's personal composition falls within the competence of the prime minister. This construction shifts the centre of executive accountability from the presidential vertical to a system of parliamentary confidence and control. At the same time, the draft removes the judiciary from presidential personnel dependency through the National Council of Justice, and establishes local self-government as an autonomous level of public power that does not form part of the system of state authorities (Draft Constitution, 2025, Arts 3, 70, 95, 99, 102, 125).

The aim of the article is to show precisely which constitutional mechanisms of the CNB are designed to prevent the preservation or renewed emergence of personalist authoritarianism. The task is not to demonstrate the superiority of a parliamentary republic over a presidential system per se. Comparative political science has long shown that the stability of democracy depends not on any single institution, but on the combination of the form of government, the party system, legal culture and genuine guarantees of competition (Linz, 1990; Mainwaring and Shugart, 1993). For Belarus, therefore, the key question is which form of government is best suited to addressing the specific risk of renewed concentration of power during the forthcoming democratic transition.

1. The super-presidential model as an institutional problem

The 1994 Constitution is often perceived as a democratic alternative to the subsequent authoritarian redactions of the Constitution. From the standpoint of the form of government, however, it already contained significant institutional risks. Belarus departed from the logic of a parlia-

mentary republic laid down in the 1990 Declaration on State Sovereignty, and moved to a presidential model in which the president was simultaneously head of state and head of the executive. This created two independent centres of democratic legitimacy – the president and the Supreme Council – and the effectiveness of the mechanisms of interaction envisaged between them depended on the parties' willingness to preserve the logic of checks and balances.

The vulnerability of the 1994 model lay not in the presidential form of government itself, but in the weakness of the constitutional safeguards against the subsequent concentration of power. The president directed the system of executive bodies, the Cabinet of Ministers was created under the president, and there was no separate chapter on government in the Constitution. The Supreme Council took part in the appointment and dismissal of a number of key members of government, but the Constitution provided no effective mechanism for situations in which the president disregarded Parliament's position. Parliament could raise the question of the early dismissal of a member of government, but had no instrument to compel such a decision (Constitution, 1994, Arts 100, 107, 108).

A similar problem existed at the level of local government and self-government. The 1994 Constitution did not specify who was to form local executive and administrative bodies, leaving this question to ordinary legislation. At the same time, the president had the power to appoint other officials whose offices were determined by law. Consequently, the subsequent statutory entrenchment of presidential appointment of the chairmen of regional, city and district executive committees could not be regarded as a direct breach of the text of the 1994 Constitution. The original version also allowed the president to appoint judges – other than those whose election fell within the competence of the Supreme Council – to chair the Security Council and to serve as Commander-in-Chief of the Armed Forces. A simple return to the text of the 1994 Constitution would therefore not have eliminated the institutional preconditions for authoritarianism.

The decisive turning point was the 1996 constitutional reform. In its wake, the balance among the president, Parliament, the Government, the courts and other constitutional bodies was broken in the president's favour. The Supreme Council was replaced by a bicameral National Assembly, and the House of Representatives acquired a considerably weaker position compared with the former Parliament. It was stripped

of key personnel powers, and its capacity to oversee the Government was constrained by the risk of its own dissolution in the event of conflict with the president.

The 1996 reform also changed the legislative balance. The president gained the right to issue decrees having the force of law and effectively became an independent centre of rule-making. At the same time, his control over the Government, the Prosecutor's Office, the State Control Committee, the National Bank, the electoral bodies, the courts and the local executive vertical was strengthened. The formal separation of powers was preserved, but the real balance of institutions was supplanted by presidential dominance. The abolition of presidential term limits in 2004 completed the personalisation of this model, removing any time limit on a single individual's tenure of the presidency.

The 2022 constitutional amendments formally reinstated presidential term limits, but did not change the nature of the system. The transitional provision deferred the application of the two-term limit until the inauguration of a newly elected president, and therefore does not affect the incumbent holder of power. The president also retained a broad range of powers: calling referendums and elections; the power to dissolve the chambers of Parliament; determining the structure of government; appointing and dismissing members of government; appointing judges of the courts of general jurisdiction; presiding over the Security Council; influence over local government; and the power to annul acts of government.

The principal innovation of 2022 was the inclusion in the Constitution of the All-Belarusian People's Assembly. It was declared the highest representative body of the people's power and granted broad strategic, personnel and oversight powers, including participation in the formation of the higher courts and the Central Election Commission, the power to issue binding directives to state bodies, and the power to annul the acts of other bodies, with the exception of judicial acts. The Venice Commission observed that this reform did not correct the existing imbalance of powers and that the creation of the All-Belarusian People's Assembly could deepen it, including through the risk of the Assembly's Presidium becoming a parallel executive centre (Venice Commission, 2022).

The Belarusian super-presidential model thus took shape in stages. The 1994 Constitution established a strong presidency and failed adequately to protect other institutions against subsequent centralisation.

The 1996 reform transformed these risks into a system of presidential dominance. The 2004 amendment removed the time limit on the exercise of personalist power. The 2022 reform did not dismantle this system, but supplemented it with a new supra-parliamentary body and constitutional guarantees for the incumbent and former presidents. Consequently, any constitutional alternative for Belarus must answer the question of how to prevent a renewed concentration of executive, legislative, judicial, personnel and oversight power within a single political centre.

2. Theoretical framework for the choice of a form of government for post-authoritarian Belarus

The classical critique of presidentialism, formulated by Juan Linz, is associated with two risks: dual democratic legitimacy and a fixed term of office. The president and Parliament may simultaneously claim to express the will of the people, yet the constitution does not always provide a flexible means of resolving conflict between them. A fixed term makes such conflict more intractable, since an unpopular or dangerous president remains in office until the end of the term unless extraordinary impeachment procedures are triggered (Linz, 1990). In stable democracies, this risk can be mitigated by a developed party system, federalism, independent courts, media freedom and an established practice of constitutional self-restraint. For post-authoritarian systems, the risk is higher, since victory in a presidential election is often perceived as a mandate for one-person rule over the country.

Linz's critics rightly observed that not every presidential system leads to crisis, and not every parliamentary system guarantees democracy. Presidential democracies can be stable where presidential powers are limited, parties are institutionalised, Parliament is effective, and the courts are independent (Mainwaring and Shugart, 1993). The choice of form of government should therefore be assessed not as a dispute over the unconditional superiority of one model over another, but as a question of how specific institutional risks are managed.

For Belarus, the key risk is not presidentialism as such, but the personalisation of power under conditions of weak parties, dependent courts and a centralised administration. Against this background, a parliamen-

tary republic offers stronger institutional mechanisms for changing governments without changing the constitutional regime itself. When the Government loses confidence, Parliament can form a new one. When a coalition collapses, parties are compelled to negotiate or go to elections. This does not eliminate crises, but shifts them from the realm of personal confrontation to that of parliamentary procedure. For a society emerging from authoritarianism, this is particularly important. Political conflict becomes part of normal democratic competition rather than a threat to the survival of the state itself.

A further argument in favour of the parliamentary model concerns the quality of economic governance. A study by Richard McManus and F. Gülcin Özkan, based on comparative data from 119 countries for 1950–2015, shows that presidential regimes are on average associated with less favourable macroeconomic outcomes: slower growth in output, higher and more unstable inflation, and greater income inequality. According to their estimates, annual output growth under presidential regimes is 0.6–1.2 percentage points lower, inflation is at least four percentage points higher, and income inequality is 12–24% greater than under parliamentary systems (McManus and Özkan, 2018). These data do not prove an automatic economic advantage of parliamentarism, but they show that the form of government can affect not only political stability but also the quality of public policy.

The Venice Commission, in its updated Rule of Law Checklist, emphasises the importance of effective checks and balances, as well as constitutional review, as conditions for protecting democracy and preventing backsliding from the rule of law (Venice Commission, 2025). For Belarus, therefore, the task lies not only in shifting the centre of power from the president to Parliament, but also in distributing public power among Parliament, the Government, the courts, local self-government, independent oversight bodies, and citizens.

3. The parliamentary model of forming executive power and its accountability in the CNB

The CNB provides for a unicameral Parliament bearing the historical name *Sojm*. It comprises 220 deputies, elected on the basis of universal, free, equal and direct suffrage by secret ballot. Deputies are elected

under a system of proportional representation in multi-member constituencies (Draft Constitution, 2025, Art. 70). For post-authoritarian Belarus, this solution carries particular significance. Proportional representation, as a rule, more accurately reflects the political diversity of society than a majoritarian system, under which a relative majority of votes can produce a disproportionately high representation for the winner in Parliament. Amid the formation of a new party system, such a model creates institutional conditions for the representation of diverse political positions and their reconciliation through parliamentary procedures.

The Government, under the CNB, is defined as the highest collegiate body of executive power, accountable and responsible to the *Sojm* (Draft Constitution, 2025, Art. 99). This is one of the key distinctions from the current presidential model. Executive power ceases to be the domain of sole presidential leadership. Its legitimacy rests on parliamentary confidence, and the Government's programme of action is presented together with the prime minister's candidacy. The candidacy is put forward by the parliamentary faction or coalition of factions holding the largest number of deputies, following which the president, after consultations, submits it to the *Sojm* (Draft Constitution, 2025, Art. 102). The president's role in this procedure is thus predominantly constitutional and procedural, whereas the Government's political basis is formed within Parliament.

The mechanism for expressing a vote of no confidence in the Government is of particular importance. Deputies initiating a motion of no confidence must simultaneously put forward a candidate for the office of prime minister, and this candidate presents a new composition of the Government together with its programme of action. If the *Sojm* appoints the new prime minister, the vote of no confidence is deemed to have been expressed (Draft Constitution, 2025, Art. 103). This corresponds in substance to the model of a constructive vote of no confidence: it is designed to reduce the risk of governmental instability while preserving the parliamentary accountability of executive power.

This construction has significance for preventing a renewed concentration of power. First, it limits the president's ability to use a parliamentary crisis as an occasion for the independent exercise of executive power. Second, it increases the accountability of parliamentary forces. Changing the Government requires not merely criticism of the incumbent cabinet, but also the capacity to propose an alternative majority,

a candidate for prime minister, a composition of Government, and a programme of action. Parliamentary accountability is thus understood here not only as oversight of executive power, but also as an obligation on political forces to offer a realistic alternative of governance.

4. The president in the parliamentary model of the CNB

The CNB does not do away with direct presidential elections. The president is elected by citizens for five years, and the same person may not hold this office for more than two terms in a lifetime (Draft Constitution, 2025, Art. 90). The direct democratic legitimation of the head of state is thus preserved. The substance of the presidential office, however, changes considerably. The president remains head of state and Commander-in-Chief of the Armed Forces, represents Belarus in external relations, signs laws and international treaties, and takes part in certain appointment procedures. At the same time, the president does not direct the Government, determine its structure, appoint ministers at his or her own discretion, or exercise day-to-day control over executive power (Draft Constitution, 2025, Arts 89, 95, 99–104).

The countersignature of presidential acts is of particular importance. Decrees of the president, in order to acquire legal force, must be countersigned by the prime minister, with the exception of acts falling within the president's exclusive powers. Such acts must not contravene the Constitution or the laws (Draft Constitution, 2025, Art. 97). Countersignature therefore links presidential decision-making to the accountability of the Government, which is itself accountable to the *Sojm*. The president cannot therefore use his own acts as an independent instrument of governance against the will of the parliamentary majority.

The draft also substantially limits the possibility of presidential rule-making with the force of law. Decrees having the force of law are permitted only during a state of war, when the *Sojm* is unable to convene. They are adopted on a proposal of the Government, within the bounds of the Constitution and the law, and are subject to subsequent approval by the *Sojm*. Decrees not approved cease to have effect after 90 days or upon the end of the state of war (Draft Constitution, 2025, Art. 97). This construction takes account of the need for a swift response in

extraordinary circumstances, while not allowing emergency powers to become a permanent source of presidential rule-making.

Under this model, the president performs a limited constitutional role. He or she decides on early elections to the *Sojm* only where a deadlock established by the Constitution exists, represents the state, and takes part in security matters within the limits of his or her powers. This allows the institution of the head of state to be preserved without vesting the president with the status of head of the executive branch.

Such an approach is consistent with the logic of a parliamentary republic. The president performs the representative functions of head of state and holds limited powers to resolve constitutional deadlocks in cases expressly provided for by the Constitution. The president does not, however, supplant the Government or the parliamentary majority: political accountability remains centred on the relationship between the *Sojm* and the Government.

5. Checks on the parliamentary majority in the CNB

A parliamentary form of government reduces the risk of a personalist concentration of power, but does not eliminate a different risk: a political force that has secured a parliamentary majority may attempt to change the rules in its own interests. For post-authoritarian Belarus, this risk is particularly significant, since the new party system will take shape under conditions of low institutional trust and intense political competition. The CNB therefore provides not only for the parliamentary accountability of the Government, but also for special constraints on the parliamentary majority itself.

The first mechanism concerns the stability of electoral legislation. The draft establishes that the procedure for conducting elections is determined by the Constitution and by an organic law. At the same time, provisions of the electoral law concerning electoral rights, the electoral system, and the procedure for forming electoral commissions and determining their powers cannot be amended by a single composition of the *Sojm*. Such amendments are adopted by two successive compositions of the *Sojm*, separated by a regular election, with the subsequent composition required to vote for the law without amendment (Draft

Constitution, 2025, Art. 64). This limits the ability of a parliamentary majority to change electoral rules immediately before an election.

In addition, the draft prohibits amendment of the electoral law during a state of war or a state of emergency, as well as in the final six months before a regular election (Draft Constitution, 2025, Art. 64). A crisis, or the approach of an election, must not be used as an occasion to revise the rules of political competition. In this respect, the draft proceeds from the premise that the integrity of elections depends not only on polling day itself, but also on the predictability of the rules governing the participation of electoral contestants, the composition of electoral commissions, and the electoral system itself.

The second mechanism is the introduction of organic laws. The draft distinguishes ordinary, organic and constitutional laws. An ordinary law is adopted by a majority of those taking part in the vote, but by no fewer than one-third of the constitutional composition of the *Sojm*. An organic law requires a higher threshold – a majority of the constitutional composition of the *Sojm* – unless the Constitution provides otherwise. A constitutional law is adopted according to the special procedure for amending the Constitution (Draft Constitution, 2025, Art. 85). In this way, issues of particular importance to the organisation of state power are removed from the sphere of ordinary, situational voting.

The significance of an organic law lies in the fact that it gives concrete effect to constitutional institutions and must not be amended as readily as ordinary legislation. Organic laws govern matters on which the stability of the political system depends: elections, the activity of the *Sojm*, the Government, the Constitutional Court, the National Council of Justice, local self-government and other key institutions. The elevated threshold for adopting organic laws is thus a means of protecting the basic rules of public power from the short-term interests of the current majority.

The third mechanism relates to the procedure for amending the Constitution itself. A draft constitutional law amending the Constitution is subject to publication for nationwide public consultation and is considered by the *Sojm* only where the Constitutional Court has issued an opinion confirming that the draft complies with the established limits on revision. A first reading is possible no earlier than thirty days after publication, and the first and second readings each require no fewer than three-fifths of the votes of deputies of the constitutional composition of the *Sojm*. A third reading likewise requires three-fifths of the

votes and may not take place earlier than six months after the draft's submission (Draft Constitution, 2025, Art. 160).

An additional mechanism of deferred adoption then applies. Where the amendments concern the chapter on the fundamentals of the constitutional order or the chapter on amending the Constitution, the constitutional law must be adopted by a national referendum, no earlier than three months after its approval by the *Sojm* in the third reading. Adoption requires a majority of the total number of registered voters on the electoral rolls. In all other cases, the law must be confirmed without amendment by the next composition of the *Sojm*, by a majority of no fewer than three-fifths of its constitutional composition (Draft Constitution, 2025, Art. 160). Such a procedure does not allow a single parliamentary majority to rewrite the Constitution swiftly to suit the current political situation.

Particular importance attaches to the limits placed on constitutional amendment. The draft establishes that the provision defining Belarus as a unitary democratic social state based on the rule of law is not subject to amendment, and that no amendment to the Constitution may contravene it (Draft Constitution, 2025, Art. 162). This protects not merely the text of individual articles, but the very foundation of statehood. This is important precisely in the context of the risk of an authoritarian concentration of power: even a formally lawful procedure for amending the Constitution must not be used to dismantle the state's legal and democratic character.

Thus, the CNB responds to the risk of a parliamentary monopolisation of power through a multi-layered system of constraints. Electoral legislation is protected against swift amendment by the current majority; organic laws require broader consent; and amendment of the Constitution passes through public consultation, constitutional review, a qualified majority, a temporal delay, the involvement of the next composition of the *Sojm*, or a national referendum. Taken together, these mechanisms are directed at ensuring that the parliamentary republic does not turn into the unlimited rule of a parliamentary majority.

6. Conclusion

The project of transition to a parliamentary republic in Belarus should be understood not as a rejection of the institution of the presidency, but

as an attempt to eliminate the possibility of excessive concentration of power around the president. Its logic lies in distributing public power among several independent institutions, each with its own constitutional role, but none of which can single-handedly determine the entire political course of the state. The Sojm becomes the centre of political representation, the Government the centre of executive accountability, the president the head of state with representative and limited stabilising powers, the courts an independent mechanism for the protection of the law, local self-government an autonomous territorial level of public power, and the oversight bodies an additional instrument for preventing corruption and abuses of power.

The principal significance of the CNB lies in the fact that it takes account of Belarus's historical experience. Authoritarianism in Belarus took shape not only as a result of political practice, but also because of a constitutional arrangement that allowed a single institution gradually to subordinate the others. The new Constitution must therefore be designed so that even a strong and popular politician cannot turn a personal mandate into a basis for concentrating state power. In this context, a parliamentary republic serves not as an end in itself, but as a mechanism for dispersing power, ensuring public accountability and enabling the regular rotation of governments.

At the same time, the draft does not eliminate all risks. The stability of the new Belarusian democracy will depend on the quality of elections, the development of the party system, the independence of the courts, the resilience of local self-government, the freedom of the media, and society's capacity to defend the Constitution once it has been adopted. A constitution can create rules that make the resurgence of authoritarianism more difficult. The effectiveness of those rules, however, will depend on institutions, political competition and civic engagement, without which even the most carefully drafted constitutional text cannot by itself guarantee democratic development.

Abstract

This article examines the Draft Constitution for a New Belarus (CNB) as an institutional response to a structural problem of Belarusian constitutional development over recent decades — the excessive concentration of power around the presidency. The article's central thesis is that prevent-

ing a new authoritarianism requires not merely a change of political regime, but a change in the architecture of public power. The draft Constitution proposes a parliamentary-republic model in which executive accountability shifts from the president to the parliamentary majority, the Government becomes accountable to Parliament, and the president's powers are redefined within the logic of a parliamentary form of government. However, the article treats this model as part of a broader system of constitutional checks, which includes an independent National Council of Justice, a Constitutional Court, local self-government, and specialised oversight institutions. The article shows that a parliamentary form of government is not an automatic guarantee of democracy, but that, under conditions of free and fair elections, party pluralism, an independent judiciary and free media, it can reduce the risk of personalist concentration of power. For post-authoritarian Belarus, constitutional reform must therefore mean not a technical replacement of the presidential model with a parliamentary one, but the creation of rules governing public power under which no single institution or political force can again appropriate the power of the people.

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Right to Resist Tyranny in the European Tradition and in the Draft Constitution for a New Belarus

1. Introduction

The right to resist tyranny lies at the boundary of law and politics. On the one hand, a constitution is created so that political conflicts may be resolved peacefully, through elections, courts, parliamentary procedures, and other lawful mechanisms. On the other, the history of European constitutionalism shows that state institutions themselves may be captured and turned against society. This raises the question: does the people remain merely an object of power, or does it retain a primary right to defend the constitutional order once that power has ceased to be constitutional?

The Draft Constitution for a New Belarus (hereinafter: CNB) formulates an answer to this question at the level of the foundations of the constitutional order. Article 2(5) provides that the people and every citizen have the right to resist tyranny and oppression by anyone who encroaches upon the foundations of the constitutional order and violates democratic human rights and freedoms, where recourse to lawful means proves impossible (Draft Constitution, 2025). The norm is placed within the article on democracy. It thus links the right to resist to popular sovereignty, the prohibition on the usurpation of power, human rights, and the idea of the constitution as a compact between society and the state.

In the Belarusian debate, this formulation has raised questions above all because the right to resist appears paradoxical: it is entrenched in a legal text, yet designed for a situation in which ordinary legal mechanisms have already ceased to function. This paradox does not, however,

mean that the norm legalises arbitrary violence or removes political conflict from the sphere of law. The right to resist in a democratic constitution does not abolish the law, does not displace the courts, and does not convert political disagreement into a ground for the use of force. On the contrary, it establishes an extreme boundary: where tyranny has destroyed the legal means of protection, the law cannot require citizens to submit passively to unlawful authority.

The purpose of this article is to show that the right to resist, as set out in the CNB, is a logical element of the European constitutional tradition and, at the same time, a response to Belarus's specific experience. To this end, the article first considers the theoretical and international-legal foundations of the right to resist; it then analyses European constitutional models for entrenching this right; and it goes on to examine the Belarusian context and to propose a legal interpretation of Article 2(5) of the CNB.

2. The right to resist as a right of last resort

The idea of resistance to oppression predates modern constitutions. In the natural-law tradition, power is not a self-sufficient value: it exists to protect the human being – their life, liberty, property, dignity, and the common good. When power becomes a source of arbitrariness, it loses its moral and legal foundation. Understood in this way, resistance is not an ordinary form of political disagreement, but an extreme remedy for situations in which power itself has destroyed the legal mechanisms of protection.

The French Declaration of the Rights of Man and of the Citizen of 1789 included resistance to oppression among the natural and inalienable rights of man, alongside liberty, property, and security (*Déclaration des droits de l'homme et du citoyen*, 1789). Resistance was thus understood not as a negation of law, but as a defence of the very purposes for which state power is established. The state is created to preserve human rights, not to require citizens to submit unconditionally to whatever power happens to exist in fact.

After the catastrophes of the twentieth century, the right to resist acquired a new resonance. The Universal Declaration of Human Rights of 1948 does not contain a separate article on resistance, but its preamble states that human rights should be protected by the rule of law, so

that man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression (United Nations, 1948). This formula is important for two reasons. First, it confirms that the rule of law and effective legal remedies constitute the normal path for the protection of rights. Second, it recognises that, where such remedies have been wholly destroyed, resistance to tyranny cannot be regarded as inherently illegitimate.

Contemporary theory links this problem to the concept of militant, or defensive, democracy. Karl Loewenstein, analysing the experience of interwar Europe and the threat of fascism, showed that anti-democratic forces are capable of exploiting freedom of speech and assembly, the legality of political parties, and parliamentary procedure to destroy democracy itself. His central conclusion was that liberal democracy cannot remain passively neutral towards movements that make use of democratic freedoms to dismantle the democratic order (Loewenstein, 1937). Constitutional democracy must therefore defend not only the procedure for the transfer of power, but also the conditions on which its own existence depends: human dignity, popular sovereignty, the separation of powers, free elections, an independent judiciary, and fundamental rights.

Comparative constitutional research shows that the right to resist appears in the constitutions of various regions, and occurs with particular frequency following a break with an authoritarian past, a coup d'état, or a democratic transition (Ginsburg, Lansberg-Rodriguez and Versteeg, 2013). The authors emphasise the dual nature of this norm. On the one hand, it may serve as a democratic mechanism of protection against future tyranny, a reminder that the people remain the ultimate guarantor of the constitutional order. On the other, it may be used as a retrospective justification for an unconstitutional seizure of power that has already taken place. The right to resist is thus a constitutional paradox: it may strengthen democracy, yet may equally be turned against it, and its meaning depends on the political and historical context in which it is incorporated into the constitution.

3. The European constitutional tradition

European constitutions entrench the right to resist in different ways, yet most employ a similar legal framework. Within this, one can typically

identify the subject of resistance, the object of protection, the condition of last resort, and the limits of permissible conduct.

The best-known formula is that of the German Basic Law. Article 20(4) grants all Germans the right to resist anyone who seeks to abolish the constitutional order, if no other remedy is available (Basic Law for the Federal Republic of Germany, 1949). This provision was absent from the original 1949 text. When drafting the Basic Law, the Parliamentary Council debated including such a clause, but rejected it, fearing that radical forces might use the right to resist as a pretext to breach public order and destabilise the new democracy.

