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country report

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In the Shadow of War: Lukashenka reaches for lifelong power

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The Belarusian national anthem begins with the line “Belarusians are peaceful people”. For many years it had been a core promise of Minsk’s foreign policy positioning to rule out the possibility of an aggression towards any neighbors. This sentence is now even supposed to become part of the national constitution, despite Russian tanks rolling and missiles flying into Ukraine from Belarusian territory every day. After this Sunday’s referendum, which took place under circumstances which democratic forces call a “de facto military occupation by Russia”, the regime declared that a majority of Belarusians voted in favor of constitutional amendments – although pre-referendum projections suggest that the figures presented are strongly inflated (presumably more than doubled) and the necessary quorum was almost certainly not met in reality. When the amendments will come in place on March 9th, the state setup of Belarus and the country’s formal geopolitical positioning will be changed substantially – at least on paper. For Aliaksandr Lukashenka, the goal is to secure a path to unlimited rule and personal immunity and minimise the “danger” of the “opposition” ever taking over. Although in reality, many question how much control he still has left, apart from repressions. In the foreign policy realm, the country is abandoning neutrality and its non-nuclear status. Hence, the majority of people doesn’t expect any improvements in the country from the constitutional amendments. Many ask: why a new constitution if the current one isn’t being applied anyway? The democratic forces had called for an active boycott of the “illegitimate” referendum beforehand. Faced with their country being dragged into a highly unpopular war against a peaceful neighbour, thousands of Belarusians seized the opportunity to protest – for the first time in over a year.

Pre-History

The idea of the constitutional change in Belarus is fundamentally not new. An authoritarian system that has effectively eliminated elections as an instrument for changing power faces the challenge of having to organize the dictator’s succession at some point. In the years leading up to 2020, Lukashenka had made it clear that he did not want to leave the „excessive power“¹, he had amassed for himself to a single successor. Strengthening of the government and the role of parties were considered and he himself suggested that the coming term could be his last, although the question of personal security guarantees had to be „clarified“ – after all, he had also made enemies and is suspected of being involved in political murders of the 1990s. But while he could have the impression after the “unspectacular” parliamentary election of 2019 that he could carry out such a process in a calm

and controlled manner “from above”, the late summer of 2020 created a completely new reality. The mass protests against electoral fraud and police violence not only threatened his power and security of his entourage, but also challenged his entire understanding of the state with their advocacy of a constitutional, democratic and cosmopolitan Belarus. The confrontation plunged the country into its deepest political crisis since independence.

While hundreds of thousands of people were still demonstrating in Minsk every Sunday, representatives of the regime brought up constitutional reform at an OSCE meeting as a way out of the crisis. The democratic forces rejected this as a stalling tactic² and called for new elections, but the idea fell on receptive ears in the Kremlin, to which Lukashenka turned for help. Although Putin was not well disposed towards the Belarusian ruler, whose flirtation

with the West had culminated in a downright anti-Russian election campaign in recent years, he could not let his ally "fall victim" to the democratic protests - the two systems of rule are too similar. Thus, a constitutional reform with subsequent new elections (the date in question was 2022) seemed to offer the chance to replace Lukashenka with a more reliable vassal in a timely but not hasty manner and, at the same time, to open up new vehicles of influence in Belarus, for instance via a pro-Russian party.

Lukashenka's goal, on the other hand, remained to keep the political reins in his hands, to guarantee security for himself and his followers and to preserve the "political legacy" of his system by preventing what he saw as the "criminal" opposition from (ever) taking power. In doing so, he let it be known that he would actually prefer not to change anything in the system, since in a system based on violence and obedience, even small changes can create "unnecessary" stress.

The path to a draft

Since then, the process has dragged on and it was rumoured that "big brother" was displeased that Lukashenka was "not delivering". The oft-made promise of early elections has since disappeared from the debate altogether. Then, in March 2021, Lukashenka set up a constitutional commission consisting of 36 loyal people under the chairmanship of Miklashevich, the president of the Constitutional Court. This commission was to prepare a draft in secret by 1 August 2021. The public only got a glimpse of the contents through a (supposed?) leak, but a decree by Lukashenka from May 2021 also revealed the direction of development. In the event of his violent death, the Security Council, rather than the prime minister, was to take over power collectively - so great, observers suggested, was his fear of a coup from within his own ranks.

Even at that time there was speculation that the "Kazakh model" could serve as a model for the transformation. The "President" retreats to a new office created for him, which de facto allows him to hold the reins "from the off". Indeed, Lukashenka expressed during this period that the

constitution was "for the next president" and praised the "cooperation of Nazarbayev and Tokayev". Some of his officials, including representatives of the Security Council and the KGB, made "consultation trips" to Nur-Sultan.

