

## Constitutional reform in Belarus: step in the wrong direction

**On March 15, a comprehensive package of amendments and additions to the constitution came into force in Belarus. This was preceded by a national referendum on February 27, in which, according to official figures, the reform draft was approved by a narrow majority. The justification for the constitutional reform has been that the extremely far-reaching powers of the president were no longer necessary to this extent and should be distributed more evenly among other constitutional bodies.**

### Civil protests as a catalyst for reform

The Belarusian leadership chose a symbolic date for the entry into force of the constitutional reform: March 15. Since 1998, this day has been a national holiday as Constitution Day. The previously instigated reform considerations were taken up again after the disputed presidential elections in 2020 and the ensuing civil protests and were further advanced by appointing a constitutional commission and a group of experts. The intention behind the reform initiative was to calm the heated atmosphere in the country and take the wind out of the opposition's sails. The civil protests thus became the catalyst for the constitutional reform.

The February 27 referendum was held following a sham public hearing. The draft changes were open for debate for less than three weeks – a period that included the New Year and several state and religious holidays – after which they were favourably evaluated by over 99 percent of the 9,000 respondents. The referendum ended with a 65.16% approval rate and a 10.07% disapproval rate, with 78.63% of eligible voters having participated. The formal requirement of approval by more than 50% of those eligible to vote was narrowly achieved with 51.24%. The proportion of invalid votes, which the opposition had urged the population to cast, was strikingly high with 24.77%.

### The main amendments to the constitution

#### Waiver of neutrality and nuclear weapons freedom

Although Belarus had previously postulated the goals of freedom from nuclear weapons and national neutrality, these principles have now been removed from the constitution. Instead, they were replaced by the formulation that the Republic of Belarus rules out military aggression against other states coming from its territory. The provision of Belarusian territory as a deployment area for Russian forces and their invasion of Ukraine from Belarus clearly violates the constitution, both the old and the new version. The stationing of nuclear weapons in Belarus now also appears possible.

#### Revaluation of the All-Belarusian People's Assembly

The All-Belarusian People's Assembly, which until now has been held only once every five years, becomes the “supreme representative body of people's power” with a constitutional status. It is to meet at least once a year with 1,200 delegates as a non-professional state body. Some of the president's responsibilities have been transferred to it, although in many cases the president retains the exclusive right to make proposals. The function of the People's Assembly is likely to be limited to pure acclamation. In the relationship between the president, parliament and government, this new body is more likely to create confusion and uncertainty. The separation of powers is weakened, not strengthened.

#### Presidential power remains strong

The president's overwhelming power – constitutional lawyers speak of super-presidentialism – will hardly change. However, the president will only be allowed to serve a maximum of two five-year terms, which means a return to the rule that applied until 2004. However, a “lex Lukashenko” ensures that Lukashenko's previous terms in office will not be taken into account. In this respect, the new regulation will not take effect until the next presidential election. Lukashenko could theoretically remain in office until 2035. A lifelong immunity of the president after leaving office was newly introduced.

The admission requirements for the office of president have been increased: the candidate must have lived in Belarus for at least 20 years prior to the election and must not have or have had any other citizenship or right of residence in another state. Instead of valuing foreign experience as a special qualification, Belarus is choosing a path of increased isolation.

The president appoints the prime minister and other ministers, although he needs prior approval of the House of Representatives of Parliament (“lower house”) for the appointment of the prime minister. The president may be removed from office (“impeachment”) by the People's Assembly under strict conditions and after a prior review by the Constitutional Court.

On a positive note, presidential decrees will no longer be allowed to contradict or take precedence over national laws.

The president's control of the judiciary is ensured by his right to appoint and recall all judges. Only the judges of the Supreme Court and the Constitutional Court (one-time term of eleven years) are appointed and dismissed by the People's Assembly, with the president having the exclusive right of nomination.

### Culture of remembrance and man-woman marriage

Striking is the increased emphasis on national identity and the national culture of remembrance. The state ensures the preservation of historical truth and the commemoration of the heroic deeds of the Belarusian people during the years of the Great Patriotic War. Patriotism and preservation of the memory of the heroic past of the Belarusian people become an obligation of every citizen. The postulate of marriage as a union of a man and a woman is also formulated more explicitly.

### **Low relevance for the economy**

There are only a few amendments on economic issues. For the first time, a unified policy on innovations and the possibility of public-private partnerships are mentioned as tasks of the government. Among the hardly changed fundamental rights, a new fundamental right to the protection of personal data is added. The regulations on property rights, entrepreneurship and employee participation remain virtually unchanged.

### **Russia's constitutional reform as a blueprint**

The constitutional reform in Belarus is similar in many aspects to the reform of Russia's constitution in 2020, which could thus be called a source of inspiration for Belarus. However, one cannot speak of a complete "copy and paste". It is interesting to note in which points Belarus did not follow the Russian model. The provisions on the sovereignty of the country have not been weakened, which would have been in line with many expectations in connection with the union state of the two countries. Nor has the precedence of national law over international law been adopted, unlike in Russia. Belarus also did not to ban or permanently suspended the death penalty; since the country does not belong to the Council of Europe or aspire to become a member, there was no reason to do so.

### **Conclusions**

Has Lukashenko achieved the announced goals of the constitutional reform? Has the constitution become more modern? Has it been successful in addressing the division of society and the reconciliation of the opposition with the country's leadership? Definitely and without reservation: no. The constitutional reform is a sham. It does not move the country forward; at its core, it is rather backward-looking. Are these changes needed, are they important? The answer is also a definite no. The presidential powers remain overwhelmingly strong, while parliamentary power is weakened, and the rule of law remains far below international standards. Lukashenko, as has been widely speculated, could make himself chairman of the People's Assembly in addition to the presidency, or take over this position

after his time as president ends, in order to remain the strong man in Belarus. He explicitly denied at least the former in his address to the Belarusian people. However, it seems unlikely that Lukashenko would be satisfied with anything less than a dominant leadership role in the future.

According to Lukashenko in his address to both chambers of parliament, the revised constitution is intended to release the country's potential. It is the pinnacle of legal changes, he said. With the support of the Russian invasion of Ukraine, the constitution already lost its credibility when it came into force.

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