The resistance clause was inserted into the Basic Law only in 1968, alongside the passage of emergency legislation. Critics of these emergency powers feared a repetition of the Weimar scenario, in which emergency powers had served as a key legal instrument to destroy democracy. Article 20(4) thus served as both a political compromise and a constitutional safeguard: expanding state powers did not entitle the authorities to abolish the democratic order lawfully.

The Portuguese Constitution frames the right more broadly, linking it to the protection of rights and freedoms. Article 21 provides that everyone has the right to resist any order that violates their rights, freedoms or guarantees, and, where recourse to the public authorities is impossible, to use force to repel aggression (Constitution of the Portuguese Republic, 1976). This model connects resistance to specific unlawful orders and direct defence against aggression. It shows that the right to resist can carry not only a general political dimension, but also an individual, rights-protective one.

Article 23 of the Czech Charter of Fundamental Rights and Freedoms grants citizens the right to resist anyone who would abolish the democratic order of human rights and fundamental freedoms, where the functioning of constitutional bodies or the effective use of legal remedies has become impossible (Charter of Fundamental Rights and Freedoms, 1992). The Slovak Constitution employs a closely related formula. Under Article 32, citizens have the right to resist anyone who would abolish the democratic order of fundamental rights and freedoms, where the functioning of constitutional bodies and the effective use of lawful means have become impossible (Constitution of the Slovak Republic, 1992). Both formulations bear the imprint of the post-communist experience, directing protection against the destruction of the democratic order as a system of human rights.

The Estonian Constitution situates the right to resist within the context of defending independence and the constitutional order. Under Article 54, where no other means exist to counter a violent attempt to change Estonia's constitutional order, every citizen has the right to resist such an attempt on their own initiative (Constitution of the Republic of Estonia, 1992). For a country that regained its independence after Soviet domination, this formula carries particular significance. Because a threat to the constitutional order may originate not only from within, but also from without, the defence of the constitution is linked directly to the defence of the state as a space of political freedom.

The Greek Constitution employs the most solemn formula of all. Article 120(4) entrusts the observance of the Constitution to the patriotism of the Greeks, who have the right and the duty to resist by all possible means anyone who attempts to abolish it by force (The Constitution of Greece, 2019). This clause reflects the memory of the 'Black Colonels' dictatorship and the subsequent restoration of democracy, showing that the right to resist can be at once a legal provision and a symbolic lesson for society.

A comparison of these models shows that European constitutions envisage not rebellion against authority as such, but the defence of the democratic constitutional order. Resistance is permitted only when ordinary legal mechanisms are unavailable or can no longer function. Its subject is generally the citizens or the people, as resistance serves as a means of last resort to defend against anyone who destroys the constitutional order – whether an internal usurper, an anti-democratic force, or an external aggressor.

4. From the 1994 Constitution to the crisis of legality in Belarus

For Belarus, the question of the limits of submission to state power is bound up with the gradual erosion of constitutional institutions. The 1994 Constitution contained important elements of democratic constitutionalism: popular sovereignty, the separation of powers, rights and freedoms, a Constitutional Court, and the Supreme Council as the highest representative body and sole legislature. At the same time, however, it entrenched a presidential form of government, under which the president was head of state and of the executive, while the government re-

mained substantially dependent on the presidential office (Zhurakouski, 2024).

The key turning point came in 1996, when a referendum on constitutional amendments was used to radically restructure the system of power. On 4 November 1996, the Constitutional Court concluded that submitting constitutional amendments to a binding referendum was contrary to the Constitution and to the law, and that the results of such a referendum could be only consultative. The authority to adopt a new version of the Constitution belonged to the Supreme Council. In practice, however, the results of the referendum were used to introduce a new version of the Constitution, redistributing power decisively in favour of the president.

Following the 1996 changes, the president acquired the power to issue acts with the force of law, and to exert substantial influence over the composition of the electoral bodies and over appointments to the government, the judiciary, the prosecution service, and the local executive vertical. The Supreme Council was replaced by a bicameral National Assembly with far more limited powers. In this way, the original presidential model of 1994 was transformed into a system of personalist presidential power that preserved a formal separation of powers, while substantially weakening the actual mechanisms of checks and balances.

The next stage was the abolition of presidential term limits in the 2004 referendum. This amendment removed one of the last temporal constraints on presidential power, allowing an incumbent to hold the office of president indefinitely. As a result, the crisis of legality acquired a personalist as well as an institutional character. State power became increasingly bound up not with stable constitutional procedures, but with the retention of power by a particular political leader.

The 2020 presidential election and the subsequent political crisis marked a new stage in this process. Mass protests against the official election results were met with large-scale violence, mass detentions, the criminal prosecution of protesters, and pressure on journalists, human rights defenders, and civil society representatives. The OSCE Rapporteur under the Moscow Mechanism concluded that the 2020 election had failed to meet basic international requirements for transparent, free, and fair elections, and that the aftermath saw mass and systematic violations of human rights, including torture and ill-treatment (Benedek, 2020).

The 2022 constitutional reform did not resolve this crisis. Although term limits were restored to the Constitution, transitional provisions deferred their application until the inauguration of a newly elected president. At the same time, the All-Belarusian People's Assembly was incorporated into the system of government, with broad strategic, appointment, and oversight powers. The Venice Commission criticised the reform regarding its compliance with democratic standards, the procedure by which it was prepared, and the risk of further disrupting the balance of powers (Venice Commission, 2022).

The Belarusian constitutional crisis thus developed in stages: from the strong presidential model of 1994, through the redistribution of power in favour of the president in 1996, the abolition of term limits in 2004, and the crisis of legitimacy following the 2020 election, to the 2022 reform, which failed to restore institutional balance. This experience shows that the problem lies not only in individual violations of the law, but in the transformation of formal institutions into a mechanism for retaining personalist power.

5. The right to resist as an extreme means of defending the Constitution

In the draft CNB, the right to resist is entrenched in Article 2, which enshrines democracy. Placing this provision among the foundations of the constitutional order links it to the idea of popular sovereignty. Where the people are the sole source of power, and the seizure of power or the usurpation of state authority is prohibited, resistance to tyranny is not an act external to the Constitution, but an extreme form of defence of the Constitution itself.

The formulation in Article 2(5) contains several internal limitations. First, the subject of the right is 'the people and every citizen'. This combination of collective and individual dimensions is significant. On the one hand, it identifies the people as the bearer of sovereignty. On the other, the individual citizen is not subsumed within an abstract collective, nor obliged to wait for resistance to be sanctioned by an institution that may already be paralysed or captured. In this respect, the Belarusian formulation reflects the German and Estonian logic, in which the right to resist likewise belongs to individual citizens.

Second, the target of resistance is ‘anyone who encroaches upon the foundations of the constitutional order and the exercise of democratic human rights and freedoms’. This provision is significant because it does not confine the threat to a coup d’état or to the actions of state authorities. The encroachment may originate from the president, the government, the security forces, a political party, a group of officials, foreign forces, or other actors. What matters is not the status of the offender, but the character of the threat. The Constitution protects not public offices, but the democratic order and human rights. In a scholarly analysis of the CNB’s structure, Barabash (2024) highlighted the entrenchment of the right to resist tyranny as a key guarantee of the constitutional order.

Third, the right to resist arises only where there is an encroachment upon the foundations of the constitutional order and democratic rights and freedoms. It is not a right to oppose any given law, court decision, or government policy. In a democratic state, dissent is ordinarily channelled through elections, the courts, freedom of expression, assembly, petitions, public oversight, and political competition. Resistance to tyranny applies to a fundamentally different situation, in which the threat strikes at the very foundations of the legal and democratic order.

Fourth, the key condition is the impossibility of using lawful means. This is the most important safeguard against arbitrary interpretation. The Constitution recognises resistance not as an ordinary political instrument, but as an extreme means of defending the constitutional order. As long as the courts, parliamentary oversight, elections, public procedures, free media, constitutional complaints, international mechanisms, and other lawful means of protecting rights remain available, these must always be used first.

Article 2(5) is thus designed not as a licence for political violence, but as the constitutional recognition of the right to defend the democratic order when lawful means have become impossible. Its meaning lies in the principle that the legal order must not be left defenceless against those who use state power to destroy the law itself. This is especially important for a post-authoritarian transition, since the new Constitution must not only distribute powers among state institutions, but also determine how to respond if a future government again begins to dismantle constitutional constraints from within.

6. The right to resist within the system of constitutional guarantees

The right to resist in the draft CNB is not an isolated norm. It must be interpreted in conjunction with the draft's other provisions. Article 5 entrenches the rule of law, the supremacy and direct effect of the Constitution, the obligation of state institutions to act within the bounds of the Constitution and the law, and the invalidity of acts found to be contrary to the Constitution. Article 10 recognises human rights and freedoms as natural and inalienable, obliging the state to create effective mechanisms for their protection. Article 18 provides for the right to effective legal remedies, including individual constitutional complaints. These provisions show that the draft relies, above all, on the institutional protection of rights.

This same logic extends to Article 32, which provides for citizen participation in government through democratically elected representatives, referendums, public consultations, public oversight, and other mechanisms. This is important for a systemic interpretation of Article 2(5): the draft CNB prioritises ordinary democratic and legal means of influencing state power. Resistance to tyranny is no substitute for civic participation, but applies to a situation in which such means have been effectively destroyed.

Of particular significance is Article 49, which entrenches the right of citizens to refuse to execute or comply with orders and directives that are knowingly unlawful. This provision gives concrete expression to the idea that state discipline cannot stand above the Constitution. It is addressed not only to citizens in everyday life, but also to those acting within state structures. In an authoritarian system, violence is often carried out not by a single person, but by thousands of agents who justify their actions by appealing to superior orders. The constitutional right to refuse obedience dismantles this logic: an unlawful order does not create a duty to obey.

Closely related is Article 48 of the CNB, under which the armed forces and other military formations are subject to civilian control, must maintain political neutrality, and may not be used to restrict the peaceful exercise of human rights and freedoms. In the Belarusian context, this carries particular significance. The events of 2020 and subsequent years showed that the security forces can be turned into the principal

instrument of political control. The right to resist tyranny should therefore be understood not as a call for confrontation with the security forces, but as part of a broader model in which the security forces are constitutionally constrained, depoliticised, and bound by human rights from the outset.

This framework shows that the right to resist is not antithetical to the *Rechtsstaat*, but is incorporated into the system of legality, judicial protection, the subordination of state institutions to the Constitution, and civilian oversight of the security forces. Article 2(5) is therefore not a substitute for legal procedures, but an exceptional guarantee in the event of their complete destruction.

7. The limits of the right to resist and the risk of abuse

The most difficult problem posed by the right to resist lies in defining its limits. Any such norm is potentially dangerous if used to justify arbitrary violence or a refusal to comply with the law on the grounds of ordinary political disagreement. Contemporary constitutional doctrine therefore treats the right to resist not as an unconditional freedom of action, but as a strictly limited right, applicable only in exceptional circumstances.

The draft CNB contains several mechanisms designed to prevent an excessively broad interpretation of Article 2(5). First, Article 51 establishes that no provision of the Constitution may be construed as restricting or encroaching upon rights and freedoms recognised by national and international law. This means that resistance cannot be used to destroy the rights of others. The same article prohibits construing the Constitution as permitting the exercise of rights to cause harm to another person, to the environment, or to cultural heritage. The right to resist is thus no licence for arbitrariness.

Second, Article 52 entrenches the general principle of proportionality regarding restrictions on rights. Although this article directly governs restrictions imposed by the state, its logic applies equally to resistance. If the Constitution is built on the principle of proportionality, then resistance to tyranny, too, must be assessed by weighing the threat against the means of defence. The more serious the threat to the consti-

tutional order and to human rights, the wider the scope of permissible defence becomes. Even so, resistance must not become an end in itself, a punishment without trial, or an instrument of revenge.

Third, Article 2(5) makes resistance strictly conditional on the impossibility of using lawful means. Political disagreement, distrust of the government, criticism of a law, or protest against a particular official decision do not, in themselves, give rise to a right to resist tyranny. As long as elections, the courts, parliamentary procedures, freedom of expression, public oversight, and other effective protective mechanisms remain in place, these must always be used first.

Article 2(5) must therefore be interpreted restrictively and systemically. It neither legalises arbitrary violence, nor abolishes the rights of others, nor substitutes for an independent judiciary. Its purpose is to recognise the exceptional right of the people and every citizen to defend the constitutional order when the authorities themselves have destroyed all legal means of protection against tyranny and oppression.

8. The significance of the norm for Belarus's democratic transition

In a democratic transition, the right to resist tyranny performs several functions. The first is symbolic. The draft CNB must clearly break with the logic in which the state is treated as the supreme value and the citizen as a mere object of governance. Article 2(5) reverses this perspective, asserting that the state has no right to self-preservation at all costs, when it itself becomes an instrument of tyranny and oppression.

The second is educational. The Constitution does not merely regulate state institutions; it also shapes political culture. For a society that has endured prolonged authoritarian rule, it is vital to entrench the conception of the citizen as an active agent, not a passive subject. In this sense, the right to resist serves as a reminder that loyalty to the state is not the same as loyalty to a particular leader, party, or security apparatus. Genuine constitutional loyalty means fidelity to human rights, to popular sovereignty, and to the democratic order.

The third is institutional. The right to resist reinforces the other constitutional guarantees: the separation of powers, judicial independence, parliamentary oversight, local self-government, freedom of assembly,

freedom of expression, and the right to effective legal remedies. It does not replace these institutions, but gives them a common purpose. They all exist so that citizens are never compelled to employ this measure of last resort.

The fourth is preventive. Future officials, military personnel, law-enforcement officers, judges, and civil servants must know in advance that the Constitution does not recognise an absolute duty to obey the authorities when those authorities are destroying the constitutional order. This may have a deterrent effect. An authoritarian system rests not only on citizens' fear, but also on the readiness of its agents to execute unlawful orders. The constitutional right to refuse obedience and to resist undermines this readiness, introducing the principle of personal accountability to the Constitution into legal culture.

The fifth is international. The inclusion of the right to resist tyranny shows that the draft CNB is oriented towards the European constitutional tradition. Analogous norms exist in the basic laws of Germany, Portugal, the Czech Republic, Slovakia, Estonia, and Greece. Their common meaning is that democracy must have a right to self-defence. For Belarus, where authoritarianism developed through formally constitutional mechanisms, such a norm is especially apt.

At the same time, it is important not to overestimate Article 2(5). It is no panacea against authoritarianism, since no constitutional norm can, on its own, protect democracy without citizens' willingness to defend their rights and the constitutional order. The right to resist should be regarded as part of the broader architecture of the CNB, and as a reminder of citizens' personal responsibility for its preservation. Its strength lies not in the promise of a swift response to tyranny, but in a shift in the underlying presumption: the people are not the property of the state, and state authority cannot demand submission when it is itself destroying the law.

Conclusion

The right to resist tyranny in the draft CNB is one of its most fundamental, yet most sensitive, norms. It combines the European tradition of defending democracy with the Belarusian experience of constitutional crisis, the personalist concentration of power, political violence, and the destruction of legal institutions.

A comparison with European constitutions shows that such a norm is not an exception to the logic of the *Rechtsstaat*. On the contrary, it arises precisely within constitutionalism itself, as a response to its principal vulnerability: the possibility that the law may be used to destroy the legal order itself. European models formulate this right differently, but converge on one point: resistance is permissible only as a measure of last resort to defend the democratic order, when lawful means have become impossible.

The draft CNB follows this logic. Article 2(5) neither legalises arbitrariness, nor substitutes political violence for legal procedures. It entrenches the principle that the Constitution belongs to the people, not to those in power. Where anyone encroaches upon the foundations of the constitutional order and democratic human rights, and lawful means of protection become unavailable, the people and individual citizens retain the right to defend the very possibility of a legal and democratic order.

For the new Belarus, this norm carries particular significance. It is not a call for conflict, but a constitutional lesson drawn from the country's own experience: the state must be strong in protecting rights, yet limited in its capacity to degenerate into tyranny. For this reason, the right to resist tyranny should be regarded as an essential element of democratic constitutional design, complementing the separation of powers, judicial independence, civilian oversight of the security forces, and the right to refuse obedience to unlawful orders.

Abstract

This article examines the right to resist tyranny, as enshrined in Article 2(5) of the Draft Constitution for a New Belarus for Public Discussion of 17 January 2025. This norm is treated neither as a licence for arbitrary violence nor as a substitute for legal procedures, but as a remedy of last resort, arising only when there is an encroachment upon the foundations of the constitutional order and democratic human rights, and when recourse to lawful means has become impossible. The article analyses the theoretical foundations of the right to resist, European constitutional models that entrench it, and the Belarusian experience of constitutional crisis since 1994 – including the 1996 constitutional changes, the abolition of presidential term limits, the events following the 2020 election, and the 2022 reform. The author concludes that Article 2(5)

must be interpreted restrictively and systemically, in conjunction with the rule of law, effective legal remedies, the right to refuse obedience to knowingly unlawful orders, and civilian oversight of the security forces. Understood in this way, the right to resist tyranny is not a threat to the *Rechtsstaat*, but an exceptional defence of the Constitution when the authorities themselves have destroyed all legal means of protection.

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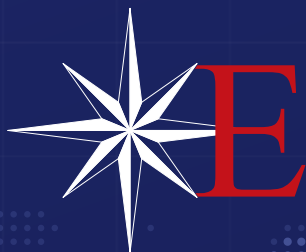
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Towards a European Constitutional Identity of Belarus

Introduction

The constitutional vision for a post-Lukashenka Belarus is expressed in the Draft Constitution for a New Belarus, prepared by a working group (Public Constitutional Commission) under the auspices of the Office of Sviatlana Tsikhanouskaya, the leader of the democratic Belarus (Draft Constitution of Belarus, 2022). It has already become a subject of scientific research from different angles (Buchsbaum and Pabel, 2024; Czachor, 2024).

What is the essence of this vision and what is its difference from the existing ‘constitution’ of Lukashenka’s regime? The best way to answer these questions conceptually is to determine what kind of constitutional identity is expressed in the Draft Constitution for a New Belarus, which key elements of this identity are worth highlighting. This is the main purpose of this article.

As for many doctrinal concepts, it is hard to find a uniform or binding definition of constitutional identity. For the purpose of this article, the combined conception of constitutional identity is taken as a basis.

In general, constitutional identity is perceived as encompassing the constitutional principles and provisions which reflect the essence of the constitutional system and constitute the exceptionally safeguarded constitutional core (Jarašiūnas, 2021, pp. 43–44). In other words, from the body of textual (first of all, the text of the Constitution) and historical materials we can find in the Constitution the basic and regime-defining characteristics that provide general definitional content to constitutional identity (Jacobsohn, 2011, p. 129). It can be defined first and fore-

most by constitutional eternity clauses, known as the German model of unamendable constitutional identity (Calliess, 2019), as well as by other constitutional traditions that, in principle, remain open to modification, known as the French model of relative constitutional identity (Jarašiūnas, 2021, pp. 64–65). However, in a broader sense, the concept of constitutional identity ranges from focus on the actual features and provisions of the Constitution (for example, a presidential or a parliamentary system of governance) to the relation between the Constitution and the culture in which it has to operate, and to the relation between the identity of the Constitution and other relevant identities, such as national, historical, religious, or ideological identity (Rosenfeld, 2012, pp. 756–757). To the extent that it is based on common ideas of constitutionalism, the constitutional identity can be common or shared with other States (for example, one can refer to the European constitutional identity). However, even such universal constitutional principles as the rule of law, the separation of powers, and respect for fundamental rights may acquire important national nuances and be subject to divergent interpretations and applications. Such differences may stem from the specific wording of the Constitution and its historical antecedents.

A similar concept of constitutional identity has been employed in the context of European integration by a number of the European institutions of constitutional control, including the constitutional courts of the Czech Republic, Germany, Latvia, Poland, Spain, and the Constitutional Council of France (Jarašiūnas, 2021, pp. 57–61, 63–68, 70–74). Albeit not expressly referred to as such, the concept of constitutional identity is also clearly implicit in Lithuanian constitutional jurisprudence (Žalimas, 2022, pp. 5–17), which has identified supra-constitutional (and therefore unamendable) principles, de facto unamendable constitutional clauses, and other constitutional traditions established by the fundamental constitutional acts of the State of Lithuania even before the adoption of the Constitution itself (Constitutional Court of Lithuania, 2020, paras. 6, 8.1, 8.2).

Thus, in order to identify and determine the key elements of Belarusian constitutional identity expressed in the Draft Constitution, its relevant provisions have to be considered in the context of their constitutional antecedents. In this respect, the Preamble to the Draft Constitution invokes ‘the law written in Belarusian in the Statutes of the Grand Duchy of Lithuania, in the Charters of the Belarus People’s Republic and the Belarusian Constitutions’. Here three Lithuanian Statutes

of the 16th century (Žalimas et al., 2017, pp. 390–391), five (the first three as the most important) Constituent Charters of the Belarus People's Republic (BPR) of 1918 (Constituent Charters of Belarus, 1918) and the original Constitution of the Republic of Belarus of 15 March 1994 (Constitution of Belarus, 1994) are kept in mind.

Obviously, this list of constitutional antecedents cannot be considered as exhaustive. First, the reference to 'the law written in Belarusian' excludes the Constitution of the Commonwealth of Two Nations of 3 May 1791 (with the Mutual Guarantee of the Two Nations of 20 October 1791) (Žalimas et al., 2017, pp. 392–394), as it was written in Polish (translated into Lithuanian afterwards). Nevertheless, the Constitution of 3rd of May (as it is most often referred to) is inevitably relevant to the Belarusian constitutional tradition, as the Grand Duchy of Lithuania then encompassed the territory of present-day Belarus. Second, though not mentioned in the list, the declaration of independence – the Declaration on State Sovereignty of the Republic of Belarus of 27 July 1990 (with amendments of 19 September 1991) (Declaration on State Sovereignty of Belarus, 1990) – is also significant for the determination of the Belarusian constitutional identity. It can be regarded as a 'birth certificate' of the contemporary Belarusian State, which describes the core of constitutionalism and, together with the Constitution, forms a block of constitutionality of the Belarusian State. Such a status and the role of the declaration of independence (sovereignty) has been similarly described by the constitutional courts of Moldova (Constitutional Court of Moldova, 2013, paras. 47–51, 73–75, 87–91), Slovenia (Constitutional Court of Slovenia, 2011, paras. 7, 8) and Lithuania (Constitutional Court of Lithuania, 2020, para. 6, in particular 6.4).

At the same time, the list appears to be somewhat ambiguous, as well as the reference in the Preamble to the 'Byelorussian Soviet Socialist Republic' as one of the historic forms of the Belarusian statehood. This ambiguity reflects the dilemma of Belarusian constitutional identity, which is natural for many post-Soviet countries trapped in the past and inherent in the tension between the European roots of national constitutional traditions and Soviet legacy (Žalimas and Danėlienė, 2024, pp. 18–19, 23, 24, 30). However, the implied reference to the 'constitutions' of the Byelorussian SSR is not by itself sufficient to treat them as having impact on the Belarusian constitutional identity embodied in the Draft Constitution. It is due to the well-known fictitious character of both the Soviet statehood of Belarus (Mälksoo, 2025, pp. 145–146)

and its Soviet ‘constitutions’. The further analysis proves that it is hard to find anything in essence common between the Draft Constitution and the Soviet ‘constitutions’ of Belarus (Zhurakouski, 2024, p. 4).

1. Unamendable constitutional identity

The most important novelty of the Draft Constitution is the expressly established eternity clause – the constitutional principles that are immune from any amendment, even by referendum. This status is recognised to the fundamental Art. 1(1) of the Draft Constitution – the very definition of the modern State of Belarus: ‘the Republic of Belarus – Belarus – shall be a unitary democratic social State governed by the rule of law’. By virtue of Art. 162(1) of the Draft Constitution, ‘Art. 1(1) of the Constitution shall not be subject to any changes. No amendment to the Constitution shall be contrary to Art. 1(1) of the Constitution’. Thus, according to Art. 1(1) of the Draft Constitution, there are the following constitutional foundations, or the utmost fundamental constitutional principles, which will not be subject to any changes even by the Belarusian people after they adopt this Constitution and which any constitutional amendment will have to comply with: 1) sovereignty of the State of Belarus (though not expressly mentioned in the text, it is an inalienable feature of statehood as such); 2) the republican form of governance (as follows from the name of the State of Belarus); 3) unitarian character of State organisation; 4) democratic nature of a political regime; 5) social character of the State policy; 6) the rule of law as the basis for the State’s activities.

The wording of Art. 1(1) of the Draft Constitution is almost identical to that of the first sentence of Art. 1(1) of the 1994 Constitution. However, the latter provision was not accorded the status of an eternity clause. So, why is it now proposed that this provision be elevated to such a status, and what would this entail?

Naturally, the eternal constitutional clauses express the unamendable constitutional identity that can also be referred to as the structural principles of statehood or the core of the Constitution. Following the tradition of American constitutionalism, this means that the Constitution cannot be employed against itself, including for the purpose of destruction of its foundation – the sovereignty of the People and their State. In other words, the Constitution cannot be perceived as a ‘suicide pact’, to use a maxim commonly associated with the era of U.S. Presi-

dent Abraham Lincoln (Posner, 2006, pp. 153–154). Therefore, the clauses prohibiting constitutional amendments that would strike at the essence of the rule of law, inherent human rights and democracy as such, serve as a safeguard of a democratic self-determination, however paradoxically this may sound. If the substance of democracy is depleted, though in a formally democratic way, there will be no room left for the further exercise of popular sovereignty and self-determination. An example of totalitarian or authoritarian regimes (in particular, in Belarus) is rather obvious.

This reasoning is supported by the Venice Commission (the European Commission for Democracy through Law) that is the most authoritative international expert institution on constitutional issues. In its Report on Constitutional Amendment the Venice Commission stated that ‘unamendability is a complex and potentially controversial constitutional instrument, which should be applied with care and reserved only for the basic principles of the democratic order’ (Venice Commission, 2010, para. 218). The Venice Commission has also consistently emphasised that texts submitted to a constitutional referendum must comply with the substantive limits, both intrinsic and extrinsic, of constitutional reform and must not be contrary to international law or the Council of Europe’s statutory principles of democracy, human rights and the rule of law (Venice Commission, 2001, para. II.D; 2007, para. III.3; 2022, para. III.1). In the latest Revised Code of Good Practice on Referendums, the Venice Commission added that texts submitted to a referendum also must not be contrary to ‘Council of Europe membership conditions’ and that ‘States may add further limitations’ (Venice Commission, 2022, para. III.1).

By introducing an eternity clause, the Draft Constitution also reflects a broader trend in modern constitutionalism: nearly 35 per cent of the world’s constitutions contain explicit unamendable provisions, and their prevalence has steadily increased since the 1990s (Roznai, 2014, p. 28). The Draft Constitution follows the pattern of such European countries as Germany, France, Romania, Ukraine and Moldova. In this regard, it is worth quoting the Lisbon judgment of the German Federal Constitutional Court:

Within the order of the Basic Law, the structural principles of the State laid down in Article 20 of the Basic Law, i.e. democracy, the rule of law, the principle of the social state, the republic, the federal state, as well as the substance of elementary fundamental

rights indispensable for the respect of human dignity are, in any case, not amenable to any amendment because of their fundamental quality. <...> Through what is known as the eternity guarantee, the Basic Law reacts on the one hand to the historical experience of a creeping or abrupt erosion of the free substance of a democratic fundamental order. However, it makes clear on the other hand that the Constitution of the Germans, in accordance with the international development which has taken place in particular since the existence of the United Nations, has a universal foundation which cannot be amended by positive law (BVerfG, 2009, paras. 217–218).

Mutatis mutandis this interpretation can be applicable to the unamendable constitutional values consolidated in Art. 1(1) of the Draft Constitution.

In addition, the Draft Constitution has been also influenced by such neighbours as Lithuania and Latvia, where the texts of national constitutions do not provide explicit eternal clauses, but such clauses are implicit and have been identified by the respective constitutional courts through the interpretation of constitutions. For example, the Lithuanian Constitutional Court identified the eternal nature of the fundamental constitutional principles, such as the independence of the State, democracy and inherent nature of human rights, which are consolidated by Art. 1 of the Lithuanian Constitution and arising out of the Act of Independence of 16 February 1918 (Constitutional Court of Lithuania, 2014, para. I.5.3 of the argument; 2020, para. 8.2). Its Latvian counterpart proclaimed that the fundamental values, upon which the State of Latvia is based, including the fundamental rights and freedoms, democracy, the sovereignty of the State and the People, the separation of powers, the rule of law, cannot be infringed by any amendments to the Constitution (Constitutional Court of Latvia, 2009, para. 17).

Thus, the purpose of the proposed eternity clause is clear: to protect the very foundations of the State, the sovereignty of the People, and the constitutional order of Belarus. It represents a response to the experienced erosion of the democratic constitutional order, providing constitutional safeguards against dictatorship or any other attempt to undermine the sovereignty and democratic self-determination of the People. The proposed eternity clause, reflecting both universal (such as democ-

racy and the rule of law) and particularistic (such as republicanism and unitarianism) constitutional values, is also limited to the basic principles of a democratic constitutional order.

2. European identity and rejection of the ‘Russian World’

The proposed eternity clause of the Draft Constitution would have a broader and significant implication: it would contribute to anchoring Belarus within a shared European (or even transatlantic) constitutional identity, which is construed on the commonness of fundamental constitutional values. This concept can be traced to the Declaration on the European Identity of 1973, where the then nine Member States of the European Communities expressed their determination to defend the fundamental elements of the European Identity – the principles of representative democracy, of the rule of law, of social justice and of respect for human rights; the shared values and aspirations, based on the common heritage, with the United States of America were also acknowledged (European Communities, 1973, paras. 1, 14). The commonness of similarly identified and defined values can be also seen in the Preamble of the North Atlantic Treaty (North Atlantic Treaty, 1949), the Preamble of the Statute of the Council of Europe (Statute of the Council of Europe, 1949), Arts. 2 and 6(3) of the Treaty on European Union (Treaty on European Union, 2016). In addition, as already established, the Draft Constitution follows the standards and practices of other European States in entrenching the eternity clauses.

The historical and conceptual roots of the eternity clause in the Draft Constitution can serve as another argument for anchoring Belarus within a European constitutional identity. In particular, the Preamble with references to the Statutes of the Grand Duchy of Lithuania and the BPR Constituent Charters is important in this regard. In general, the preamble of a constitution has systemic links with the rest of the constitutional text and can express the spirit of the whole constitution (Barabash, 2024, p. 70). The significance of these references for the construction of constitutional identity is demonstrated by the fact that, in 1994, during the adoption of the then Constitution, they failed to secure the necessary majority in Parliament and were therefore excluded from the final text (Vashkevich, 2024, p. 83).

For several centuries following their adoption, the Lithuanian Statutes were among the most advanced codifications of law in Europe and reflected the evolving European constitutional tradition – in particular, the emerging concept of the rule of law, with its key requirement that the exercise of State (monarchical) power be based on and bound by law, guided by the interests of the common good, and limited for the protection of individual liberties (Valikonytė, 2017, pp. 14–40). The origins of some other elements relevant to the rule of law can be found in the Lithuanian Statutes: basic civil rights for nobility (equality before law, guarantees of personal freedom, including personal inviolability and the presumption of innocence), the beginning of parliamentarianism and local self-governance (local and the central assemblies of nobility), the independence of judiciary from the executive administration. The same roots of the constitutional tradition of the rule of law are, to the least, shared with Lithuania, whose Constitution of 1992 also expressly refers to the Lithuanian Statutes in its Preamble as one of the legal foundations of the Lithuanian statehood (Constitution of Lithuania, 1992).

The European roots of Belarusian constitutional identity could be further strengthened by incorporating a reference to the Constitution of the Commonwealth of Two Nations of 3 May 1791, which is currently absent from the Preamble of the Draft Constitution. Through such a reference, the claim to a European constitutional identity could be reinforced by demonstrating that, already in the 18th century, Belarus formed part of the first wave of European constitutionalism. The Constitution of 3rd of May, as the first written Constitution in Europe and the second written Constitution in the world (following the US Constitution of 1787), had much more conceptual influence on the development of European constitutionalism than the Lithuanian Statutes. It advanced substantially the elements of the rule of law: the supremacy of the Constitution over statutory laws was established; the principle of separation of powers was introduced through the classic triad of the legislative, the executive and the judicial powers, while the principle of independence of the judiciary was strengthened; the parliamentarianism was developed by clearly defining the lower chamber of the Parliament (the *Sejm*) as the representation of the whole political (civic) Nation and by introducing the instruments of parliamentary control over the executive; equality of citizens and local self-governance was expanded to townspeople (Machovenko, 2017, pp. 42–56).

Meanwhile, the roots of some of the constitutional values protected by the eternity clause, such as sovereignty, democracy, and the social state, can be traced back to the BPR Constituent Charters, which reflected an understanding of these principles similar to that prevailing in other European countries that were also seeking independence at the time (with the exception of the abolition of private ownership of land under para. 7 of the Second BPR Constituent Charter, which, somewhat paradoxically, coincided with the Bolshevik approach to private ownership). For example, according to the First and the Third BPR Constituent Charters, sovereignty of the Belarusian State was based on the right of the Belarusian people (including national minorities) to full self-determination. Meanwhile, democracy was understood as vesting sovereign power within the Belarusian people and its realisation through their representative institution – the Constituent *Sojm*.

The reliance on the inalienable right to self-determination was continued during the establishment of the modern State of Belarus (Art. 1 of the Declaration on State Sovereignty of Belarus, 1990; Preamble to the Constitution of Belarus, 1994). Therefore, it is natural to find in the Preamble to the Draft Constitution an affirmation of ‘the inalienability of the rights of the Belarusian people to self-determination and State independence’, as well as, in the definition of democracy, the principle that ‘the People are the sole source of power and the bearer of sovereignty in the Republic of Belarus’ (Art. 2(2) of the Draft Constitution).

As regards popular sovereignty and democracy, one detail seems to be important in terms of a European constitutional identity of Belarus and is closely related to the references to the Lithuanian Statutes and the BPR Constituent Charters. It is the chosen name of the Belarusian Parliament – *Sojm* (Соўм) (Chapter 5 of the Draft Constitution) – although, formally, it is not protected by an eternity clause. Nevertheless, this choice is intended to revive the constitutional tradition of the Grand Duchy of Lithuania, which was later continued in the BPR Constituent Charters, thereby breaking with the post-Soviet tradition reflected in the 1994 Constitution, under which the Parliament was called the Supreme Council (*Soviet*) (Chapter 3 of the Constitution of Belarus, 1994). Thus, as regards the name of its Parliament, Belarus could become the fourth country influenced by the parliamentary tradition of the Commonwealth of Two Nations, which consisted of the Kingdom of Poland and the Grand Duchy of Lithuania (the Lithuanian Parliament is called the *Seimas*, the Latvian Parliament the *Saeima*, and the lower chamber of

the Polish Parliament the *Sejm*). This could become yet another symbolic gesture of Belarus's alignment with its European regional roots and its distancing from dependence on Russia.

The origins of the constitutional tradition of a social State can be found in para. 8 of the Second BPR Constituent Charter, which proclaimed the introduction of an eight-hour working day in Belarus. In 1918, the legal establishment of an eight-hour working day was a progressive social measure in Europe. Belarus was formally declared a social State in Art. 1(1) of the Constitution of 15 March 1994.

One more argument as to why the eternity clause established in Art. 1(1) of the Draft Constitution would contribute to shaping a European constitutional identity of Belarus lies in the content of that clause, in particular, in the principle of the rule of law. Under the Draft Constitution, the rule of law is a core principle, underpinning spirit and content of the entire Constitution: e.g., supremacy of the Constitution is reconciled with the international commitments (respect to international law), all State bodies and officials are placed under the Constitution, direct effect of the Constitution and publicity of law are highlighted as elements of the rule of law (Art. 5 of the Draft Constitution); the recognition, observance, provision, and protection of human rights and freedoms is proclaimed to be the main duty of the State (Art. 2(1) of the Draft Constitution); transparent, accountable, inclusive and democratic legislative process is provided (Arts. 81–86 of the Draft Constitution); separation of powers, equality and non-discrimination, access to justice and constitutional control are subject to constitutional guarantees (Arts. 3, 5(4), 16, 18, 27, 28, 124, 128 of the Draft Constitution). In general, the Draft Constitution englobes formal as well as substantive elements of the rule of law, as they are revealed in the Venice Commission's Updated Rule of Law Checklist (Venice Commission, 2025) with such benchmarks as legality, legal certainty, prevention of abuse of power, checks and balances, equality and non-discrimination, access to justice, constitutional review; the Draft Constitution reflects current European and international standards of the rule of law and implements them in the Belarusian context (Kiener and Gunjic, 2024, pp. 252–253).

Finally, the Europeanisation of the Belarusian constitutional identity under the Draft Constitution stands in sharp ideological contrast with the current 'constitution' of the authoritarian regime in Belarus ('Constitution' of the Republic of Belarus, as last amended in 2022), which does not expressly mention any deeper historical constitutional tradi-

tion of the country (though the preamble mentions in an abstract way ‘the centuries-long history of the Belarusian statehood’). The identity construed by the ‘constitution’ of Lukashenka’s regime is built mostly on the Soviet narrative of the ‘great patriotic war’ fought by ‘Soviet partisans’ (i.e., the war between the Soviet Union and the Nazi Germany of 1941–1945), which was imposed by Lukashenka following the usurpation of the full State power (Nikžentaitis, 2021). Art. 15 of the ‘Constitution’ currently obliges the State ‘to preserve memory of heroic deed of the Belarus people in the Great Patriotic War’, while, in a similar manner, Art. 54 proclaims that ‘the preservation of historical memory about the heroic past of the Belarus people as well as patriotism shall be a duty of each citizen of the Republic of Belarus’. These provisions are essentially Russian in origin, as they were made by Lukashenka in 2022 largely borrowing them from analogous constitutional amendments adopted in Russia in 2020 (Law of the Russian Federation, 2020, Art. 1(2)), which reflect imperial nostalgia and ideology (Mälksoo, 2025, p. 3). They are also anti-European in essence, as they are directed against the foundations of pluralistic democracy, including the freedoms of expression, assembly and association.

Moreover, they are detrimental to the self-identification of the Belarusian people and their national statehood: in the current Belarusian context, they serve to legitimise repression against a significant part of Belarusian civil society that seeks to construe its identity around narratives other than the Russian one, including those associated with the Grand Duchy of Lithuania and the BPR (Law and Democracy Center (Justice Hub), 2022, paras. 21, 23). Ultimately, this also contributes to the imposition of ideological alignment with Russia, based on the predominance of the Russian language and the narratives of the ‘Russian world’. In this regard, it is worth recalling that the European Parliament condemned nationalist imperialist ideology of Ruscism, based on narratives of the ‘Russian world’, as well as its policy and practices by the current Russian regime, as incompatible with international law and European values (European Parliament, 2025, recital F, para. 13).

Needless to say, the Draft Constitution represents a move in the opposite direction – towards an authentic European constitutional identity of Belarus, accompanied by a rejection of the ‘Russian world’. It can be also referred to as the move towards deauthoritarianisation and decolonisation of Belarus (Czachor, 2024, p. 26).

3. Relative constitutional identity

There are various distinctive elements that can be attributed to the category of relative constitutional identity reflected in the Draft Constitution. Most of them can also be traced to constitutional antecedents, in particular the BPR Constituent Charters and the Declaration on State Sovereignty, while others emerged in the Draft Constitution as specific responses to the challenges posed by the present dictatorship. The following elements falling within this category of constitutional identity can be highlighted, without claiming that the list is exhaustive.

3.1. Parliamentary Republic

The Draft Constitution seeks to establish a functioning parliamentary democracy in which Parliament has the predominant role; in particular, the formation and functioning of the Government depend on the parliamentary majority (Draft Constitution of Belarus, 2022, Arts. 99(2), 102, 103). The chosen constitutional design is proximate to that introduced in neighbouring Lithuania in 1992 (Danėlienė and Žalimas, 2024, p. 175): the Government can function only on the basis of parliamentary confidence and is accountable to the Parliament, while the role of the president is rather ceremonial, even though the president is directly elected by the People (the president is not free to choose a candidate for Prime Minister but has to submit to Parliament the candidate proposed by the parliamentary majority). However, the Draft Constitution regulates the appointment of the Prime Minister, which is central to the successful formation of the Government, in greater detail: it empowers Parliament to appoint the Prime Minister upon the proposal of the president and even to nominate a candidate for this office if the two previous presidential nominees fail to receive parliamentary support. By comparison, in Lithuania there is only one option – the prime minister is appointed by the president with the consent of Parliament (Constitution of Lithuania, 1992, Art. 92).

The origins of a parliamentary republic are related with the Third BPR Constituent Charter, which proclaimed a full State independence of the Belarus People's Republic on 25 March 1918. It was supplemented by the Law on the BPR Council of 9 October 1918 and the Law on the BPR Council of People's Ministers of 11 October 1918, altogether forming the BPR temporary constitutional order or even the provisional Con-

stitution (Plisko, 2021). Both laws established a parliamentary republic, as the governmental power assigned to the Council of People's Ministers had to be exercised 'on the basis of parliamentary accountability' to the BPR Council; the latter had also to appoint the Chairperson of the Council of People's Ministers and to assign him the task of forming the cabinet of ministers. Parliamentary republic was also implied in Art. 2(2) of the Declaration on State Sovereignty of the Republic of Belarus, which proclaimed the exclusive right of the then Parliament (the Supreme Council) to act on behalf of the Belarusian people. No other State body has been granted such a status of the representative institution.

Thus, the Draft Constitution intends to revive the constitutional tradition of a parliamentary republic, which was not preserved by the Constitution of 15 March 1994 (it established a presidential system of governance, with the Cabinet of Ministers being highly dependent on the president (Constitution of Belarus, 1994, Arts. 95, 106, 107)). It is very important for future viability of democracy in Belarus. The revival of a parliamentary republic takes into account the lessons from the past and the region – almost all post-Soviet countries that chose a presidential form of government experienced democratic backsliding and eventually became autocracies (including Belarus). This also corresponds to the predominant practice among European democratic states, which generally have a parliamentary form of government.

As regards the form of government, the only notable feature retained from the Constitution of 15 March 1994 is the direct popular election of the president (Constitution of Belarus, 1994, Art. 97(1); Draft Constitution of Belarus, 2022, Art. 90(1)). However, this feature, typical of a semi-presidential form of government, does not change the general picture, in which the framework of a parliamentary republic prevails.

3.2. Respect for human rights

It is no coincidence that the Draft Constitution contains a comparatively long and detailed Chapter 2 'Human Rights, Freedoms and Duties' (Arts. 10–53). Most of the human rights and freedoms enshrined therein are being systematically violated by Lukashenka's regime.

The Draft Constitution develops a constitutional tradition that can be traced to the Second BPR Constituent Charter of 9 March 1918, para. 5 of which enumerated a number of freedoms that are particularly rele-

vant in the present Belarusian context, such as the freedoms of expression, press, assembly, strikes and association, unconditional freedom of conscience, and inviolability of a person and place of residence. It develops also the supreme goal of sovereignty, as proclaimed in Art. 3 of the Declaration on State Sovereignty, – ‘a dignified life for every citizen <...> on the basis of ensuring human rights’ in conformity with the Constitution and international obligations.

In sharp contrast to the current ‘constitution’ of the authoritarian regime stands the Europeanisation of human rights under the Draft Constitution. The Draft Constitution enshrines the principle that international law – and, eventually, European law – constitutes a constitutional minimum standard for the protection of human rights. It is visible from the prohibition to interpret constitutional rights in a manner that restricts or infringes human rights and freedoms recognised by international law (Draft Constitution of Belarus, 2022, Art. 51(1)). In addition, Art. 18(3) of the Draft Constitution expressly recognises the right to protect human rights by means of application to international bodies, in accordance to international treaties of Belarus, as well as declares the decisions of those international bodies to be binding on Belarus.

Two more remarkable changes must be seen in the context of Europeanisation. First, the express prohibition of the death penalty established by Art. 13(2) of the Draft Constitution, which would align Belarus with the common European standard of the abolition of the death penalty. Second, the Draft Belarusian Constitution appears to be unique in the post-Soviet area due to its progressive regulation of equality and non-discrimination. For example, Art. 27 expressly includes gender, gender identity and sexual orientation among the prohibited grounds of discrimination. Meanwhile, Art. 25(1) provides for a gender-neutral definition of marriage and family (‘All people, upon reaching marriageable age, have the right to establish a family and to marry. <...> Spouses have equal rights in marriage and family’), which would entail the constitutional recognition of same-sex marriage and the corresponding family relations of same-sex couples.

Thus, the adoption of the Draft Constitution could facilitate the future integration of Belarus into European human rights structures, including the Council of Europe and its Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Bilková, 2024, p. 225). One can add that this would also contribute to releasing the country from the grip of the ‘Russian world’.

3.3. Respect for international law

Similarly, according to the Draft Constitution, respect for and openness to international law, in particular including human rights, constitute an inalienable element of a European constitutional identity of Belarus. This principle, as the imperative to act in conformity with international law, was established in Arts. 1(2) and 3 of the Declaration on State Sovereignty; it was later reaffirmed in Arts. 8 and 21 of the Constitution of 15 March 1994. Art. 5(5) of the Draft Constitution intends to further develop this constitutional tradition by bringing this obligation within the ambit of the rule of law. In addition, the monistic orientation is maintained (Deikalo, 2024, p. 265): ratified international treaties form part of national law and take precedence over domestic legislation (Draft Constitution of Belarus, 2022, Art. 5(6)).

The unique feature illustrating particularly friendly attitude to international law is the proposed new limitation on constitutional amendments: Art. 162(2) of the Draft Constitution would prohibit amendments to the Constitution ‘if the changes provide for a violation of the binding provisions of international law’. Similar substantial limitations requiring the compatibility of constitutional amendments with international obligations exist only in Lithuania and Switzerland (Žalimas, 2017, p. 18).

3.4. Right to uprising

One more unique feature relevant to constitutional identity of Belarus is the right to uprising, largely shaped by the current Belarusian context, in particular the struggle of the civil society against the authoritarian regime. It is established as a means of last resort within the definition of democracy under Art. 2 of the Draft Constitution: ‘the People and each citizen shall have the right to resist against tyranny and oppression by anyone who encroaches on the foundations of the constitutional order and the exercise of human rights and freedoms of a democratic nature, when the employment of legal means is not possible’ (Draft Constitution of Belarus, 2022, Art. 2(5)). In addition, Art. 49 of the Draft Constitution, entitled ‘Right to Disobey’, provides for the right of citizens to disobedience and non-execution of knowingly illegal instructions.

The consolidation of the right to uprising against tyranny (as well as the related right to civil disobedience) was inspired by the Preamble to

the Universal Declaration of Human Rights (UDHR, 1948), where the right ‘to rebellion against tyranny and oppression’ is recognised also as means of last resort when human rights are not protected by the rule of law. Besides, the Draft Constitution follows the example of Art. 3(2) of the Constitution of the Republic of Lithuania of 1992, which proclaims that ‘the People and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force’. This provision of the Lithuanian Constitution was inspired by the peaceful resistance to Soviet aggression in 1991 and, therefore, appears to be broader in scope, as it comprises the right to resist both external aggression and internal oppression.

In conjunction with the prohibition on the usurpation of the People’s power (Draft Constitution of Belarus, 2022, Art. 2(4)), the right to uprising would legitimise resistance to Lukashenka’s regime and efforts to dismantle it, notwithstanding repression by the regime through the use of law-enforcement agencies and measures.

3.5. Emphasis on democratic electoral principles and proportional elections

The specific Belarusian context, including the dysfunctional institution of elections and abuse of referendums for the usurpation of power, also dictates the need to ensure the integrity and fairness of the electoral (voting) process, in particular by preventing any falsification or distortion of the will of the People. This explains the significant expansion of the scope of constitutional regulation of both institutions of direct democracy (Barabash, 2024, p. 73), with two separate chapters devoted to elections and referendums (Chapters 3 and 4, respectively), in which particular attention is paid to the democratic electoral principles common to both institutions (Arts. 54–60), the regulation of the activities of electoral commissions, in particular the Central Electoral Commission (Arts. 62, 63), the requirements for electoral legislation, in particular its stability (Art. 64), and the requirements for calling and holding referendums (Arts. 65, 66, 68).

In this manner, the Draft Constitution also develops the constitutional tradition originating in the First and Second BPR Constituent Charters, which established democratic electoral principles at the constitu-

tional level. The Second BPR Constituent Charter proclaimed in greater detail that the All-Belarusian Constituent Assembly was to be convened on the basis of ‘universal, direct, equal voting, secret ballot and proportional electoral right’ for the entire adult population, without distinction as to nationality, religious belief or sex (para. 2). While the principles of universal, equal and direct suffrage and secret ballot are generally recognised throughout the world, a unique feature of the emerging Belarusian constitutional order was the entrenchment at the constitutional level of a proportional system of parliamentary elections. In Art. 70(4), the Draft Constitution aims to re-establish the proportional system of elections to the *Sojm*, as the Constitution of 15 March 1994 did not maintain this tradition.

3.6. Strong independent institutions and fourth branch

Again, the specific Belarusian context, in particular the absence of checks and balances in the system of State governance and the abuse of powers by law-enforcement agencies to repress civil society, explains the particular attention paid in the Draft Constitution to the independence of the judiciary (Chapter 9 ‘Judicial Power’, and Chapter 10 ‘Constitutional Court’) and of the Prosecutor’s Office (Chapter 11). In more detail the Draft Constitution addresses the principles of judicial proceedings that comply with the standards of the rule of law (Art. 123), the constitutional status of the judicial magistrate body (National Council of Justice) (Art. 125), requirements for candidates to judges (Art. 120) and constitutional judges (Art. 127(2)), guarantees of independence and inviolability (Art. 122), the formation and powers of the Constitutional Court (Arts. 127, 128).

In accordance with the European standard, the Draft Constitution by its Art. 130 proposes to deprive the Prosecutor’s Office of a rudimentary function from the Soviet past – ‘general oversight of compliance with legislation’ (Barabash, 2024, p. 74). The unique feature of the Draft Constitution is the extensive involvement of civil society in the governance of the judiciary: under Art. 125(2), ‘half of the members of the National Council of Justice are elected by the congress of representatives of higher education institutions of law, scientific institutions, bar associations, public organizations working in the field of law’. Another distinctive feature is the complete exclusion of political bodies from appointment of

judges, with the exception of constitutional judges: according to Art. 121(1) ordinary judges are appointed by the National Council of Justice.

The particularity of the Draft Constitution lies also in the reliance in prevention of abuse of power on the so-called Fourth Branch institutions, i.e. additional State bodies – independent regulatory and oversight institutions – that supplement the system of checks and balances between three main branches of State power (Kiener and Gunjic, 2024, p. 247). They are intended to protect the country from a retreat to authoritarianism (Czachor, 2024, p. 25). Therefore, their activities are regulated in considerable detail (Draft Constitution of Belarus, 2022, Chapter 13 ‘Commissioner for Human Rights’, Chapter 14 ‘Control Chamber of the Republic of Belarus’, Chapter 15 ‘Intelligence and Security Services Oversight Committee’, Chapter 16 ‘Public Service Ethics in Anti-Corruption Committee’). Similarly, the existence of a special Chapter 12 ‘Bar’ with quite extensive constitutional regulation can be also explained by a particular need in the current Belarusian context to guarantee the independent functioning of this professional community of lawyers.

3.7. Reinstatement of national symbols and promotion of the Belarusian language

The affirmation of the official status of the Belarusian language and the protection of national historical symbols constitute a constitutional tradition of Belarus originating at least in the Declaration on State Sovereignty. This stands in sharp contrast to the policy of the current authoritarian regime, which treats the possession or display of historical symbols and national attributes as manifestations of ‘extremist activity’ and has also subjected expressions of Belarusian national and linguistic identity to repression (OHCHR, 2022, para. 68).

Art. 9(2) of the Declaration on State Sovereignty obliges the State to preserve national traditions and historical symbols. In line with this obligation, national symbols were declared to be official State symbols under Art. 19 of the Constitution of the Republic of Belarus of 15 March 1994. However, these symbols were replaced under Lukashenka’s rule by Soviet-style symbols. Naturally, the Draft Constitution intends to reinstate the status of official State symbols to the white-red-white flag and the Pahonia coat of arms (Art. 8 (2, 3)). It also introduces a unique

State symbol – the historical Belarusian national motto ‘Long Live Belarus!’ (*‘Žyvie Bielaruś!’*) (Art. 8(4)). Meanwhile, the issue of the State anthem remains unsettled in the Draft Constitution.

The most complicated issue in this field, which remains far from being resolved and is left to be decided by referendum, is that of the official State language. There is no doubt that Belarusian will be granted such a status, as Art. 1(1) of the Declaration on State Sovereignty proclaims the official status of the Belarusian language to be an attribute of the sovereign Republic of Belarus. However, the issue of a possible second official language, Russian, remains unclear. While the Declaration on State Sovereignty is silent on any status of the Russian language, the realities of the linguistic situation on the ground – the majority of the population speaks Russian as a first language – dictated the granting of a special status to Russian as a ‘language of inter-ethnic communication’ under Art. 17 of the Constitution of 15 March 1994. In any case, the priority of Belarusian as the sole or the first official State language has to be ensured, as Art. 9(2) of the Declaration on State Sovereignty obliges the State to ensure the use of the Belarusian language in ‘all spheres of social life’. So far, the Draft Constitution contains only one provision expressly establishing the priority of the Belarusian language: according to Art. 91(2), the oath of the president has to be taken in the Belarusian language.

3.8. Neutrality and European integration

The most controversial is the issue of neutrality in Belarus. On the one hand, it can be acknowledged as the constitutional tradition of Belarus: the aim to establish a nuclear-free zone and permanent neutrality of the State is declared in Art. 10(2) of the Declaration on State Sovereignty. It was repeated in Art. 18(2) of the Constitution of 15 March 1994. In 2022, by means of an illegitimate referendum, Lukashenka abandoned this objective, replacing it with the hypocritical declaration that Belarus ‘excludes military aggression from its territory against other states’ (‘Constitution’ of the Republic of Belarus, as last amended in 2022, Art. 18(2)). In fact, this amendment sought to legitimise the military alliance with Russia, the deployment of Russian armed forces and nuclear weapons in Belarus, as well as the use of Belarusian territory for acts of aggression against Ukraine.

Art. 6(2) of the Draft Constitution seeks to revive the aspiration for the status of permanent neutrality of Belarus as well as defines the territory of the State as being free from nuclear and other weapons of mass destruction. It seems logical in light of the said constitutional tradition. However, on the other hand, taking into account the drastically changed geopolitical situation and the possible prospect of a future democratic Belarus joining the European Union, the permanent neutrality clause may appear obsolete and should most likely be reconsidered. This is all the more so given the provision of Art. 6(3) of the Draft Constitution, which envisages the possibility of joining international organisations involving the transfer of part of State powers to supranational bodies. This provision appears to contemplate, in particular, the possibility of future EU membership.

Conclusions

So, what vision of Belarus is shaped by the Draft Constitution? This question can be answered briefly by identifying the elements of the unamendable core of the Belarusian constitutional identity reflected in the Draft: sovereignty, the rule of law, democracy, republic, social State, unitarianism. Unamendability is intended to serve as a means of last resort for protecting the sovereignty and democratic self-determination of the Belarusian people from being undermined or destroyed.

One can also add – Belarus is a European State, as the Draft Constitution expresses the fundamental values of a common European constitutional identity, builds on the European roots of Belarusian constitutionalism, which can be traced to the Lithuanian Statutes of 16th century, and implements European standards of the rule of law, while fully respecting modern national constitutional traditions originating in the BPR Constituent Charters of 1918 and the Declaration on State Sovereignty of 1990.

Finally, Belarus is envisaged as a resilient State, one that has learned the painful lessons of its history and is determined not to allow dictatorship to return. This is evident not only from the unamendable constitutional core, but also from other key elements forming the relative constitutional identity, which can in principle be modified but are generally intended to be preserved. They include such well-known categories as a parliamentary republic, respect for human rights and interna-

tional law, genuine democratic electoral principles, and a strong and independent judiciary and Fourth Branch. They are supplemented by more nationally distinctive elements of Belarusian relative constitutional identity: a proportional system of parliamentary elections, the reinstatement of national historical symbols, and preference for Belarusian as the official State language. Some of these elements, such as permanent neutrality, remain open to reconsideration in light of the prospects for European integration. Last but not least, the name of the future Belarusian Parliament – *Sojm* – is itself indicative of the envisaged regional allegiance of the country.

A European constitutional identity of Belarus, as expressed in the Draft Constitution, marks the fundamental difference from the post-Soviet or Russian identity imposed by Lukashenka's regime. Through the Draft Constitution, a democratic Belarus seeks to break away from the 'Russian world', where the same concepts – such as the rule of law, democracy, a social state, elections, referendum, human rights and respect for international law – acquire idiosyncratic, hypocritical meanings that are contrary to their European understanding. The Draft Constitution is intended to mark the beginning of Belarus's long path back to Europe.

Abstract

The article examines the vision of Belarus embodied in the Draft Constitution through its constitutional identity. The unamendable core comprises sovereignty, the rule of law, democracy, the republic, the social State and unitarianism, serving as a last-resort safeguard of the Belarusian people's sovereignty and democratic self-determination. The Draft Constitution expresses a European constitutional identity: it draws on the European roots of Belarusian constitutionalism in the Lithuanian Statutes, implements European rule-of-law standards, and respects national traditions stemming from the 1918 Constituent Charters of the Belarus People's Republic (BPR) and the 1990 Declaration on State Sovereignty. Belarus is envisaged as a resilient State, protected against the return of dictatorship by relative identity elements such as a parliamentary republic, respect for human rights and international law, democratic electoral principles, and independent judicial and Fourth Branch institutions, alongside distinctive features such as proportional elections, national symbols, the Belarusian language, and the Belarusian Parlia-

ment, the *Sojm*. Some elements, notably permanent neutrality, remain open to reconsideration in the light of European integration. The article concludes that the Draft Constitution marks a break with the ‘Russian world’ and with Lukashenka’s regime.

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How to Advise the Development of a New Constitution for Belarus from a European Perspective

Introduction

This article is aimed at commenting upon and suggesting how to advise the Belarus democratic forces in their wish to develop a ‘modern European’ constitution for their country – which could also be of interest to other countries in such or a similar state of constitutional development. To achieve this aim, we take the Austrian-initiated and led year-long process of co-ordinated advice by leading European experts on constitutional law and human rights of 2020/2021 to the Belarus democratic opposition in their efforts to develop the ex-/post-Soviet constitution of their country into a truly democratic constitution in line with European and international standards as a kind of ‘textbook case’.

Two — complementing — starting points

The rigged presidential elections of Belarus of summer 2020 led various countries to consider measures in support of the democratic forces of Belarus. In view of Austria’s long-time constitutional history and its Constitutional Court, regarded as the oldest such institution in the world, constitutional law was soon identified as a possible field where Austria could be of help.

On the Belarusian side, during the years leading up to 2020, various democratic groups and personalities in Belarus — including eminent lawyers — started re-drafting the Belarus Constitution in view of making it truly democratic. Their starting point was in particular to get rid

of a number of authoritarian amendments pushed through by Aliaksandr Lukashenka.

The most comprehensive undertaking to re-draft the Constitution by democratic forces was a drafting process started in March 2019 by a group of opposition politicians, later named the ‘Public Constitutional Commission’, under the leadership of the long-time opponent of Lukashenka, Anatol Liabedzka, a former MP of the 12th and 13th convocation of parliament, chair of the United Civic Party, head of the European Dialogue Centre, and repeatedly detained under Lukashenka. In autumn 2020, exiled presidential candidate Sviatlana Tsikhanouskaya appointed him ‘Representative for the Constitutional Reform’ in her Cabinet of Representatives.

The basic idea behind drafting a new constitution ahead of the democratic transformation was the possible lack of time and stamina to do so when possibly suddenly such transformation would take place.

The ‘seminar’

While originally a seminar had been planned for one weekend in Vienna, COVID and other factors led it to be expanded and held fortnightly by videoconference under the title of ‘International Seminar on Belarus Constitutional Reform’. At the end, altogether 20 sessions including a final in-person conference in Vienna were held from February to November 2021, co-ordinated by the author.

The participants

Before embarking on the issues to be tackled, the question of participation had to be solved and be made absolutely clear to the prospective participants. As the aim of the seminar was to provide expertise by leading European constitutional and human rights lawyers to those from the Belarusian civil society/democratic forces – from various quarters – as well as from Belarusian universities and high courts, working on and interested in, the ‘democratisation and Europeanisation’ of the Constitutions of Belarus, in particular to the active re-drafters, such personalities had to be found and their interest in participating established and secured.

Austria also made efforts to associate individual personalities from academic and judicial state bodies of Belarus to the seminar. While there was some interest by a couple of them, their participation was finally prevented by the regime. To hold a parallel seminar with state representatives, as suggested by the regime, was not realised either – due to unrealistic conditions set by Minsk.

From the community of exiled Belarusian lawyers and other specialists from legal and political bodies, the seminar was attended by, inter alia, Professor Uladzimir Astapenka, Enira Branitskaya, Aliaksandr Dabravolski, Andrei Kazakevich, Mikhail Kiryliuk, Anatol Liabedzka, Leu Marholin, Valery Matskevich, Professor Mikhail Pastukhou, Professor Ivan Pliakhimovich, Attorney Illia Salei, Valery Tsapkala, Professor Aliaksandr Vashkevich, Valery Zhurakouski, Siarhei Zikratski, and a number of further (unnamed) personalities.

On the advisers' side, the co-ordinator of the seminar wanted to provide to the Belarusian drafters not only a broad expertise on issues relevant to constitutions, but that also from various geographic and professional backgrounds. The experts did not only come from so-called 'old established democracies', but also from countries which in the past had to modernise, democratise and 'Europeanise' their constitutions, and organise and implement a transition to a democratic and human-rights-oriented system, like countries of South-East Europe and Eastern Central Europe. And already existing advisers to the Belarus drafting efforts from, inter alia, Strasbourg and the USA (representing the Stockholm-based 'International IDEA') were also included in the seminar.

Members of the Venice Commission participating in the seminar were – in individual capacity – Professors Veronika Bilková (Bratislava), one of the authors of the OSCE Moscow Mechanism 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (2022)' and member of the Managerial Board of the EU Fundamental Rights Agency (FRA), Peter Bußjäger (Innsbruck and Liechtenstein), Regina Kiener (Zurich), Vice-President of the Venice Commission, Angelika Nußberger (Cologne), international judge at the Constitutional Court of Bosnia and Herzegovina and former Vice President at the European Court of Human Rights, Katharina Pabel (Vienna) and Dainius Žalimas (Vilnius), former President of the Constitutional Court of the Republic of Lithuania.

The author of the 'OSCE Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of

9 August 2020 in Belarus', Professor Wolfgang Benedek, also contributed to the seminar. As did Professor Mirosław Wyrzykowski, former judge of the Polish Constitutional Tribunal and awardee of the Austrian Constitutional Prize of 2021, on the Polish experiences and caveats deriving thereof, Professor Iurii Barabash, of Yaroslav Mudryi National Law University (Kharkiv, Ukraine), on past and current developments in his country, and Professor Joseph Marko (Graz), former Vice-President of the Constitutional Court of Bosnia and Herzegovina.

Additional expertise came from Professors Ingrida Danėlienė (Vilnius), Stefan Hammer (Vienna), Francesco Palermo (Verona and Bolzano/Bozen, Italy), Bernd Wieser (Graz, Austria) as well as from Thomas Markert (Strasbourg, France), and Erin C. Houlihan (USA). Contributors to individual sessions were, inter alia, Professor Adam Bodnar (SWPS University Warsaw), former Commissioner for Human Rights of the Republic of Poland, Heinz Gärtner (Vienna University, Danube University Krems and International Institute for Peace IIP, Vienna), Professor Christoph Grabenwarter (Vienna University of Economics and Business), President of the Austrian Constitutional Court, member and former vice-president of the Venice Commission, Professor Robert Krimmer (e-Governance, Tartu), Professor Georg Milbradt (Dresden), Special Envoy of the German government for the Ukrainian reform agenda, former Minister-President of Saxony, and Professor Daniel Thürer (Zurich), member of the Permanent Court of Arbitration (The Hague) and former Member of the OSCE Court of Conciliation and Arbitration.

Altogether, some 25 Belarusian personalities and some 25 international advisers participated in the sessions of the Seminar. Besides general advice on the various topics (ref. *supra*), all advisers referred in detail to the provisions of the Liabedzka-coordinated 'Draft Constitution for a New Belarus'. The European experts neither redrafted the existing Liabedzka team draft nor required any changes to it, but simply offered their up-to-date European expertise and suggestions, which were intensely debated with their Belarusian counterparts at high levels of legal and political expertise.

The topics

One starting point of the seminar were the two existing drafts for a future Constitution of Belarus, one by Liabedzka and his team, and the other by Professor Mikhail Pastukhou, former/dismissed member of the

Constitutional Court of Belarus. Both drafts were taken into account and commented upon in detail from the beginning, but (advice on) drafting later focused on the first one, as it was more forward-looking and already further developed.

The seminar covered literally everything relevant to democratic constitutions and started with an overview on constitutional choices in Eastern Europe and the CIS. Besides traditional issues like competences of the head of state, the parliament and the government; fundamental freedoms and human (including minorities) rights, and their safeguarding and enforcement; a democratic judiciary; system(s) of legal protection; and elections of members of democratic institutions, individual sessions also addressed, e.g., the vertical division of powers (decentralisation, devolution, local/regional self-government); participatory democracy and its tools (including e-governance); referendums and initiatives; ombudspersons and national human rights institutions; processes for changing the Constitution; the Belarusian neutrality (definition and inclusion into the Constitution); and transitional justice (lustration, retributive justice, reconciliation commissions). On many issues, opinions of the Venice Commission were presented and discussed.

‘First conclusions’

In the following we will present in shorthand ‘first conclusions’ after some months of discussions of the seminar as presented at an external event:

- I. The present and the 1994 Belarus Constitution need major overhauling – in order to reflect the precepts and institutions of a genuine democracy of today.
- II. It is impressive that the development of the draft ‘People’s Constitution’ is undertaken diligently, and drawing upon European and international standards and advice, and by a transparent and inclusive process.
- III. It is not clear yet, by which process and at which stage of the formative process this new Constitution should be enacted. Will it be through a single constitutional or revolutionary act, or gradually, and at which stage of determining the legitimate representatives of the people and state? There are differing opinions on the Belarusian side on this question.

- IV. It will not be sufficient to update existing provisions of the Constitution by just eliminating authoritarian elements and introducing truly democratic content. A far-reaching overhaul has to design a well-balanced redistribution of powers between the Head of State, Parliament and Government – both central and local – and possibly also a new wording on the neutrality of the country (see Buchsbaum, 2024, pp. 115–128).
- V. In addition, on the one hand, contemporary concepts and features of democracy and democratic institutions have to be studied and incorporated in a new Constitution. Some work is still needed here, on topics such as participatory democracy, enabled civil society, effective inclusion and protection of all sorts of minorities, expanded guarantees of judicial protection of citizens' rights, true regional and local self-government, and e-governance, which is situated at the crossroads of good governance and digitalisation.
- VI. On the other hand, in order that a democratic Belarus becomes – as quickly as possible – a member of the Council of Europe, the substance of the major European conventions and of the case-law of the European Court of Human Rights has to be reflected in the new Constitution. There is still some work to do in this field, too.

The concluding meeting in Vienna

The concluding meeting of the seminar held in the historic hall of the Austrian Federal Ministry for European and International Affairs on 20 November 2021 dealt with 'The way forward towards a democratic Constitution of Belarus' and 'Our work – what we achieved and how we want to carry it forward'. It was addressed by Professor Christoph Grabenwarter, President of the Austrian Constitutional Court, Anatol Liabedzka and Leu Marholin, Professors Regina Kiener, Wolfgang Benedek and Katharina Pabel, Messrs. Valery Tsapkala, Uladzimir Astapenka and Valery Matskevich, and commented by Professors Benedek, Hammer, Kiener, Pabel, Vashkevich, Wieser, Wyrzykowski, Žalimas, and Messrs. Salei and Kazakevich.

The main advisers' comments from the meeting were that the current draft reflected well current European and international standards, and breathed 'a fresh, modern and innovative spirit'. The drafters had been very responsive to suggestions made during the Seminar. Only few

issues remained to be amended, and a broad political consensus by interested Belarusian parties and the people on the draft to be established, including on presidential powers. At the end, mutual (legal and political) concessions were needed.

The open, transparent public consultations on the draft were generally much praised, while further consultations amongst democratic forces were suggested, as well as an increased education and sensitisation of the Belarusian public, in particular the youth, on (the importance of) democracy and constitutional issues. The path to and way of the adoption of the New Constitution needed more clarity.

On the issues still to be included/refined were, inter alia, a strong self-protection mechanism of the Constitution itself, some ex ante-control of (organic) legislation by the Constitutional Court and the generally too narrow rights to appeal to the Constitutional Court, stronger human rights enforcement procedures, the appointment procedures of justices, some elections issues (including thresholds, possible direct mayoral elections, referendums – including the role of the Constitutional Court – and the Central Election Commission (CEC)), accountability of perpetrators of serious human rights violations and recognition of and redress to victims, as well as citizenship and asylum issues.

The book (Buchsbaum and Pabel, 2024)

As it became clear in the course of the year 2021 that democratic change was not imminent in Belarus – but rather the contrary – the wish for a solid documentation of the expertise and advice provided arose. With financial support by the Austrian Federal Ministry for European and International Affairs and the Austrian ‘Forum Verfassung’ (Constitution Forum), a 780-page book was produced – also in print – fully both in English and Belarusian/Russian.

It covers most of the topics discussed within the framework of the seminar. It is structured into ‘The Belarusian constitutional identity’, ‘Transitional constitutional processes in the post-Soviet space’ and the ‘Draft Constitution for a New Belarus’, where ‘Overarching elements’, ‘Democracy and the division of powers’, ‘Human rights and the Rule of Law’ and the ‘Integration of Belarus in the European and international community’ are addressed by individual articles.

Besides 19 contributions by eminent European constitutional and human rights lawyers from 10 different countries – Austria, Belarus, Czechia, Germany, Italy, Lithuania, Poland, Switzerland, Ukraine, and the United States – it also included the texts of the ‘Declaration on the State Sovereignty of the Republic of Belarus’ of 1990/1991 and of the ‘Draft Constitution for a New Belarus – People’s Constitution’ elaborated by the ‘Public Constitutional Commission’ under the overall direction of Anatol Liabedzka, Representative for the Constitutional Reform of Sviatlana Tsikhanouskaya, of 14 July 2022.

The book is readily available. It was publicly presented at the European Parliament in Brussels, in Strasbourg (at the Fondation René Cassin) – both in the presence and with congratulatory remarks by Sviatlana Tsikhanouskaya – as well as in Vienna and Vilnius. It became a kind of handbook for Belarusian politicians, lawyers and civil society for fine-tuning the new constitution of a new Belarus once the political conditions on the ground allowed for such development. The book can furthermore be of use also to other countries dealing with post-Soviet constitutions.

The time factor and further disillusion

When discussing the timing of the seminar with the Belarusian partners, they urged its quick start and results. The domestic and international reaction to the rigged presidential elections of summer 2020 had led to hopes for a quick democratic transition and, thus, the early need for a diligently elaborated text of a democratic constitution.

These hopes gradually diminished and an early adoption of a democratic constitution looked unlikely. In addition, further disillusionment came with yet another Constitutional amendment according to Lukashenka’s wishes – and also Russia’s liking (ref. the abolishment of the aim of the state to become neutral and the territory to be nuclear-free) – in 2022 leading further away from European standards, yet another rigged constitutional referendum, and – in connection with Russia’s unwarranted war of aggression against Ukraine – a much-deepened military alliance of Belarus with Russia.

The way ahead

While the ‘Draft Constitution for a New Belarus – People’s Constitution’, which was – via an online process over several months – also well consulted with Belarus people, constitutes the (legal) starting point of a new, democratic Belarus, a number of key issues to the state and democracy could not be elaborated in detail in the draft. The Liabedzka team resorted to define a list of ‘organic laws’ – structurally situated between the constitution and ordinary laws – for elaboration in the following years. A couple of them – together with a few draft ordinary laws – already exist in an advanced state at the time of writing this article (summer 2026).¹

Conclusions

All international advice can only complement and add to domestic aspirations and wishes. It has to be system-neutral as to different concepts and traditions of democratic constitutions and try to understand local political and societal particularities which may have to be reflected in the constitution.

Integrating today’s European standards and thinking on constitutional law and human rights into the future Constitution of a democratic Belarus requires not only domestic knowledge and will, but also outside advice – be it by international institutions, governments, international and national courts, universities, think-tanks and CSOs/NGOs, and their experts. While the determination by Belarusian democratic politicians and legal experts, supported by the figurehead of democratic Belarus, Sviatlana Tsikhanouskaya, clearly existed, legal and linguistic expertise on the vast array of fields covered by modern European constitutions was domestically lacking. This concerned, in particular,

¹ E.g., the draft organic laws ‘On Local Self-Governance in the Republic of Belarus’, ‘On Gender Equality’, ‘On the Constitutional Court of the Republic of Belarus’, ‘On the National Council of Justice of the Republic of Belarus’, and ‘On the Commissioner for Human Rights of the Republic of Belarus’ – besides draft (ordinary) laws ‘On the President of the Republic of Belarus’, ‘On the Government of the Republic of Belarus’, ‘On Political Parties’, ‘On the Police’, ‘On the Committee on Civil Service Ethics and Anti-Corruption’ and the Draft Statute of the *Sojm* (<https://tsikhanouskaya.org/en/new-belarus.html/page/3?type=all&date, 20/07/26>).

a number of Council of Europe instruments and the case law of the European Court of Human Rights.

Bringing co-ordinated external expertise and advice to the domestic drafters and their staff was undertaken in a year-long process, where leading European experts – mostly from universities, but with international advising experience – were addressing chapter-by-chapter of the draft, upon which the domestic drafters further developed their text. The changes in their drafts were remarkable and fundamentally improved the character of the text. The final outcome of the mutually advising process, the ‘Draft Constitution for a New Belarus’ of 14 July 2022, was and is well documented in print and online – in order to be available when it would be required by the state authorities.

As to some remaining gaps to be filled in accordance with current European standards and thinking, besides provisions of Council of Europe instruments and the case-law of the European Court of Human Rights, it is, in particular, contemporary concepts and features of democracy and democratic institutions that have to be further studied and incorporated in a new Constitution – for example, participatory democracy, enabled civil society, effective inclusion and protection of all kinds of minorities, expanded guarantees of judicial protection of citizens’ rights, true regional and local self-government, and e-governance.

External advice cannot, however, substitute for or even influence fundamental decisions on the state structure – presidential or parliamentary, centralised or decentralised – and democratic processes, such as the process by which the new constitution should be adopted. It can only demonstrate the pros and cons of various models and point to successful and unsuccessful cases of implementation and their experience. It is, however, of primordial necessity that a new Belarus Constitution incorporates current and developing European standards and thinking, as expressed in particular by Council of Europe instruments, the opinions of the Venice Commission and the case law of the European Court of Human Rights – in particular when and as a membership of democratic Belarus to the Council of Europe and possibly also to the European Union is wished.

Abstract

The transformation from an ex-/post-Soviet to a modern European constitution requires political will and determination, extensive expertise on the domestic and European legal reality and history, as well as popular support. When attempting to do so before the effective state powers are willing to embark on such process, special challenges arise.

The Austrian-led year-long process of co-ordinated advice by leading European experts on constitutional law and human rights to the Belarus democratic opposition in 2020/2021 was one way of overcoming these challenges. It is well documented (Buchsbaum and Pabel, 2024) and achieved significant results while deliberately leaving key political decisions open. It also identified remaining gaps to be filled in accordance with current European standards and thinking – as, in particular, expressed by the Council of Europe, the European Court of Human Rights and the Venice Commission.

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Guarding the New Constitution: Designing an Independent Constitutional Court for a Post-Authoritarian Belarus

1. Introduction

The current debate on the shape of Belarus's future focuses on the legal framework for democratisation, the means of moving away from authoritarianism, the structure of the executive branch and the electoral system, while sidelining the question of who, and by means of what legal instruments, would safeguard the new constitution once it comes into force. This paper examines this issue by analysing a source that has been absent from the academic debate to date: the draft organic law on the Constitutional Court of the Republic of Belarus dated 2 May 2023 (Organic Law 'On the Constitutional Court of the Republic of Belarus', hereinafter: the draft organic law on the ConCourt), considered against the backdrop of the Draft Constitution for a New Belarus in the version dated 17 January 2025 (Constitution of the Republic of Belarus, hereinafter: the Draft Constitution) and the draft law on the National Council of Justice of 26 February 2025 (Draft Law 'On the National Council of Justice of the Republic of Belarus', hereinafter: the draft law on the NCJ).

This article employs a method of dogmatic analysis of the content of the aforementioned drafts of legal acts, as well as a comparative law approach. The thesis of the article is as follows: the draft organic law on the ConCourt does not prevent a potential constitutional crisis, however, it determines whether it will be able to survive it. It is worth recalling here that the ConCourt of Belarus, established under the 1994 Constitution and composed exclusively of members appointed by the

unicameral Parliament – Supreme Council – challenged several presidential decrees, yet collapsed within approximately 30 months of its establishment. In this context, it can be assumed that the draft of the organic law on the ConCourt does not constitute a simple adoption of European standards, but rather a set of retrospective safeguards against a recurrence of the authoritarian crisis in Belarus that began in 1996, which is in line with the democratic model of governance. The current academic literature confirms this thesis concerning the opposition's Draft Constitution (Czachor, 2024a).

The safeguards against any restriction on the independence of the ConCourt can best be understood by means of a distinction proposed for this analysis: the division of the guarantees of the ConCourt's independence into 'superficial' and 'substantive' elements. 'Superficial', façade, elements are understood here as general guarantees established by the very wording of the legal provisions, including: a declaration of independence, the term of office, and the principle of the irremovability of judges, the presence of which in the text of a legal act attests to the drafter's intention, but does not in itself determine the actual legal and political situation of the ConCourt. This corresponds to the concept of a 'façade constitution' (Božek, 2023). The substantive variables, on the other hand, are those provisions that determine the ConCourt's ability to withstand actual pressure: the procedure for appointing judges and the mechanism of exercising control over this process, the legal consequences of failure to enforce ConCourt's rulings, the safeguarding of its budget, the scope of standing to bring proceedings, and the manner in which its activities are regulated during the transitional period. The validity of applying the categories of 'substantive' and 'superficial' provisions stems from a comparative analysis of the evolution of constitutional justice in post-Soviet states and the experiences of the 1996 Belarus constitutional crisis. This distinction, based on research into constitutional justice in authoritarian states (Czachor, 2023; 2024b), makes it possible to distinguish, in the Belarusian opposition's proposals, between what is declared and what actually determines their effectiveness. A practical test of this analytical concept was also provided by the case of the takeover of the Polish Constitutional Tribunal, an institution with an exemplary formal structure, which demonstrates that a sound façade does not protect against the collapse of the underlying structure (Sadurski 2019; Tuleya 2022).

2. Theoretical framework

Constitutional courts occupy an ambiguous position in undemocratic regimes. They are not simply the antithesis of authoritarianism, but can sometimes serve as its instrument. Authoritarian regimes make use of constitutional forms, elections and the rhetoric of the rule of law, not despite their nature, but precisely to consolidate it (Tushnet, 2015). The constitutional courts then perform a subservient role vis-à-vis the regime: they legitimise the authoritarian rulers, monitor the administrative apparatus, distribute benefits amongst loyal actors and channel disputes (Ginsburg and Moustafa, 2008). It is therefore worth noting that authoritarian constitutions are not empty façades, but functional ones (Ginsburg and Simpsen, 2014).

Legal scholarship has shown that the contemporary capture of constitutional courts is typically achieved through legal mechanisms rather than dismantling them. Kim Lane Scheppele (2018) describes this phenomenon as ‘autocratic legalism’: authoritarian leaders come to power through democratic elections and then dismantle constitutional checks and balances using the law itself: by appointing judges, restricting the court’s jurisdiction, and manipulating procedural rules. Similarly, David Landau (2013) uses the term ‘abusive constitutionalism’ to describe the use of constitutional amendment mechanisms to erode democracy. In both approaches, the body formally continues to operate; what changes, however, is who appoints its members and what the consequences are of disregarding its rulings. This raises the question of why authoritarian legislators endow constitutional courts with guarantees of independence in the first place. The answer is provided by public choice theory, which links such decisions to electoral uncertainty: political actors who anticipate a loss of power establish a strong court as an insurance policy to protect their future interests (Ginsburg, 2003). Mark Ramseyer (1994) formulated a condition in this regard: judicial independence is genuine where the parties anticipate competitive elections; when a particular authoritarian group of politicians expects lasting dominance, the incentive to grant independence disappears. An important conclusion follows from this: the effectiveness of formal guarantees is contingent on the political conditions in a given state and on the willingness of political actors to abide by the rule of law. This conclusion justifies the distinction between ‘superficial’ and ‘substantive’ variables made in the introduction.

The validity of this distinction is confirmed by a comparative study of the constitutional courts of post-Soviet states, in which the same substantive variables recur in recognisable patterns. The authoritarian republics of Central Asia represent the ‘façade’ pole, which is rich in declarations but poor in function: Constitutional Courts with formal jurisdiction in practice place almost no constraints on the executive, and appointments remain dominated by the presidents. The South Caucasus presents a different picture: political contestation has focused on key institutional arrangements, including judicial appointment procedures, judicial terms of office, and individual constitutional complaints, while constitutional declarations have remained largely unchanged. While Armenia and Georgia have moved towards strengthening these variables, Azerbaijan aligns more closely with the Central Asian model, confirming that the actual standing of the constitutional judiciary is determined not by declarative statements but by the state of the key variables (Czachor, 2023; 2024b).

3. Historical context: Belarus’s ConCourt in 1994–1996

The ConCourt of Belarus was established in April 1994 under the constitution of 15 March 1994, which was based on the principle of the separation of powers, albeit with a clear predominance of the Parliament (Czachor, 2016). The judges of the ConCourt were elected by the Supreme Council, without the involvement of the executive. It comprised 11 judges, elected for an 11-year term. Notably, the concentration of appointment powers in the hands of a single body serves as a point of reference for all further considerations: a body whose entire membership is appointed by a single actor can be no more independent than the actor that appoints it.

Between 1995 and 1996, the ConCourt entered into open confrontation with president Aliaksandr Lukashenka. It ruled that his legal acts were unconstitutional and, in 1995 alone, challenged 11 presidential decrees (Czachor, 2016). The executive’s response, however, was not to comply with the rulings but to systematically ignore them: A. Lukashenka disregarded the rulings declaring the decrees unconstitutional and instructed the government and state institutions not to implement

them. This revealed a mechanism of crucial importance: the zero cost of openly failing to comply with a Constitutional Court's ruling, and thus the absence of consequences for unlawful action and of sanctions for such conduct. At the same time, the ConCourt retained its jurisdiction and continued to rule; however, no effective mechanism existed to enforce its rulings.

The confrontation reached its climax in the autumn of 1996. At the request of the Speaker of the Supreme Council, the ConCourt ruled that the proposed nationwide referendum on amending the 1994 constitution could not be binding, but only advisory, as the proposed amendments touched upon the very essence of the constitution and fell within the remit of parliament. The president ignored this ruling. The referendum was held on 24 November 1996, and its result was declared legally binding. The entry into force of the amended constitution, amongst other things, 'reset' A. Lukashenka's term of office and brought the term of the Supreme Council to an end (Wilson, 2011; Czachor, 2016).

The ConCourt was dismantled through legal and personnel measures rather than by formal abolition. In the weeks following the vote, five judges, including the Chairman, resigned in protest. One member who declined to go was dismissed by presidential decree on the stated ground that his term had run out. A reconstituted bench, most of whose members owed their seats directly to A. Lukashenka, was installed in March 1997. In its first ruling issued after the referendum, the ConCourt declared the presidential decree declaring the referendum result binding to be in accordance with the constitution (Human Rights Watch 1997; Attacks on Justice 2002; Yekadumava 2011). At the same time, the amended constitution restructured the ConCourt itself: the president was granted the right to appoint six of the twelve judges, including the Chairman of the ConCourt; the other half of the bench is filled by the Council of the Republic, the upper house of the Parliament; the ConCourt lost the right to initiate proceedings on its own initiative, while the range of entities entitled to file applications was drastically narrowed. The sequence of events leading to the collapse of constitutional adjudication provides the analytical lens through which the opposition's draft legal acts for a new Belarus should be interpreted.

The takeover of the ConCourt in 1996 did not, in fact, involve its abolition, but rather a strike at its key pillars, and can be broken down into several mechanisms:

- a) the method of appointing judges, enabling a single entity to replace the entire bench;
- b) the regulation of access to the bench, i.e. control over the selection of candidates and the removal of an inconvenient judge;
- c) forced resignations as a means of clearing the bench;
- d) a lack of consequences in the event of failure to enforce rulings;
- e) the restriction of jurisdiction and standing to bring proceedings by means of a higher-ranking legal act.

The opposition's Draft Constitution and the draft organic law on the ConCourt propose specific legislative solutions to these mechanisms. This allows them to be interpreted as a retrospective response to the constitutional crisis of 1996. A symbolic turning point is the break introduced by the drafters of these legislative acts in Article 56.2 of the draft law on the ConCourt. This provision invalidates all ConCourt judgments issued after 5 December 1996, on the assumption that everything that followed resulted from the capture of constitutional justice.

4. Constitutional justice in draft legislation for post-authoritarian Belarus

The mechanisms of hijacking of the Belarusian ConCourt in 1996 set out the logic of the following analysis. The research question is not simply whether the opposition's drafts introduce the European standard, but whether each of the key variables has been effectively guaranteed within them. At the outset, one methodological caveat must be noted: the draft organic law on the ConCourt is almost two years older than the Draft Constitution. Some of these discrepancies may be explained by the chronology of the drafting process. The following article highlights those provisions that require harmonisation.

4.1. Appointment and protection of the ConCourt's membership

In contrast to the single-channel system of 1994, under which all judges were elected by the Supreme Council, the Draft Constitution establishes a three-channel mechanism for selecting judicial candidates. Five can-

didates are to be drawn from each of the lists submitted by the president, the speaker of the *Sojm* (the proposed unicameral Parliament), and the chairman of the Supreme Court. All fifteen judges are then appointed by the *Sojm* by a majority of its full composition in a secret ballot, with at least two candidates nominated for each vacancy (Article 127 of the Draft Constitution). Two safeguards stem directly from the 1996 crisis: the requirement for a list comprising at least two candidates precludes the manipulation of access by the nomination of a single 'suitable' candidate, while the three-channel nomination system abolishes the monopoly of a single entity. The draft law on the ConCourt retains these safeguards and develops them procedurally: the competition is announced by three bodies nominating candidates (Article 12), each of which puts forward at least two candidates for each vacancy (Article 13), and the *Sojm* decides by secret ballot by a majority of its constitutional quorum (Article 16).

The draft law on the ConCourt, however, introduces a body not provided for in the Constitution – a six-member Expert Committee responsible for vetting candidates (Article 14). Three of its members are nominated by national authorities: one each by the president, the speaker of the *Sojm* and the chairman of the Supreme Court (Article 14.2), while three are appointed by the Government, but on the recommendation of the Venice Commission, the president of the European Court of Human Rights and the UN Human Rights Committee (Article 14.3). Notably, the international component is intended as a permanent feature of the constitutional framework rather than a transitional arrangement. This arrangement should be compared with the draft law on the NCJ, in which the involvement of foreign elements in the appointment process was limited solely to the first composition (Article 48.6 of the draft law on the NCJ). A drafting point concerns the relationship between the ranking list drawn up by the Expert Committee (Article 15.6) and the list of nominating bodies on which the *Sojm* bases its decision (Article 16.1). It is not clear whether the Expert Committee's ranking is binding on the Chamber. This issue merits closer attention.

The issue of safeguarding the composition of the Constitutional Court, on the other hand, is addressed consistently and coherently. A judge's term of office expires by virtue of a decision of the ConCourt itself, adopted by a simple majority of all judges, except in objective cases such as the expiry of a term of office or death (Article 20.3 of the draft organic law on the ConCourt), which is in line with the rule that

a decision on the early termination of a judge's term of office may be appealed against only to the ConCourt itself (Article 122.5 of the Draft Constitution). The arrest of a judge and the bringing of criminal charges against them requires the consent of the Constitutional Court, except where they are caught in the act of committing a serious crime (Article 21.1 of the draft organic law on the ConCourt). No procedure is provided for the removal of a judge by the executive, which creates an effective safeguard against the mechanism of forced resignations and against a hypothetical repetition of the precedent of removing a judge under the pretext of the 'expiry of their term of office'.

The Chairman of the ConCourt deserves separate consideration, as it has proved to be crucial in the practice of power capture in Central Europe (Sadurski 2019). The draft of the organic law on the ConCourt regulates this matter carefully: the Chairman is elected by the ConCourt from among its own judges for a term of five years, without the right to re-election (Article 27), and is vested solely with additional administrative powers (in accordance with the principle of equality of judges, Article 4.1.6), while the Chairman approves the agenda based on a decision by the ConCourt, rather than acting independently (Article 27.8.2). Cases are allocated by an automated system (Article 4.1.8; Article 32.1). One provision requires clarification: although the automated system appoints the judge-rapporteur, this is done 'under the supervision of the ConCourt's Chairman' (Article 42.1). This wording partly undermines the safeguard of automatic allocation; it must be determined whether this 'supervision' is purely technical (ensuring the system functions correctly) or substantive (allowing the allocation to be corrected).

4.2. Access to the ConCourt, scope of jurisdiction and overcoming procedural crises

The 1996 amendments narrowed the range of bodies entitled to institute proceedings before the ConCourt and removed its power to act *ex officio*. The opposition's Draft Constitution introduces a constitutional complaint available to any person once all legal remedies have been exhausted and retains the instrument of the parliamentary minority: a motion by one-fifth of the *Sojm* to initiate abstract review (Articles 128.1.1–128.1.5). The draft organic law develops these guarantees procedurally. The complaint is directed against a final court ruling and

subject to a ninety-day time limit (Articles 30.7, 31.7.3); the minority motion is retained and a court seized of a concrete case may refer a question on an act it is to apply (Articles 30.4–30.7; 31.7.3); and jurisdictional disputes may be raised by eleven bodies, among them the president, the Government, the NCJ and the Ombudsman (Article 30.6). Access is thus organised at several channels at once, which the 1994 model lacked, and in ruling on a complaint the ConCourt determines remedial measures, including compensation (Article 54.5). The draft does not restore the power to act *ex officio*: every head of jurisdiction depends on an application by a designated subject (Article 30). The Draft Constitution installs mandatory preventive review, triggered by operation of law rather than by an applicant: the wording of referendum questions is verified before the vote (Article 66.2), the ConCourt's opinion co-determines whether the result is binding or merely consultative (Article 66.3), and a constitutional law may not be considered without its opinion (Article 160.2). Read against 1996, this is the most precise of the retrospective safeguards. The draft organic law, however, lays down no procedure, neither time limits nor the consequences of proceeding without the ConCourt's ruling.

Similarly exhaustive provision has been made for dealing with a hypothetical procedural crisis. The Draft Constitution provides for proceedings to continue despite the withdrawal of the application, if this is in the public interest (Article 128.3), and for the suspension of the effects of the legal act under review in the event of a risk of irreversible harm (Article 128.4). The draft of the organic law on the ConCourt specifies both of these solutions: the loss of legal force of the contested act does not constitute grounds for refusing to initiate or for discontinuing proceedings where this serves the public interest (Article 33.4), whilst interim measures, including the suspension of the act's effect and, in cases of complaints, also the enforcement of a ConCourt ruling, are regulated by Article 34. Once impeachment proceedings – aimed at removing the president from office – are initiated, the officeholder is suspended for their duration (Article 45). Within this group of variables, the prospects for genuine independence should be assessed most favourably: safeguards are not only enshrined in the Draft Constitution but also implemented in the draft of the organic law.

4.3. Enforcement of judgments and self-preservation of the organic law

Two significant shortcomings of the draft become apparent, relating to the two most dangerous mechanisms introduced in 1996. The first is the cost of openly failing to comply with a ruling. In 1996, the president disregarded the ConCourt's rulings and directed state institutions not to implement them, leaving the Court with no means of enforcing its own decisions. The Draft Constitution addresses this with a blanket provision: failure to comply with, improper compliance with, or obstruction of the enforcement of a ruling 'shall entail liability in accordance with the rules laid down by statute' (Article 129.5). The key question, therefore, is what the draft of the organic law fills in under this blanket provision. The answer is negative: it does not fill it in, but merely repeats it. The draft organic law on the ConCourt reproduces the constitutional wording. The scope of personal liability – that is, who bears the consequences and how – thus remains outside the draft of the organic law; the effectiveness of this safeguard remains undefined. The draft partially compensates for this by equipping the ConCourt with its own powers rather than repressive measures: it may declare invalid, from the moment of its adoption, any act constituting an attempt to override a previous ruling (Article 54.3), and it is prohibited to override the force of a ruling by re-enacting the contested regulation (Article 53.3). The mechanism for invalidating such circumvention therefore operates within the Act itself; however, there is no deterrent effect in the form of personal liability.

The second shortcoming concerns the organic law's long-term resilience. In 1996, the ConCourt was restructured by a higher-ranking act; a natural safeguard is the rule whereby amendments to the organic law on the ConCourt come into force only after the ConCourt itself has issued an opinion on their constitutionality (Article 129.1 of the Draft Constitution). This serves as a safeguard against the ConCourt being re-appointed by an ordinary legal act. The draft of the organic law on the ConCourt does not establish a separate procedural regime for this mechanism. The list of powers (Article 7) includes the review of constitutional amendments (Article 7.1.7), but does not provide for a mandatory, preventive review of amendments to its own organic law; such an amendment, as an act of the *Sojm*, may be subject at most to an abstract review initiated upon request (Article 30.1), rather than to the automatic review before entry into force required by the Constitution. Given the

detailed regulation of the other procedures, the absence of specific provisions in this regard is striking.

4.4. Budgetary autonomy

The executive's control over the Constitutional Court's budget constitutes a classic mechanism of capture. The opposition drafts, however, address this issue inconsistently. The draft law on the NCJ explicitly establishes financial autonomy: a separate position in the state budget (Article 1.2), financial independence based on the NCJ's own budget (Article 3) and a dedicated financial regime (Article 20). The draft organic law on the ConCourt contains no equivalent provisions. It does, admittedly, employ the concept of the Constitutional Court's budget: the Chairman of the ConCourt submits a draft of it (Article 27.8.3.5), and the Registry administers budgetary matters (Article 28.2.6). Nowhere, however, is the ConCourt's financial independence confirmed, nor is any safeguard established against a reduction of its budget by the body that adopts it.

4.5. Transition period

The final mechanism concerns the phased commencement of the Constitutional Court's operations, which took place in 1994 without a step-by-step procedure. The Draft Constitution provides for a comprehensive procedure: the immediate expiry of the current panel's term of office, the 'staggering' of the terms of the first panel – that is, the introduction of three-, six- and nine-year terms, broken down by individual nomination channels (Article 168), and the enforcement of the establishment timetable by the ConCourt itself, which, in the event of the *Sojm's* delay in this regard, may order the enactment of a law or call for early elections (Article 164.5–6). The draft organic law on the ConCourt does not incorporate these provisions: it grants all judges a uniform nine-year term of office, without any staggered terms (Article 9.1), while the transitional provisions (Articles 56–58) regulate only the expiry of the current composition's term of office, the entry into force of the organic law and the establishment of the Registry. This discrepancy, however, is almost certainly a consequence of the chronology of work on the draft legislation. The 2023 organic law draft could not have implemented the 'staggered terms' provided for in Article 168, which only appeared in the 2025 Draft Constitution.

4.6. Overall assessment

The safeguards intended to guarantee the independence of the ConCourt are distributed unevenly, with important implications for the overall assessment of the draft. Three variables are strictly regulated – both in the Draft Constitution and in the implementing act: the appointment and protection of the ConCourt’s composition (the three-channel system, the requirement for at least two candidates, the ConCourt’s power to terminate its own mandate, and the carefully regulated office of the Chairman), access and jurisdiction (individual complaints, the parliamentary minority instrument, a broad scope of jurisdictional disputes) and the ability to survive a hypothetical procedural crisis (interim measures, continuation of proceedings despite a legislative act ceasing to have legal force). In these areas, the draft equips the ConCourt with real, workable tools to resist precisely these actions that led to the collapse of the ConCourt in 1996. Three variables relating to the most dangerous mechanisms fare less well: the cost of overt non-compliance with a ruling (blanket provision), the self-protection of the organic law (lack of a procedural framework for Article 129.1 of the Draft Constitution) and budgetary autonomy (lack of an equivalent safeguard to that in the draft law on NCJ).

Importantly, some shortcomings can be rectified simply by amending the text of the law, while the discrepancies concerning the budget and the transitional period can largely be explained by the two-year drafting process. This means that the draft acts are at different stages of completion: the resilience mechanism has been conceived appropriately and is largely implemented, whilst the remaining gaps are localised rather than structural.

5. Conclusions and recommendations

The above analysis suggests that the future Belarusian ConCourt’s ability to safeguard the new constitution will depend not on formal guarantees, but on the state of the key variables. Against the mechanisms that led to the Court’s collapse in 1996, both the Draft Constitution and the draft organic law appear sound, though unevenly developed. Three variables – judicial appointments and tenure, access and jurisdiction, and resilience in the face of procedural crisis – are secured at both levels

(the Draft Constitution and organic law), providing the ConCourt with effective safeguards against the very measures that proved decisive three decades ago. The remaining variables require further refinement.

This gives rise to some recommendations concerning the draft organic law on the ConCourt. Firstly, the general provision on liability for failure to comply with a ruling (Article 55.1 of the draft organic law, which replicates Article 129.5 of the Draft Constitution) must be given concrete substance, either by referring to criminal or administrative sanctions or by establishing a separate statutory regime, to supplement the mechanism for invalidating circumvention (Article 54.3) with a deterrent element. Secondly, a separate procedure for the preventive review of amendments to the organic law itself, as required by Article 129.1 of the Draft Constitution, should be established. Thirdly, budgetary autonomy should be added to the draft law on the ConCourt, modelled on the arrangements adopted for the NCJ (Article 1.2 and Article 3 of the draft law on the NCJ), thereby removing the current asymmetry. In addition, the transitional provisions of the draft organic law on the ConCourt (Articles 56–58) require alignment with the current version of the Draft Constitution, in particular about the staggered terms of office of the first panel (Article 168 of the Draft Constitution). A broader conclusion extends beyond the Belarusian case. The unfinished state of the drafts reflects the ongoing process of constitution-making rather than any weakness. It shows that post-authoritarian constitutionalism in exile prioritises safeguarding the judiciary over perfecting institutional design.

To sum up, the draft legislation discussed here should be interpreted not as a simple adoption of European standards, but as a retrospective set of safeguards developed by a community that remembers the 1996 crisis and seeks to prevent its recurrence. Whether these safeguards will prove effective in practice will ultimately depend on the political environment in which they operate. The legislator's task is therefore to make them as watertight as possible at the drafting stage. The Belarusian experience shows that the effectiveness of constitutional justice in a state undergoing democratic transition depends not only on the constitution itself, but above all on the quality of the statutory provisions governing its organisation, powers, and guarantees of independence.

Abstract

This article examines three documents published for public consultation by the Belarusian democratic opposition: the draft organic law on the Constitutional Court, read against the Draft Constitution and the draft law on the National Council of Justice. Using the 1996 constitutional crisis as an analytical framework, it examines whether the proposed solutions would effectively safeguard the Court's independence. To that end, it proposes distinguishing 'superficial' from 'substantive' guarantees, separating declaratory provisions from the mechanisms that determine a Court's resilience to political pressure. The analysis shows that the drafts are best read not as a straightforward reception of European standards but as retrospective safeguards against the mechanisms that dismantled the Court in 1996.

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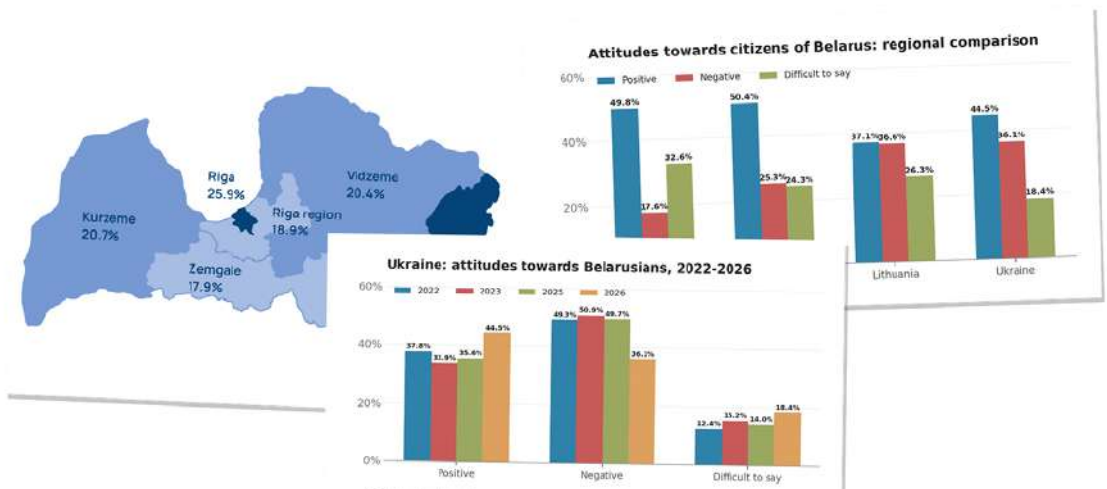
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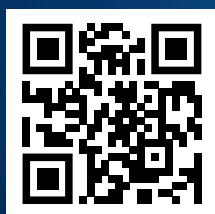
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Science for Export: Who Is Belarus Training Researchers for — and What Can Be Done?

Introduction

Belarus has long been regarded as a country with a strong scientific tradition — a legacy of the Soviet system, under which the republic served as one of the USSR's industrial and technological centres. The question today is what remains of that capital, and whether it has grown. There are no direct open-source data on the 'brain drain' specifically among scientists. But there are related datasets — the number of researchers, their age structure, the inflow of new Candidates and Doctors of Sciences, and migration statistics from neighbouring countries — which together paint a troubling picture. What follows attempts to draw these fragments into a coherent argument.

1. Was Belarus a scientific 'showcase' — and what do the data show now?

The idea of Belarus as a country with an exceptionally large scientific workforce rests partly on Soviet-era statistics. In 1988, the Belarusian SSR had approximately 1,177 Doctors of Sciences and 14,600 Candidates of Sciences (Goskomstat SSSR, 1990). These figures are indeed large, but direct comparisons with current data are misleading. The Soviet indicator included the entire teaching and research staff of higher education institutions, whereas current Belstat statistics count only 'researchers performing research and development (R&D)' — a considerably narrower category. The current figure of approximately 3,200 degree-holding re-

searchers is therefore not evidence that ‘science has shrunk fivefold’, but largely the result of a change in counting methodology. This is an important caveat: part of the apparent decline is a statistical artefact rather than a genuine loss of researchers.

A more substantive question is not the sheer number of researchers, but what kind of science Belarus produces, and whether it aligns with the current global research frontier.

According to Belstat’s official statistical review ‘Day of Belarusian Science’ for 2024, the country employed 17,700 researchers, of whom 63.3% worked in the technical sciences, a further 17.6% in the natural sciences, 6.8% in the social and economic sciences, 4.1–4.4% each in the medical and agricultural sciences, and 3.8% in the humanities (Belstat, 2026). On paper, this looks like a structure perfectly suited to a technological state. However, looking at the share holding an academic degree (Candidate or Doctor of Sciences) within each field, rather than the total number of researchers, transforms the picture: only 8.6% of researchers in the technical sciences hold a degree, compared with 35.2% in the natural sciences and 45.3% in the humanities. In other words, the large ‘technical’ bloc consists mainly of engineering and applied R&D personnel rather than PhD-level academic specialists. The country’s genuine scientific core is closer to the 3,200 degree-holders – 513 Doctors and 2,717 Candidates of Sciences (Belstat, 2026) – distributed as follows: 31.9% in the natural sciences, 29.1% in the technical sciences, and 9–11% each in medicine, agriculture, the social sciences, and the humanities.

When set against the global concentration of breakthrough science today, the picture proves mixed. The World Economic Forum’s 2025 review of emerging technologies and the EU’s Strategic Technologies for Europe Platform (STEP) identify the frontier’s core as a cluster of biotechnology, new materials, digital and sensor technologies, and computational science, with the most significant breakthroughs occurring precisely at their intersection with biology (World Economic Forum, 2025; European Parliament and Council of the European Union, 2024; European Commission, 2024). Belarus’s historical specialisation – physics, optics, materials science, electronics, and mechanical engineering – fits this logic reasonably well: fields such as photonics, microelectronics, and materials science are far from obsolete and are, if anything, at their peak. But there is also a clear gap: the medical sciences account for only 4.1% of all researchers in Belarus – across the entire research workforce, not just degree-holders – even as global science today advances primar-

ily through genomics, cell therapy, and computational biology. A separate problem concerns artificial intelligence and computational science: Belarusian statistical classifications do not list them as a distinct category – they are subsumed within the ‘technical sciences’ – making it impossible for official figures even to estimate the scale of these fields.

The overall diagnosis is as follows: Belarus has a reasonably sound scientific macrostructure for a twentieth-century industrial state – a large technical sector plus a solid natural-sciences foundation. But the contemporary global frontier is shifting towards biology, computation, and materials at their intersection, and it is precisely Belarus’s natural-sciences core – the segment closest to that frontier – that, as will be shown below, is shrinking faster than any other.

2. Who pays for science: only the state — and increasingly less of it

The structural weakness described above is largely explained by the overall volume and sources of research investment.

Overall research intensity of the economy. The indicator ‘gross domestic expenditure on research and development as a share of GDP’ is the broadest available measure, encompassing all sources of funding. Belarus’s National Strategy for Sustainable Socio-Economic Development until 2030 sets the economic-security threshold for overall research intensity at 1% of GDP; in practice, that level was last reached in 1996. Between 2009 and 2020, the indicator fluctuated between 0.5% and 0.7% of GDP, standing at 0.60% in 2018, 0.58% in 2019, and, according to preliminary data, 0.55% in 2020. This places Belarus among the least research-intensive economies in the region. According to comparative data, among its neighbours and Eurasian Economic Union (EAEU) partners, Belarus outperforms only Ukraine (0.45%) and Latvia (0.51%), while Russia stands at 1.11%, Poland at 1.03%, and Lithuania at 0.89%.² In other words, even without comparing it to the ‘wealthy West’, Belarus

² Data and cross-country comparisons of R&D intensity as a share of GDP are drawn from academic articles on the resource provision of Belarusian science (innosfera.belnauka.by; journals.bsu.by), based on Belstat data and the National Strategy for Sustainable Socio-Economic Development of the Republic of Belarus until 2030.

lags noticeably behind its immediate neighbours – including Poland and Lithuania, to which, as shown in Section 6, part of the scientific workforce has migrated since 2020.

Budgetary funding of R&D. This narrower category, which reflects direct state support for research (as distinct from enterprises' applied R&D spending), amounted to 0.20–0.24% of GDP, or 1.3–1.5% of the national budget, between 2016 and 2020 (Klimuk and Astratava, 2022). The state introduced no meaningful increase in the budgetary priority given to science over this period. More recent estimates (particularly for 2024) exist but rely on a methodology that is not fully comparable, so it is more prudent not to present them as a continuation of the same series.

By comparison, government budget allocations for R&D (Eurostat's GBARD indicator, methodologically close to 'budgetary R&D funding') averaged 0.71% of GDP across the EU in 2024 (€127.9 billion, or €284.7 per capita) – roughly three times the Belarusian level. More than half of this money (52.3%) in the EU goes not towards applied development but towards the general advancement of knowledge, mainly through university funding (Eurostat, 2025a). Taking into account all R&D expenditure across all sectors and sources, the EU spent 2.2% of GDP in 2024 (€403.1 billion) – almost four times the Belarusian figure of 0.5–0.6% (Eurostat, 2025b).

What about private funding? Here Belarus has a structural gap. Even in the EU, where science is funded predominantly by business (66.5% of all R&D expenditure), independent private scientific philanthropy – foundations funding basic research outside the state budget and independently of any particular corporate interests – occupies a modest but separately tracked niche: 1.3% of all R&D spending, or €5.4 billion a year (Eurostat, 2025b). No comparable sector could be identified in Belarus: there is no developed system of domestic private charitable science foundations funding basic research on a competitive basis. It is important here not to conflate three distinct elements: enterprises' own R&D spending, foreign grants, and the state Belarusian Republican Foundation for Fundamental Research, which – despite the word 'foundation' in its name – distributes budgetary, not private, funds.

The only real alternative to state funding available to Belarusian scientists was foreign sources – participation in EU framework programmes (Belarus was a party to Horizon 2020), grants from foreign scientific foundations, and academic mobility programmes. But this channel, too,

has largely closed: following Russia’s full-scale invasion of Ukraine, the European Commission suspended cooperation with Belarus under a number of joint programmes in March 2022 – including the cross-border research programmes ENI CBC and the Interreg Baltic Sea Region programme – and Belarus’s participation in Horizon Europe has since remained indefinitely uncertain (European Commission, 2022a, 2022b).

The result is a narrowing funnel: science is financed almost exclusively by the state; the level of that funding is already among the lowest in the region and is not rising; no domestic private channel for basic research exists; and since 2022 a significant share of the external, foreign funding that had previously offset the shortfall in domestic money has also disappeared.

3. Trends in researcher numbers: the past fifteen years

To assess trends in Belarusian science in terms of human capital, examining data from 2010 onwards is instructive: this was the point at which Belstat’s counting methodology stabilised and became comparable with current metrics.

Table 1. Degree-holding researchers in Belarus, 2010–2024

Year	Doctors of Sciences	Candidates of Sciences	Total degree-holders
2010	746	3,143	3,889
2015	648	2,822	3,470
2020	558	≈2,723	≈3,281
2023	519	2,687	3,206
2024	513	2,717	3,230

Over these fifteen years, the number of Doctors of Sciences fell by almost a third (746 → 513), and Candidates of Sciences by approximately 13.5%. The decline continued after 2020, albeit at a slower pace, and by 2023–2024 the researcher workforce had stabilised at roughly 3,200 people (Belstat, 2018, 2020, 2024; Belstat and Rosstat, 2024).

More important than the absolute figures is what lies behind them: the same period witnessed a pronounced ageing of the remaining workforce, which bears directly on the thesis of the previous section. A comparison of the age structure in 2016 and 2023 (Belstat data, table 3.14) reveals the scale of this demographic shift (Tables 2 and 3).

Table 2. Candidates of Sciences by age

Age	2016	Share	2023	Share	Change
Under 29	34	1.2%	19	0.7%	-44.1%
30–39	596	21.2%	397	14.8%	-33.4%
40–49	617	21.9%	753	28.0%	+22.0%
50–59	593	21.1%	505	18.8%	-14.8%
60–69	694	24.7%	598	22.3%	-13.8%
70+	279	9.9%	415	15.4%	+48.7%
Total	2,813	100%	2,687	100%	-4.5%

Table 3. Doctors of Sciences by age

Age	2016	Share	2023	Share	Change
Under 29	0	0%	0	0%	—
30–39	4	0.6%	1	0.2%	-75.0%
40–49	22	3.5%	28	5.4%	+27.3%
50–59	107	17.0%	61	11.8%	-43.0%
60–69	257	40.7%	159	30.6%	-38.1%
70+	241	38.2%	270	52.0%	+12.0%
Total	631	100%	519	100%	-17.7%

Comparing identical age groups between Candidates and Doctors of Sciences reveals two striking patterns (Belstat, 2018, 2024, table 3.14). First, in both categories the youngest bracket is minimal – among Candidates under 40, the share fell from 22.4% to 15.5%, while among Doctors it remained negligible, dropping from 0.6% to 0.2% – while the 70+ share is growing (from 9.9% to 15.4% among Candidates, and from 38.2% to 52.0% among Doctors). The fact that the 70+ group is not shrinking but growing – and doing so in both categories simultaneously – rules out the assumption that the overall dynamic is simply a matter of retire-

ment or natural attrition. On the contrary, the large older cohorts continue to ‘creep’ upward through the age pyramid, with no comparable inflow of young researchers from below. Second, the picture is even starker among Doctors of Sciences: by 2023, Doctors under 50 numbered just 29 out of 519 (5.6%) – meaning that beneath the numerous elderly cohorts lies an extremely thin layer of younger scholars.

It is also telling that the natural-science sector – the segment closest to the contemporary frontier – is losing degree-holders faster than any other: between 2015 and 2023, the number of Doctors and Candidates of Sciences in the natural sciences fell from 1,326 to 1,024 (–22.8%), with Doctors alone down by 31.4%. The technical sciences, by contrast, grew slightly over the same period (809 → 932, +15%).

4. The inflow of new researchers — and its quality

Formally, hundreds of dissertations continue to be defended in Belarus each year. Yet two factors diminish the value of this inflow.

First, the sheer number of defences is falling rapidly. According to the Higher Attestation Commission (VAK), the number of new Candidates of Sciences fell from 513 in 2015 to 222 in 2025 – more than halving (–56.7%), with the decline in 2024–2025 alone amounting to almost 28%. Doctoral defences have held steadier, at around 40–50 a year (Artyukhin, Shchurok and Pushkevich, 2024; VAK, 2023–2025).

Second, the quality of the inflow is also deteriorating:

- The average age at defence is rising. Among Candidates of Sciences, it rose from 34.3 years in 2015 to 38.1 in 2022 (and stood at 37 in 2025); among Doctors of Sciences, it climbed from 49.8 in 2018 to around 54 in 2025 (Artyukhin, Shchurok and Pushkevich, 2024; VAK, 2023–2025). When a researcher earns a Doctor of Sciences degree at 54, only a few years of an active research career remain before retirement age.
- The share of foreign nationals among new degree-holders is rising. These graduates obtain their qualifications in Belarus but do not necessarily remain to work there. In 2025, 40 of the 261 degrees awarded (15.3%) went to foreign nationals; between 2015 and 2022, foreign nationals consistently made up 10–15% of new degree recipients (Artyukhin, Shchurok and Pushkevich, 2024; VAK, 2023–2025). If foreign

nationals are excluded from Candidate defences, the decline looks even steeper: from 442 domestic Candidates in 2015 to an estimated 183–184 in 2025 – a drop of nearly 60%.

In short, the inflow of new researchers is not merely shrinking numerically – it is also ‘ageing’ at the point of entry, and consists in part of individuals who formally swell VAK’s statistics without necessarily joining the country’s active research workforce.

5. The ‘hidden outflow’: why the numbers do not add up – and why this is hard to assess

Summing all Candidate defences between 2015 and 2022 excluding foreign nationals (approximately 2,859 graduates) and adding them to the 3,470 degree-holding researchers recorded in 2015, simple arithmetic suggests the workforce should have almost doubled. Instead, by 2023 it stood at just 3,206.³

Part of the explanation lies in the discrepancy between non-equivalent statistical populations. VAK counts everyone awarded a degree in the country, regardless of where they subsequently work. Belstat, in its metrics, counts only degree-holders who are recorded in a given year specifically as ‘researchers performing R&D’. There is a substantial gap between these two datasets: a significant proportion of those who defend their dissertations go on to work as university lecturers, doctors, industrial engineers, or civil servants – remaining Candidates of Sciences by title, but disappearing from the official ‘researcher’ category.

Even within the ranks of university teaching staff – the reservoir into which a significant share of new Candidates and Doctors of Sciences should logically flow – the number of degree-holders is not growing, but slowly declining (for example, universities had 9,043 Candidates of Sciences on staff in the 2012/13 academic year, compared with 8,368 in 2020/21). This means the problem is not simply that scholars are shifting from ‘researcher’ to ‘lecturer’ status – both reservoirs are shrinking simultaneously.

³ Authors’ calculations based on Belstat data (researcher numbers) and VAK data (number of degrees awarded, 2015–2022)

This is the central methodological limitation: available open data do not allow this ‘hidden outflow’ to be disaggregated precisely into its constituent components (retirement and mortality among older cohorts, transition into non-academic sectors, defences by foreign nationals, and emigration).

6. One hypothesis: migration data as indirect evidence

There are no direct data on the causes of the decline, leaving researchers to construct hypotheses. One plausible explanation is the outflow of researchers abroad. Evaluating this possibility requires examining general migration statistics to assess how closely they might relate to developments in science.

Before 2020, according to research by Yuliya Petrakova (2022), migration from Belarus was predominantly labour-driven and economically motivated, with a gradual reorientation of flows from Russia towards Poland and Lithuania following Russia’s 2015 economic crisis. Petrakova also shows that official Belarusian statistics systematically understated the true scale of migration: Polish data, for instance, recorded far more immigrants from Belarus in 2010–2019 than Belarusian emigration statistics showed, and their demographic profile differed as well (not ‘predominantly young men’, as Belarusian records suggested, but much closer to an even split between the sexes). At the same time, according to official Belarusian data for 2001–2013, only 109 researchers from the National Academy of Sciences were recorded as having emigrated permanently or failed to return from foreign assignments – indicating that, before 2020, recorded emigration specifically among scientists was quantitatively small relative to overall staff turnover (Petrakova, 2022).

Petrakova identifies a qualitative break after 2020: whereas earlier migration had chiefly involved labour migrants, many of whom subsequently returned (for example, around 47% of labour migrants returned in spring 2020 owing to the pandemic), the political crisis added a stream of forced migrants, who are far less inclined to return. Tellingly, as early as September 2020 – almost immediately after the onset of the political crisis in Belarus – Ukraine, Latvia, and Lithuania began launching programmes to attract highly qualified specialists and their

families, while Poland rolled out a large-scale relocation programme for businesses and IT specialists, Poland Business Harbour (Petrakova, 2022).

First, overall emigration from Belarus increased significantly after 2020: according to an estimate by the BEROE economic research centre (Anastasiya Luzgina and Uladzislau Kareiva, 2023), based on data from receiving countries rather than Belarusian records, 143,600–171,900 people moved to the EU in 2021–2022 alone – against official Belarusian statistics showing only 11,300, a thirteen- to fifteen-fold discrepancy. By mid-2024, according to Luzgina’s updated estimate, the long-term Belarusian community resident in Poland may have approached 200,000 (Luzgina and Kareiva, 2023). Second, the composition of this flow matters: a significant share consists of people of working age, with a strong concentration in the younger and middle age brackets and, according to a number of studies, a high proportion holding higher-education qualifications.

Third – and this is arguably the most direct, though institutional rather than statistical, evidence – neighbouring countries have, since 2020, deliberately built channels specifically to receive scientists from Belarus. Under Poland’s NAWA ‘Solidarity with Scientists’ programme, launched in 2020, Belarusian researchers holding at least a Candidate of Sciences degree have been offered positions at Polish universities, institutes of the Polish Academy of Sciences, and the Łukasiewicz Research Network, with funding for relocation and family support; the second round in 2022 attracted more than 40 applications. Tellingly, NAWA itself states that one of the programme’s aims is to enhance the internationalisation of Polish science, and one host university observed that it had gained ‘a valuable researcher’, calling the appointment ‘a good investment in the future’ (NAWA, 2020, 2021; Warsaw University of Life Sciences (SGGW), 2021). Similar, if smaller-scale, steps have been taken by Lithuania (dedicated state funding for ‘attracting new students and researchers’), the Czech Republic (a Masaryk University grant for persecuted scholars), and Germany (the Alexander von Humboldt Foundation’s programme for scholars at risk, open to Belarusians on general terms) (Government of the Republic of Lithuania, 2020; Ministry of Foreign Affairs of the Republic of Lithuania, 2021; Masaryk University, 2021; Brno Daily, 2020; Alexander von Humboldt Foundation, n.d.).

None of these facts on its own proves a mass exodus of scientific personnel – there are no open-source figures on precisely how many de-

gree-holding Belarusian scientists have gone abroad and remained there to work. But the convergence of these indirect indicators is significant: the share of young, educated people within overall emigration has risen since 2020; neighbouring countries have built functioning institutional channels specifically to receive scientists; and, within the country, the inflow of new researchers is simultaneously weakening and ageing. The hypothesis that migration is also affecting scientific personnel appears far from groundless – though it remains a hypothesis, not an established fact.

Conclusion: diagnosis and what should be done

No single data series examined here, on its own, proves an outflow of scientific personnel from Belarus. Yet their convergence paints a coherent picture: the country's scientific core is shrinking fastest precisely in the fields closest to the contemporary global frontier; the inflow of new researchers is declining and 'ageing' upon entry; the statistically unexplained gap between the number of new degrees awarded and the number of active researchers is bridged neither by retirement nor by transitions into university teaching; and since 2020, overall emigration has grown sharply and changed in character, prompting neighbouring states to establish targeted institutional channels specifically to receive qualified scientific personnel. At the same time, the overwhelming majority of currently active Doctors of Sciences in the country are of advanced age, making the question of professional relocation objectively less pressing than immediate personal concerns. This is precisely why the most likely channel of loss is not so much the departure of elderly academics themselves as the absence of a sufficient flow of younger researchers able to succeed them – some of whom, it appears, prefer to build careers where conditions have been deliberately created for them.

Without an effective research system, an economy loses its capacity to develop: science generates not only technologies, but also human capital – researchers, engineers, and educators capable of mastering and advancing those technologies. The ageing of personnel, the weak inflow of young scholars, emigration, and underfunding should therefore be viewed not as separate problems, but as facets of a single interconnected process.

The central risk here is the brain drain. Training a researcher takes years and requires substantial investment, but if a specialist subsequently builds a career in Poland, Lithuania, or Germany, that investment accrues to another economy. The task, therefore, is not merely to reduce the outflow: Belarus must itself become a place where it makes sense to stay, to which it makes sense to return, and which can attract researchers from abroad.

The first condition is restoring the international character of Belarusian science. Isolation means not only lost grants, but also restricted access to international research teams, equipment, and data. A return to EU framework programmes, exchanges, and mobility schemes should bring Belarusian scientists back into international knowledge circulation – but mobility must not be a one-way street: without an attractive environment for return, it inevitably becomes brain drain.

Within the country, integrating university and academy research is no less important. Research potential today is concentrated in the National Academy of Sciences and sectoral research institutes, while the capacity for its generational renewal – undergraduate, master's, and doctoral students – resides within the universities. This does not necessarily call for the mechanical merger of institutions; what matters more is the principle that researchers should not be cut off from training the next generation, nor lecturers from the production of knowledge. Joint laboratories and departments, dual appointments, and the involvement of students in genuine research projects can bridge this divide: universities should become an entry point into science long before doctoral study, building a continuous pathway from undergraduate to laboratory head. For Belarus, this is all the more important because the ageing of personnel signals not merely a decline in numbers, but a breakdown of the mechanism of generational reproduction itself.

At the same time, such a system must offer young researchers an economically rational career path: if conditions outside science or abroad are appreciably better, they cannot be retained by administrative means. Competitive pay is not a form of social support, but the price of preserving accumulated human capital.

Simply increasing funding without changing the principles of its allocation will merely preserve the existing structure – it is easier for an administrative system to keep supporting familiar institutions and topics than to take risks on new directions. Budgetary growth should there-

fore be accompanied by an expansion of competitive, merit-based funding and independent peer review, seed grants for young researchers, and the capacity to fund risky projects with no guaranteed outcome – such uncertainty being inherent to basic research.

The current lack of flexibility in science funding stems from a structural weakness of the existing system: an undiversified funding base. There is no developed sector of private foundations funding basic research in Belarus. The value of alternative funding sources lies not only in the volume of funding, but in the independence of decision-making: the state, private foundations, universities, and business can support different directions and accept different risks. This requires a clear legal framework for donations, tax incentives, and the right of research organisations to raise funds independently.

All the elements of a favourable environment for the development of science function effectively only in tandem: international mobility turns into brain drain if there is no reason to return; higher salaries alone do not create new research directions; a university does not become a centre of science if teaching crowds out research; and additional funding produces no renewal if it is allocated through institutional inertia. The ultimate goal of reform is therefore not any single indicator – the number of researchers, dissertation defences, or the share of spending on science – but the restoration of the research system's capacity for generational renewal and its ability to compete for human capital.

Abstract

The article analyses the state of Belarus's scientific workforce and the possible role of emigration in its decline. Drawing on Belstat statistics and data on the award of academic degrees, research funding and migration, it examines changes in the size, age profile and disciplinary structure of the scientific workforce. Particular attention is paid to the ageing of researchers holding academic degrees, the shrinking inflow of young specialists and the weakening of the natural sciences sector. The article shows that low levels of funding, and the limited range of its sources, aggravate the structural problems of Belarusian science. Although open data do not allow the emigration of scientists to be quantified, comparing workforce dynamics with post-2020 migration trends and with programmes recruiting Belarusian researchers in neighbouring

countries points to a risk of human capital loss. The article concludes by considering reforms that could make Belarus more attractive to researchers: restoring international cooperation, integrating academic and university science, offering competitive pay and diversifying funding.

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The Phenomenon of Cardinal Kazimierz Świątek

A Polish Patriot or a Hero of Independent Belarus?

Introduction

The subtitle of this article might suggest a certain dilemma. Yet I am deeply convinced that the two designations are in fact complementary. What we know of Father Kazimierz Świątek demonstrates that there is no contradiction in posing the problem in this way. Above all, we know that through his life and his pastoral and social work he managed to reconcile what might appear to be extreme positions. He was a fervent Polish patriot, yet at the same time a man devoted to the idea of an independent Belarusian state. He came from a borderland (*kresy*) family. Perhaps this is why these seemingly contradictory attitudes and two patriotisms could not – in keeping with the best tradition of the heritage of the Grand Duchy of Lithuania – be mutually exclusive.

My reflections are based both on the testimony of witnesses and his friends, and on written documents – above all on the record of his memoirs from the years 1918–1988, recently published by the Apostolicum publishing house under the title ‘*Melodie drewnianej łyżki*’ (*Melodies of a Wooden Spoon*).

The person and activity of the Cardinal were also very close to me personally. I first had the opportunity to meet him in 1989, in Pinsk. As a tourist, invited by acquaintances, I found myself by chance in the capital of Paliessie, a city on the Pina and Prypiats' rivers. One of the first places I visited, curious, on a cold March morning, was the Pinsk cathedral. I had earlier read about Father Świątek in the independent press

as a borderland priest who had remained among the faithful after the war despite the shifting borders and the inhuman conditions of Soviet reality. In 1988 this heroic priest had appealed to Polish readers to send books in support of the cultural, spiritual and national rebirth of Palies-sie. It was the time of *perestroika*, and many such appeals from the East were published in the independent press, although getting help across was still not easy, since a heavily guarded border still separated the Polish People's Republic from the USSR. After the morning Mass I stayed a while longer in the church, and, driven by curiosity, went into the sacristy to speak with the parish priest. I was generously received – not only with breakfast and endless cups of tea, but also with a long, personal account of his fate and the history of the diocese. In this way, already in 1989, I gained knowledge of the life and work of Father Kazimierz Świątek – knowledge that, years later, we can read about in his book, published thanks to the efforts of Professor Elżbieta Smułkowa, the first Polish ambassador to independent Belarus.

I had the opportunity to meet the Cardinal many more times later, as a Polish diplomat. We spoke of the fate of Belarus and of the problems between our two countries when I served as Ambassador of the Republic of Poland in Minsk (1998–2002). I was a frequent guest at the cathedral, as well as in various private conversations during those years. The last time I paid him a farewell visit in Pinsk, in 2002, Cardinal Świątek presented me with his impressive achievements: the rebuilt seminary and monastery complex and a functioning theological seminary. I was also invited to give lectures and classes to the seminarians once my mission had ended. That plan, however, was never realised.

A Polish patriot

Above all, Cardinal Świątek remained, to the end of his days, a Polish patriot. Faithful from childhood to the traditions of the Borderlands, he was raised in a system of values in which, despite an unambiguous national declaration, respect was maintained for people of different views, different faiths and different ethnic affiliations. He gave expression to this throughout virtually his entire life.

Of his ties to the borderland landscape (referring to the areas around Baranavichy, Dokshty, and later Hrodna) he writes, among other things, as follows:

Our expeditions after crayfish were marvellous – sometimes, to our great delight, we went by railway trolley with our uncle. We caught the crayfish with little nets stretched over wire hoops of no great size, weighted down and lowered on strings to the riverbed beneath the high, steep banks; we tied the strings to stakes which we drove into the ground. Frogs caught in the damp meadows near the river served as bait (...). From evening until roughly midnight we sometimes managed in this way to catch two large sacks of crayfish, which, once properly prepared at home, made a splendid delicacy (...). In autumn came other attractive pursuits: gathering mushrooms and nuts. There was a particular abundance in the low-lying area along the river, in the leafy thickets of whitish cotton-grass, which, salted in a small barrel, made an excellent dish for Lent. From the hazel trees growing thickly along the Myshanka we gathered a couple of sacks of excellent hazelnuts. And on a hill not far from the little river, in a birch grove, lay the kingdom of venomous common vipers. (...) But the Myshanka was not the only ground for our expeditions and adventures. (...) Lying on the grass, we would watch for hours on end the *susliks* [ground squirrels], which, having come out of their burrows, sat on their hind legs, forming small living pillars, and carried on endless, quiet but distinctly whistling conversations among themselves (Świątek, 2022, pp. 48–49).

This childhood landscape Father Świątek would later record for himself on film, indulging his passion as a naturalist. I know from the Cardinal's own personal accounts that he shot hundreds of metres of film with an amateur movie camera.

Kazimierz Świątek lost his father in early childhood, and it was his mother who took on the upbringing of her two sons, working hard to support them. The future Cardinal owed his religious and patriotic upbringing also to his uncles, aunts and grandmother, of whom he writes a great deal in his memoirs.

Prompted by a sense of justice and gratitude, I must particularly emphasise the great help that our uncle, together with our grandmother and aunts, gave to us – that is, to Mother, to Edek (my brother) and to me – in the difficult times of our life in Dukshy and Baranavichy. Every summer holiday Edek and I would go to our uncle's, where we had excellent material conditions. We were always fed to our fill, and for the new school year we received

new shoes and clothes, mostly remade from our uncle's railway uniforms. The holidays spent at our uncle's in Martsinkantsy, near Hrodna, were especially healthy, useful and enjoyable (Świątek, 2022, p. 56).

It was this uncle – his mother's brother, a lower-ranking railway official – who offered to finance studies in Polish philology at the University of Vilnius for the young secondary-school graduate Kazimierz. Yet the future priest's path was to unfold differently. During a trip to Pinsk organised by the Marian Sodality, Kazimierz made the decision to enter the theological seminary. As he writes and recalls, the inspiration was a spiritual encounter in the cathedral, at the coffin of the great patron of the Pinsk diocese, Bishop Zygmunt Łoziński. It is to him that he owed not only his vocation, but his lifelong bond with the diocese, in which he would serve as priest and bishop.

There is a second, extraordinarily emotional and important episode in his life. During the ceremony of the burial of Marshal Piłsudski's heart at the Rossa cemetery in Vilnius on 12 May 1936, as a seminarian delegated from Pinsk together with a whole group to this religious-patriotic ceremony, he discovers the unknown fate of his father. Among the legionnaires' graves he stumbles by chance upon his father Jan's headstone. Only seventeen years after his death does he learn that, after being released from German internment, his father joined Piłsudski's forces in 1918 and was killed on 20 April 1919 during the Vilnius operation.

Kazimierz Świątek's patriotic disposition was thus shaped within his family and among those closest to him, but it was sealed by the fact that his father – a soldier and legionnaire of the reborn Poland – rests in one of the most important cemeteries of the restored homeland, beside the heart of Marshal Piłsudski.

A borderland priest

In his memoirs, Kazimierz Świątek devotes a great deal of space to his seminary formation. He writes of his lecturers, of his fellow students, many of whom would later give their lives for their faith and for their service to the Church. But interestingly, he does not write in a lofty or pathos-laden tone. He touches on ordinary matters, describing rough-edged friendships and conflicts, misunderstandings and intrigues. From

this rich account we receive a profound truth about life under those conditions. His entire narrative is full of vivid images in which patriotism, as well as intellectual and spiritual formation, form an obvious backdrop, without exaltation or attempts to impress the reader. In the same style he would later tell us of prisons, labour camps, the people he encountered, and the Bolshevik regime that, like a steamroller, crushed every manifestation of culture – not only Polish culture, but the culture of Western civilisation in general, on whose patterns the generations living in the Borderlands had been formed.

Ordained a priest in April 1939, he was assigned to work in the parish of Pruzhany. As a young priest, just before the outbreak of war, imbued with a patriotic disposition, he began his activity – not only pastoral, but also social, and even political. He had a rebellious spirit and a critical mind, and for that reason he did not accept everything that was corroding the pre-war Polish state from within. Here is how he writes of these beginnings as a priest and a public figure:

I must also mention how my relations with the state authorities took shape. The motto of my pastoral work, which I had already voiced at the farewell dinner in the seminary, was the building of Christ's Kingdom in a Catholic-national Poland. And so I stood in opposition to the Sanacja government. I immediately subscribed to the Vilnius daily 'Słowo', edited by the well-known conservative Stanisław Cat-Mackiewicz. And a conflict soon arose. At the beginning of May I was invited to the district office to discuss the observance of the anniversary of the death of Marshal Piłsudski (12 May). Present there were senior state officials, headed by the *starosta*, together with representatives of social organisations. Asked when I would hold the memorial service for the deceased Marshal, I replied that yes, I would celebrate it, but at the ordinary time, as on a weekday. This upset the authorities. I explained that the anniversary of the Marshal's death was not a church feast, and that I could not therefore apply a festive order of service. The security officer could not restrain himself and burst out: 'Ah, I see. The priest hasn't even grown his feathers yet, and he's already stirring things up. No doubt his subscription to "Słowo" is helping him along'. To my question whether there was any further business with me, the answer was blank silence. So I bowed slightly and left. Naturally, I did celebrate the memorial Mass for the soul of the late Marshal Józef Piłsudski, but at the time set for ordinary

weekdays, and everyone, whether they liked it or not, had to conform to the order I had established. (...) At the end of September, or perhaps already in October, a radio station from the West broadcast greetings to Pruzhany and the whole county from the county *starosta*, who turned out to have found himself in Romania or Hungary. I listened to this with my teeth clenched – from pain, or perhaps from disgust. So this is how it was, dear Sanacja authorities! One was a great patriot, an activist, one rebuked the smallest lapse toward the Sanacja regime, and when the days of defeat came – one fled... (Świątek, 2022, pp. 99–100)

Father Świątek witnessed the collapse of the Polish state, but time and again bore witness to his attachment to the homeland. As he recalls his verbal duels during interrogations in the NKVD prison in Brest, he provoked fury among the Chekists by insisting that he believed Poland would continue to exist. Awaiting a death sentence in the spring of 1941 in the fortress at Brest – thanks, as he himself writes, to the intercession of Bishop Łoziński – he lived to see his release. This momentary freedom came as a result of Germany's aggression against the USSR. After leaving prison he devoted himself to pastoral work, while at the same time witnessing the tragedies and dramas of war, including those involving Soviet partisans, Belarusian collaborators, and the two armies occupying the former Borderlands – the Soviet and the German.

During the second Soviet occupation, Father Świątek was again imprisoned. The NKVD recalled his existence. He was first taken to the investigative detention centre in Minsk. There he met a certain Belarusian communist who, in the 1930s, had been sent across into Poland for subversive and intelligence work. Unmasked, he had fallen into the hands of the Polish justice system, and afterwards, having served his sentence, left for the USSR. And here his drama began. From an intelligence agent and Soviet spy he became suspected of working for Polish intelligence. Thus, in a single cell, a Catholic priest and an ideologically committed Belarusian communist – one who had been cured of his faith in Soviet justice and in the sense of Bolshevik ideology – came to meet.

After many months of investigation, Father Świątek was sent, in 1945, to the labour camps for ten years – for alleged collaboration with the German occupier. For the Stalinist regime, the sentence was supposed to be relatively lenient. Father Kazimierz would serve virtually the entire sentence and return to his home diocese from far-off Vorkuta. He did not seek repatriation, or a better fate; he remained among his

faithful — a small remnant of Poles and a growing number of Belarusian Catholics, for whom the Roman Catholic Church proved the only lasting haven amid the shifting geopolitical realities.

An activist of national rebirth

As a Polish priest and patriot, Kazimierz Świątek became involved, during the period of *perestroika*, in social activity aimed at national rebirth and democratic transformation in Soviet Belarus. According to the account of Tadeusz Gawin, on 15 June 1990 Father Świątek, together with other Poles in Belarus, welcomed at the border crossing in Brest the Marshal of the Polish Senate, Andrzej Stelmachowski, and the accompanying Bishop Zygmunt Kamiński. The following day, the founding congress of the Union of Poles in Belarus took place in Hrodna. (Gawin, 2003, pp. 134–135)

It is worth noting that at the founding congress of the Union of Poles, the official guest on behalf of the Belarusian authorities, Chairman of the Supreme Council of the BSSR Stanisław Shushkevich, addressed the gathering in Polish. And during the election of the statutory authorities, Tadeusz Gawin publicly proposed that the prelate, Father Kazimierz Świątek, become vice-president of the Union of Poles in Belarus. The priest is said to have replied, and I quote:

Our positions coincide on many matters, and so I agree (Gawin, 2003, p. 135).

For the organisation's activists this meant, at the time, that the Catholic Church would support the Polish national rebirth. Meanwhile, Father Kazimierz would become entirely absorbed in organisational work on behalf of the reviving structures of the Church in Belarus. For this reason, after a few months, he resigned from active involvement in the Union of Poles in Belarus. On 21 May 1991, the consecration of Archbishop Kazimierz Świątek took place in the Pinsk cathedral. As the then-president of the Union of Poles in Belarus, Tadeusz Gawin, recalls, after the ceremony the Archbishop submitted, into his hands, his formal resignation from the post of vice-president of the Polish organisation (Gawin, 2003, p. 183).

From that time on, he would devote himself to a far more important mission, becoming one of the builders of the Roman Catholic Church in

Belarus. And after Bishop Tadeusz Kondrusiewicz moved, in the spring of 1991, to pastoral work in Russia, Father Kazimierz took on the role of chief coordinator of the work of the emerging Belarusian episcopate. It is worth remembering that, at that time, Kazimierz Świątek was already nearly 77 years old.

It would not be an exaggeration to say that the Belarusian Church was rebuilt from ruin and ashes. Several decades of embattled communism had led to the degradation of religious communities and the destruction of sacred infrastructure (historic, and often architecturally significant, churches, chapels and cemeteries). To this was added a transformation of social consciousness, years of atheisation and de-nationalisation. In 1988, recalling his own highly significant experience of many years of pastoral practice under an atheistic political system, Father Świątek wrote:

And so, when people ask me how many faithful my Pinsk parish numbers, I answer, half in jest, half in earnest, that I measure the state of the parish not by the number of the faithful, but by the kilometres of the reach of the active Pinsk cathedral. Across these vast territories, deprived of churches, there were and still are larger or smaller clusters, or individual families, of Catholics who in many cases can no longer speak Polish, but for the most part still understand the language and pray exclusively in Polish. When they come to confession, they utter the sacramental formulas in Polish, but they confess their sins already in Russian or in Poleshuk-Belarusian. And it is no wonder – to put it jokingly – that the fixed religious forms remained Polish, while the new sins, now Russian ones, are recounted in Russian. And when I hand out catechisms, and ask in which language they wish to have them – purely in Polish, or in Polish but transcribed into Cyrillic, or entirely in Russian – with very rare exceptions, everyone asks for the second option, that is, Polish in Russian letters (Świątek, 2022, p. 312).

I once had the opportunity to hold a long conversation with Cardinal Świątek on the subject of language policy in the Church in Belarus. He admitted then, with some regret, that he heard various voices of criticism, especially from Poland, accusing him of introducing the Belarusian language instead of holding exclusively to Polish in the liturgy and in pastoral work. He would answer that he could not substitute for the

Polish state, which has its own institutions and appropriate tools for the promotion and teaching of the Polish language. He was a citizen of Belarus and a priest of the Universal Church, whose principal mission is the proclamation of the Gospel, not language education. Father Świątek recalled that when Cardinal Glemp first visited Belarusian parishes in September 1988, he had the opportunity to see for himself that the hunger for truth, and pastoral needs, demand flexibility of us as priests. Whereas Polish priests had, in the early 1990s, provided very substantial help in rebuilding the Church's structures, afterwards the time came for young priests drawn from among the citizens of Belarus. In the seminaries in Hrodna, and later in Pinsk, there appeared dozens, then hundreds, of candidates for the priesthood for whom Polish was a second, or even a third, language. They had been raised, in their homes and their own milieus, speaking Russian and Belarusian. And it was they who began to shape the new face of the reborn Church in the former Soviet republic, and later in the independent Belarusian state.

Cardinal of a reborn Belarus

After assuming the post of Archbishop of Minsk-Mahiliou and administrator of the Pinsk diocese, Father Kazimierz Świątek would head the entire Church as cardinal (his nomination came in November 1994), although he would formally assume the office of Chairman of the Conference of Bishops only in February 1999, once the body of bishops had grown larger. The first decree concerning the establishment of the Metropolitan Commission for the Translation of Liturgical Texts and Religious Literature into Belarusian was issued in July 1992 (reference no. L.dz. 07/92); subsequently, following a resolution of the Council of Priests in April 1994, the Commission's membership was expanded to ten persons. Among them were bishops, priests, members of religious orders, and four lay persons, including editors of the Catholic press (see the decree of 5 May 1995, L. Dz. 8a/95). It is worth noting, incidentally, that it is thanks to them (chiefly Krystsina Lalko and Alina Novikava) that we have a record, in publications and in press materials, of just how difficult and protracted this process was. In the documents of the episcopate we find information on the ongoing process of translating, and subsequently introducing into official use, the liturgical texts.

Following the session of the 16th Conference of Bishops, in March 2003 a document was published approving the translation of the missal

‘Missale Romanum. Editio typica III’ (see: catholic.by, decree no. 4110). In August 2004, meanwhile, Cardinal Kazimierz Świątek – as a result of the commission’s work – received the completed Roman missal in the Belarusian language, blessed in a special message by Pope John Paul II. This fact points to the long and painstaking process by which liturgical texts entered the life of the Belarusian Church. It is without doubt the fruit of Cardinal Świątek’s gradual arrival, over many years, at the decision to Belarusianise the Roman Catholic Church in the Belarusian dioceses (see: media.catholic.by/ave/, no. 3/94, 2003).

Cardinal Świątek’s pro-Belarusian policy was not guided by political doctrines, nor was he under the influence of this or that ideology. He was very often guided by prudence and caution. In the early 1990s, the Belarusian authorities were particularly oversensitive and suspicious toward neighbouring Poland, and accusations of Polonisation through the Catholic Church repeatedly surfaced as a result.

...The chairwoman of the Vitsiebsk city branch of the Union of Poles in Belarus drew attention to this at a meeting with prime minister Hanna Suchocka in Hrodna on 18 November 1992. She stated then: ‘No one complains that services in the Orthodox church are conducted in Russian, yet we feel harassed by the authorities on account of the fact that the Polish language is used in our church’. (Głos znad Niemna, 1992, no. 23, p. 7).

Accusations were also directed at the Cardinal that there was no proper order in the documentation. But one must bear in mind just how modest the human resources at the disposal of the Belarusian episcopate were in the 1990s. Most matters of an official nature had to be handled personally by the Cardinal, supported by a handful of secretaries and assistants who were themselves burdened with many other duties. For example, Mrs Lalko and Mrs Novikava would, for many years, run numerous periodicals, both in print and electronic form (Ave Maria, Nasha Viera, Słowo Życia, Odkupiciel, Wiadomości Katolickie, as well as the Catholic publishing house *Pro Christo*).

According to official data derived from the censuses conducted since 1989, we know that no more than around 300,000 people of Polish nationality live in Belarus. One may presume that a similar number again feel a connection to Polishness, or have Polish roots. But many of them do not command the Polish language even at a basic level. On the other hand, if one looks at the statistics of the Catholic Church in Belarus, the figure most often cited is 1.5 million faithful. Even so, critical voices al-

leging a deliberate depolonisation of Catholic believers have not been lacking. This is how the great expert on the Church in the USSR, the Rev. Prof. Roman Dzwonkowski, wrote in the 1990s:

The reasons for the introduction of new languages in the churches of the former Eastern Borderlands were of a complex character. They stemmed both from pastoral and ecclesial motivation, and from national and political motivation. The introduction, in very varied forms, of the languages in question became a pastoral necessity, given the very frequent lack of knowledge of Polish among young people and children, and the presence in the churches of persons who knew only Russian. Of great significance, as regards the decisions of pastors from Poland, was – and remains – the fact that the overwhelming majority of the living Polish population in the former Eastern Borderlands does not speak Polish on a daily basis, even where they know the language. What escaped their attention was the fact that this population is, at the same time, deeply attached to the liturgy in church and to prayer in the Polish language, as a sign of their spiritual distinctiveness and identity. This language is for them – as I have already mentioned – a ‘language of faith’ and a ‘language of the heart’. The younger generation of priests from Poland was entirely unfamiliar with the old tradition, characteristic of the culture of these lands, of using Polish often solely in church and in prayer. Encountering this for the first time, they frequently identified the language habitually used day to day by the faithful with nationality, and saw in these Catholics a Belarusian or Ukrainian population. This was a result of the total ignorance, prevalent in Poland after the Second World War, of the tragic fate of Poles in the East. Having lost active command of the Polish language, and no longer using it daily, they nonetheless preserved it in religious life, as the last – and usually the most important – mark of their spiritual and national distinctiveness (...). On the ecclesial side, the fundamental argument in favour of introducing new languages was, and is, the idea of the universal mission of the Church, open to all nationalities, and of Catholicism as a supranational faith. Attention was drawn to the fact that the stereotype of the ‘Pole-Catholic’, or rather ‘Catholic-Pole’, which once expressed a factual state of affairs in the Borderlands, was becoming, for those with little religious awareness, an obstacle to understanding this truth, and therefore

needed to be overcome. Since 1990, in Belarus, the pastoral letters of the bishops have been announced in both languages. In Ukraine this principle came into force somewhat later. Everywhere, the Belarusian, Ukrainian and Russian languages, after a period of individual initiatives undertaken without consultation with anyone, were introduced on the instruction of the local church authorities, once the first versions of translations of the liturgical books had appeared (...). Where these expectations were not respected, conflicts sometimes arose, though, given the exceptional position of the priest within the parish in the East, these were of an exceptional character. They arose when the new languages were introduced not on the principle of successive services in different languages, but through the unexpected replacement of Polish by them. The problems mentioned occurred in some parishes in Belarus, particularly in the early 1990s, and at times found expression in the local Polish-language press. The Union of Poles in Belarus, addressing this matter, formulated in 1992 the following apt principles for resolving conflicts in this regard: 'There are Poles in Belarus. They have the right to pray to God in their native language. Belarusian parishioners have the same right to the Belarusian language. The right to choose the language belongs exclusively to the faithful, and not to outsiders. The above principles should be respected by the Church and the state, and by the persons and institutions concerned'. A year later, the Union, in an address issued on the occasion of its Second National Congress, expressed the view that, in Catholic churches, the introduction of the Belarusian language should not proceed by way of reducing services in Polish, but by other means (Dzwonkowski, 1999, pp. 69–70).

It must be granted that, although the remarks of the Rev. Prof. Dzwonkowski are critical in character, his texts are not lacking in understanding for the complexity of the problem. Among Polish researchers, conflicts concerning the language of services in the churches in Belarus were noted, and the Rev. Prof. Dzwonkowski repeatedly expressed critical views on the subject of the depolonisation of the faithful of Polish origin among Catholics. He had a sensitivity to the delicacy and the complexity of these processes.

Looking at matters from Cardinal Świątek's perspective, it should be noted that the process of Belarusianising the liturgy was a long-drawn-

out process, carried out with sensitivity to the needs of the faithful and to the customs of the parishes – perhaps with the exception of a few places mentioned by the Rev. Prof. Dzwonkowski (this concerns the parish of Vishnieva in the Minsk-Mahiliou diocese, and a dozen or so incidents in the Hrodna diocese; it must be granted, taking into account the period observed, spanning more than a decade, that these were not frequent or drastic occurrences).

The problem of the depolonisation of the Catholic Church in Belarus appears relatively rarely within Belarusian intellectual space; more material on the subject was published in Polish-language periodicals in Belarus. Many in-depth analyses have been published in Polish, but since they do not so directly concern identity disputes within Belarus itself, it suffices merely to signal the most important of them – namely the works of Father Professor Roman Dzwonkowski, Adam Hlebowicz, Piotr Rudkouski, and – somewhat apart from purely ecclesiastical matters – the works of Professor Elżbieta Smułkowa and Anna Engelking. Among Belarusian works directly concerning the history of the Catholic Church in Belarus, particular attention is due to the martyrology of Catholics in Belarus for the years 1917–1964, prepared by Leanid Marakou and published with the support of Bishop Anton Dziemianko (Marakou, 2009).

To sum up, the main causes of depolonisation may be grouped under three headings:

1. a conscious, if unpopular, decision on the part of the bishops (in particular the pro-state and/or pro-Roman policy of Cardinal Kazimierz Świątek);
2. grassroots pressure (from the faithful, and from young Belarusian clergy demanding guarantees for the preservation of the Belarusian and/or Russian language in the seminaries and in pastoral work), combined with the passivity of a large proportion of parishioners in the face of changes to the hours of services held in Polish;
3. pressure from the state administration (the expulsion of priests and nuns who were citizens of the Republic of Poland) and demands to diminish the role and weight of the Polish language in the life of the Church (the press, the media, services, catechesis, and so on).

The process of the Church's depolonisation was the subject of sharp criticism in the 1990s. From today's perspective (the year 2025), it is clearer that the attempts, at the time, by certain Polish activists to call

on the Church to conduct obligatory catechesis and liturgy in Polish (publications by Tadeusz Kruczkowski, Tadeusz Malewicz, Eugeniusz Skrobodzki) may have been an attempt to reinforce antagonisms. Criticism in this area – directed at the Catholic hierarchs in Belarus – appears today misplaced and counterproductive, particularly in view of the difficulties experienced today by Belarusian society, and the re-Sovietisation and repression to which the clergy are being subjected.

It can therefore be stated that Cardinal Świątek rightly assessed and treated interventions and appeals of this kind as provocative and confrontational, most often replying to those concerned that the decision on the language used in church belonged to the parish communities themselves.

In the years 2001–2005, the Belarusian episcopate undertook numerous administrative and ecclesiastical initiatives (not without pressure from the Belarusian authorities) that broadened the presence of the Russian and Belarusian languages in the life of parish communities and of entire dioceses. Clergy were placed under an obligation to organise the liturgy also in Russian and/or Belarusian (independently of Polish), even where the number of the faithful for that language group was small. In the Hrodna diocese, as I have mentioned, this provoked numerous protests and expressions of discontent, although these never took drastic forms going beyond internal ecclesiastical discussion.

The Belarusian authorities were well aware that, at the same time, a natural process of generational replacement was under way, with Polish clergy (most of them holding Polish citizenship) being systematically supplanted by young clergy who were citizens of the Republic of Belarus. From the late 1990s, the regional Committees for Religious Affairs, on instructions from the authorities in Minsk, undertook numerous initiatives to ensure that parishes, church offices and more important positions were held by citizens of Belarus. This process indirectly contributed to the ‘Belarusianisation’ of the Catholic Church. It must be acknowledged, however, that the sensitivity and diplomatic skill of the Belarusian bishops – Kazimierz Świątek, Tadeusz Kondrusiewicz, Aleksander Kaszkiewicz, Anton Dziemianko, Kazimierz Wielikosielec and Władysław Blin – contributed to the smooth and quiet regulation of difficult matters along the Church–state line.

Conclusion

The most important conclusion to emerge from an analysis of the pastoral and social activity of Cardinal Kazimierz Świątek is – aside from an assessment of the heroism of his stance as a priest and a Christian – his evident prudence and strategic thinking.

In February 2003, that is, toward the end of his pastoral ministry, Cardinal Świątek, as head of the Belarusian Church, presented Pope John Paul II, during a meeting, with an impressive set of statistics. From a Church almost entirely destroyed and marginalised, with a small number of faithful, at the end of the 1980s, it had transformed into a large and socially active community of believers. The state of affairs at the end of December 2001 was as follows: approximately 1.2 million faithful, more than 400 parishes, 360 priests – of whom nearly half were clergy drawn from among the citizens of independent Belarus, already trained in the seminaries of Hrodna and Pinsk – 350 members of religious orders and 150 seminarians. By contrast, in 1989 the Belarusian Church had at its disposal fewer than 30 priests and members of religious orders, with a handful of seminarians training in the seminaries of Kaunas and Riga, and fewer than 100 parishes. When we take into account that, in 2025, the number of the faithful exceeds 1.5 million, the number of parishes is over 600, and the number of priests nearly 500, we can see just how dynamic this process has been (cf. *media.catholic.by/ave/*, no. 4(95), 2003).

Thanks to Cardinal Świątek's work, the Catholic Church in Belarus regained its own distinct character, and with it an autonomous place in the history of the state, as a community of faith and tradition rather than a community of a single national group (a minority).

Over the past five years, in connection with socio-political tension and then the war with Ukraine, the internal situation has undergone a radical reversal. Repression has not spared the Catholic Church either. Mention must be made of the numerous clergy who have come into conflict with the post-Soviet regime in Belarus. The head of the Church – Archbishop Tadeusz Kondrusiewicz – was forced to relinquish his functions, being pushed into enforced retirement. Many priests holding Polish citizenship have been removed from their parishes and/or ordered to leave the country. Several priests have been arrested and sentenced to lengthy terms of imprisonment. The best known is the case

of Father Henryk Okołodowicz, accused of espionage on behalf of Poland and the Vatican.

Nevertheless, the situation of the Church remains far removed from that in which Catholics found themselves during Father Kazimierz Świątek's pastoral work in the USSR. Foresight, and the ability to work with the faithful, have borne their fruit.

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Review

Authoritarianism under Threat: The Belarusian Political System in Comparative Perspective

Piotr Rudkouski and Piotr Lichacz, *Authoritarianism under Threat: The Belarusian Political System in Comparative Perspective*. Vilnius: Political Sphere, 2025. 246 pp. ISBN 978-609-96524-1-2.

Piotr Rudkouski and Piotr Lichacz's *Authoritarianism under Threat* examines why Aliaksandr Lukashenka's highly personalised political system survived the mass protests of 2020 and how the regime has changed since that crisis. Belarus is the principal case, while Tunisia, authoritarian South Korea, and Singapore provide contrasting trajectories of regime survival, collapse, democratisation, and institutional adaptation. The book argues that the 2020 crisis disrupted the earlier equilibrium of the Lukashenka regime and initiated an unfinished process of 'authoritarian transformation' intended to secure its long-term survival, including beyond the current ruler.

The first chapter establishes the book's methodological position. Drawing on Karl Popper, Carl Hempel, Piotr Sztompka, and Leonardo Parri, the authors distinguish description from explanation and argue that macro-level political regularities should be supplemented by micro-level accounts of actors' goals, beliefs, and decisions. The chapter demonstrates considerable methodological self-consciousness, although its extensive treatment of classical philosophy of science occasionally exceeds what the subsequent empirical analysis requires.

Chapter 2 translates this methodology into a broad conceptual framework. Democracy is disaggregated into electoral, participatory, liberal, egalitarian, and deliberative dimensions, largely following the Varieties

of Democracy dataset. The authors then formulate a catalogue of probabilistic regularities concerning personalism, ruling parties, legitimisation, repression, elite socialisation, the military, economic development, international ties, sanctions, mass mobilisation, succession, and global power. The discussion is grounded in scholarship by Barbara Geddes, Jennifer Gandhi, Beatriz Magaloni, Erica Frantz, Andrea Kendall-Taylor, Steven Levitsky and Lucan Way, and others. Its strength is its comprehensiveness. Its weakness is the absence of a clear hierarchy among the many explanations. Because several mechanisms may operate in opposite directions, the framework is often better at organising evidence than at identifying a single decisive cause.

Chapter 3 provides concise historical accounts of the four cases. Tunisia represents party-based authoritarian modernisation followed by sudden collapse and incomplete democratisation. South Korea illustrates military developmentalism, gradual liberalisation, and negotiated transition. Singapore demonstrates durable dominant-party rule sustained by administrative capacity, performance legitimisation, and institutionalised elite recruitment. Belarus combines an extremely personalised presidency with the historical absence of an established ruling party. The cases are deliberately dissimilar, as the authors seek variation in cultural setting and transformation pathway rather than a controlled comparison of neighbouring regimes. This produces illuminating contrasts but limits causal leverage. Singapore, in particular, differs from Belarus in state size, political economy, institutional capacity, and the organisation of elite rule. The comparisons are therefore most persuasive as theory-guided contrasts rather than as evidence isolating the independent effects of particular variables.

Chapter 4 is the substantive core of the book. Building on Johannes Gerschewski's framework, the authors examine legitimisation, repression, and elite co-optation in comparative perspective. They distinguish procedural, performance-based, ideological, and charismatic forms of legitimisation, showing that in Belarus procedural legitimisation was largely abandoned after 2020, performance-based claims weakened, and official justification increasingly relied on security, ideology, and loyalty to Lukashenka. Rather than equating repression with visible violence, the authors compare its legal, administrative, informational, organisational, and coercive manifestations. Singapore relied primarily on selective, low-intensity restrictions, whereas Tunisia and authoritarian South Korea employed more systematic and intensive repression. Belarus

moved from calibrated preventive coercion before 2020 to continuous and socially expansive repression aimed at dismantling the organisational foundations of future mobilisation. The discussion of elite co-optation further highlights the distinctive features of the Belarusian regime. Whereas Tunisia, South Korea, and Singapore developed institutions for elite recruitment, advancement, bargaining, and succession, Belarus depended largely on presidential appointments, personnel rotation, state resources, fragmented patronage, and the security apparatus.

Chapter 5 examines crises that did not immediately destroy authoritarian rule. Park Chung Hee's assassination in 1979 removed South Korea's ruler but left coercive institutions available to Chun Doo-hwan, while Ben Ali's 1987 'medical coup' replaced Tunisia's leader without dismantling the party-state. The 2008 Gafsa protests were contained geographically, although they exposed failures of regional patronage and provided experience later relevant to the 2011 revolution. The chapter then turns to Belarus in 2020, tracing how the COVID-19 crisis, presidential challengers, opposition coordination, digital monitoring, mass mobilisation, and state violence combined to produce a major regime crisis. The regime survived because its coercive apparatus remained cohesive, elite defections were limited, the opposition lacked coordinated strategic leadership, and Russia provided crucial support. Survival nevertheless came at the cost of intensified repression, domestic delegitimation, and international isolation.

Chapter 6 compares four distinct paths of political transformation. Tunisia experienced a rapid transition from authoritarian rule to democracy, although democratisation remained unconsolidated and was subsequently severely eroded. South Korea underwent a phased transformation through liberalisation followed by democratisation, while Singapore experienced an evolutionary transformation characterised by leadership succession, limited liberalisation, and adaptation of the social contract without relinquishing the People's Action Party's dominance. Belarus followed a different trajectory. The 2022 constitutional amendments, the strengthened All-Belarusian People's Assembly, and other institutional reforms are interpreted not as democratisation but as an attempt to construct a 'collective Lukashenka' capable of preserving authoritarian continuity after succession. The authors also discuss Russia's economic and political support, although Belarusian dependence on Russia could have been treated more fully as the structural context within which domestic political developments occur.

The conclusion is cautious. The regime retains significant stabilising advantages, including elite cohesion, coercive capacity, relatively low socioeconomic inequality, Russian support, and the absence of a viable domestic institutional alternative. At the same time, it confronts declining procedural and performance legitimisation, professional emigration, administrative deterioration, succession uncertainty, and possible conflict among newly created institutions. The authors emphasise that short-term stability should not be confused with long-term institutional viability.

The book relies primarily on secondary scholarship, international indices, surveys, official documents, and media reporting rather than original interviews or archival research. Its use of the Varieties of Democracy dataset, the Economist Intelligence Unit, and related sources strengthens the comparison, although differences among numerical scores should be interpreted cautiously. The authors' qualitative interpretation generally compensates for this limitation.

Rudkouski and Lichacz have produced a methodologically explicit and systematically comparative study that places Belarus within the broader literature on authoritarian rule without treating it either as an inexplicable exception or merely as an extension of Russia. The book's contribution lies less in proposing a new general theory than in carefully applying and refining existing approaches to a case that remains underrepresented in comparative political science. It will be valuable to scholars and graduate students of Belarus, post-Soviet politics, authoritarian resilience, and regime transformation.



About the Authors

Thomas M. Buchsbaum – former Austrian Ambassador. Researcher of democracy, human rights, minorities and international institutions. Co-editor of and contributor to *Democratizing the Constitution of Belarus: Towards a Constitution for a New Belarus in a European Context* (2024).

Rafał Czachor – Dr. habil. in political science, holding doctoral degrees in political science and law. Dean of the Faculty of Social and Technical Sciences, Jan Wyżykowski University (Poland). His research focuses on the constitutional law of post-Soviet states and public international law.

Ingrida Danėlė-Žalimienė – Associate Professor at the Faculty of Law, Vytautas Magnus University, and Associate Professor and Head of the Academic Department of Social Sciences at the European Humanities University (Vilnius). Researcher of constitutional law and human rights. Recent publications include ‘The Role of Equality and Non-discrimination in Shaping Constitutional Gender Dynamics and Safeguarding Family Life’ (*Baltic Journal of Law & Politics*, 2025). Together with Dainius Žalimas, she co-authored the chapters ‘The Dilemma of the Belarusian Constitutional Identity’ and ‘The Form of Government under the Draft Constitution for a New Belarus’ in T.M. Buchsbaum and K. Pabel (eds), *Democratizing the Constitution of Belarus* (2024).

Pavel Daneyka – Administrative Director at the BEROE Economic Research Center.

Valer Karbalevich – PhD in history, political commentator for Radio Free Europe / Radio Liberty (Radyjo Svaboda). Formerly an expert at the Analytical Centre ‘Strategy’ and, from 1997 to 2023, political commentator for the newspaper *Svobodnyye Novosti* (‘SNplus. Svobodnyye Novosti plus’). Author of the book *Aleksandr Lukashenko: politicheskiy portret*, published in Russian, French and Polish.

Henadz Korshunau – Belarusian researcher and sociologist, PhD in sociology. Former Director of the Institute of Sociology of the National Academy of Sciences of Belarus; co-founder of the independent initiative ‘Belarusian Sociological Group’.

Tatsiana Kulakevich – PhD, U.S. Fulbright Scholar and Associate Professor of Instruction at the School of Interdisciplinary Global Studies, University of South Florida. Researcher of authoritarian politics, democratisation, diaspora politics and security in Eastern Europe and the post-Soviet region. Her recent article ‘The War in Ukraine: Deterrent Effect of Weaponized Interdependence’ was published in *Nationalities Papers* (2026).

Igor Kuley – Belarusian television journalist and presenter with fifteen years of professional experience. He has worked for Deutsche Welle, Belsat and the Belarusian Investigative Center. He specialises in political and social affairs and in investigations of high-level corruption.

Anatol Liabedzka – adviser to Sviatlana Tsikhanouskaya on constitutional reform and parliamentary cooperation. Initiator and driving force of the work of the Public Constitutional Commission, which prepared the draft of the new Constitution and a package of draft laws supplementing and developing it.

Mariusz Maszkiewicz – PhD, Dr. habil., Editor-in-Chief of the *Free Belarus Journal*, former Ambassador to Belarus and Georgia, and Professor of International Relations at the Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw. Author of more than one hundred scholarly articles and twelve books on anthropology, sociology and international relations.

Piotr Rudkouski – PhD, philosopher and political analyst, Deputy Editor-in-Chief of the *Free Belarus Journal*. His research focuses on Belarusian national identity, value change and authoritarianism.

Viktar Shadurski – Doctor of Historical Sciences, Professor, Dean of the Faculty of International Relations at Belarusian State University (2008–2021); currently an independent researcher of history and international relations, based in Wrocław, Poland. In 2026 he published the monograph *Land under Grey Wings* and a Belarusian-language reissue of *The Birth of the Belarusian Leviathan*.

Olga Tomashevskaya – data journalist with experience covering social and economic issues. Communications and Project Manager at the BER-OC Economic Research Center.

Andrei Vardomatski — Dr. habil. in sociology, specialist in empirical sociological research on public opinion in Belarus. Founder of the NOVAK Laboratory (Minsk, Belarus) and the Belarusian Analytical Workroom (Warsaw, Poland), with thirty years of nationwide representative public opinion monitoring in Belarus. Former professor at Belarusian State University, the European Humanities University and the University of Warsaw. His research covers geopolitical orientations, national identity, media consumption, the phenomenon of Belarus-2020, reactions to Russian aggression in Ukraine and other topical issues.

Valery Zhurakouski — consultant in organisational development and strategic planning, specialising in the development of public institutions. One of the authors of the draft Constitution for a New Belarus prepared by the Public Constitutional Commission.

Dainius Žalimas — PhD, Member of the European Parliament and Visiting Professor at Vytautas Magnus University (Kaunas), where he was formerly Dean of the Faculty of Law. His research focuses on public international and constitutional law. His recent publications include ‘Constitutional Amendments and Constitutionality’, ‘Constitutional Justice in Lithuania’ and ‘International Law and Constitution’, in J. Cremades and C. Hermida (eds), *Encyclopedia of Contemporary Constitutionalism* (Springer, 2025–2026).



Aliaksandr Milinkevich (1947–2026)

A Personal Commemoration
by Mariusz Maszkiewicz

I met him in 1991, when he was deputy mayor of Hrodna. The meeting was arranged by Tadeusz Gawin, on the occasion of a Polish government delegation's visit – en route to Minsk – that included Deputy Minister Michał Jagiełło. We quickly became friends.

Milinkevich stood out against the whole post-Soviet reality that I observed in Belarus for many years afterwards. He seemed to be moulded from different material, different clay. He did not fit into that world; against its drab backdrop, he looked as though he had arrived from a better one. It was only after years of knowing Aliaksandr that I learned his father – a teacher and pre-war Belarusian political activist in Western Belarus – had studied in Warsaw and lived in the boarding house on Krochmalna Street run by Janusz Korczak.

Aliaksandr often recalled how he had been shaped by Polish literature, of which there was no shortage at home; his father was a school headmaster. He considered himself not only a Belarusian patriot but also a custodian of the heritage of the Grand Duchy of Lithuania. In the 1980s he took part in rebuilding the historic clock on the tower of the former Jesuit church in Hrodna. He helped transfer the remains of King Stanisław August Poniatowski from Wołczyn to Warsaw Cathedral, and supported the initiative to rebuild Kościuszko's manor house in Mereczowszczyzna. He was engaged in restoring Hrodna's historic monuments, and warmly supported me in rebuilding part of the ruins of the Szereszewski tobacco factory – which housed, initially as a temporary

measure, the Consulate General, and near which the ‘Ratusha’ later arose: a third-sector hub that grew into a centre of civic and democratic activity in Belarus.

My acquaintance with Aliaksandr Milinkevich – both the private man and the public figure – was always a source of quiet satisfaction to me. I drew on his wisdom and experience, and on the healthy distance he kept from many matters.

When I took up the post of Ambassador to Georgia in 2016, Aliaksandr was often my guest. In 2023 I proposed that he lead an academic journal within the Free Belarus University. Since my return to Poland, after the end of my diplomatic mission, we worked together on publishing the Free Belarus Journal – a scholarly and expert publication intended to serve as an intellectual foundation for a future, free Belarus.



Aliaksandr Milinkevich at the historic bell before the Chernobyl March (or Freedom Day demonstration), Minsk, 2006. Photo from a private archive.



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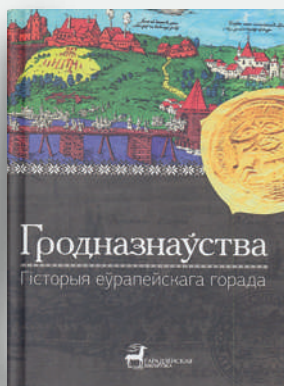
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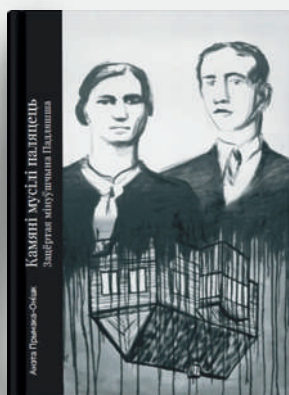
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