After discussing the draft constitution in September, Lukashenka also set up a working group of his closest confidants to finalise the project. He later claimed to have personally dictated the draft constitution.³ Parliament, which according to the current constitution should have a decisive role in such a process, was not involved. The draft was only presented to the public on 27 December 2021. The following day, Lukashenka travelled to a summit meeting of the Commonwealth of Independent States (CIS) in Saint Petersburg and then met bilaterally with Putin. Officially, it was about forestry steps in the construction of the union state and the joint military exercises in spring 2022, but experts suspected that he also sought a placet on the draft constitution.

Central Innovation: The People's Assembly

According to the draft, eleven articles are to be newly included and 77 changed. The planned changes mean a profound restructuring of the existing order. What the Venice Commission of the Council of Europe calls an "intensification of the already existing strong asymmetry in the distribution of power" is summed up by political scientist Valery Karbalevich as an "accentuation of the Lukashenka system". The central innovation is the elevation of the so-called All-Belarusian People's Assembly (ABPA) to the highest constitutional body. Until now, this body, created by Lukashenka in 1996, has had a rather folkloric character - the meetings of about 2,500 delegates, which take place every five years, are reminiscent in style of CPSU party congresses and offer Lukashenka a large stage in front of loyal followers - but now it is to be given far-reaching powers. In future, it will set the general direction of domestic and foreign policy as well as socio-economic development, decide on military operations, adopt the national security concept and hear the prime minister on it. It is to "watch over the constitutional order" and be able to

initiate amendments as well as referendums and appoint or dismiss the judges of the Supreme and Constitutional Courts. The same applies to the members of the Central Election Commission (CEC). In addition, the ABPA can rule on the legality of elections and declare a state of emergency. Finally, it has the power to annul all legal acts and other decisions, with the exception of decrees issued by judicial authorities, and to issue "binding instructions" to state organs and employees. Critics point out that the powers of the ABPA foreseeably overlap with those of the president, parliament and the judiciary.

The "People's Assembly" is to be composed of 1,200 members. Exactly how they will be appointed has not been fixed. So far, however, the practice is that they are not elected by the people, but are appointed from within the presidential administration. It will probably include civil servants, members of parliament and representatives of (pro-state) "civil society", as well as representatives of all branches of government, including the president.¹ However, being a delegate of the ABPA is not a full-time job. Its members are supposed to continue to pursue their "real" work without restriction, which severely limits their time capacities to participate in the "highest body of the state". The decisive decision-making power will therefore lie with the Presidium of the ABPA, which will be elected by the Assembly itself. Its exact composition has also not yet been determined, but there is no doubt that Lukashenka intends to be at its head.

A boy or the king? - Both!

Belarus is to remain a "strong presidential republic", but the president will lose his appointment rights for judges and the electoral commission to the ABPA and his decrees will no longer take precedence over laws. Also, his term limits, which were lifted by the referendum in 2004, will be reintroduced (Art. 81). From the next election (in rotation in 2025), a maximum of two terms of office will then apply – previous marks

of office will not be counted. Importantly, however, the People's Assembly can remove the president from office for "serious offences", although under Art 89 he will retain lifelong immunity for "acts committed in connection with the exercise of his powers as president". The minimum presidential age has been raised from 35 to 40 and no one is allowed to run for office who (!) has lived outside Belarus for the last 20 years and held another citizenship or residence permit. This deprives hundreds of thousands of political exiles of the right to stand for election. The candidacy of someone like Sviatlana Tsikhanouskaya would thus be prohibited for at least three reasons – she is too young, she has lived abroad and she also has a criminal case on her hands.

While Lukashenka was still stressing in November 2021 how important the constitutional amendment was for the country's future, he was quoted on 18th January as saying that he actually "didn't need the reform at all" and that he didn't care about the outcome. The bloody protests and the ousting of ex-president Nazarabyev in Kazakhstan had obviously made him realise how weak the guarantees of a comparable arrangement are in case of doubt. In order to leave nothing to chance, he therefore had a special clause inserted (Article 144) that allows him personally – but not a future successor – to hold both offices simultaneously: President of the Republic and Chairman of the ABPA.² With the new constitution, he can theoretically hold the office of president until 2035. Whether he intends to do so, he answers differently depending on his mood of the day. Sometimes he says he will leave soon, sometimes that he will remain president forever.

Towards totalitarianism

The second highest office in the state shifts from the Prime Minister to the Speaker of the Upper House of Parliament. The latter is the head of the Security Council, which is to replace the president collectively in the event of his violent death (Art.

¹ This seems to contradict article 86, under which the President cannot have other positions.

² Also this seems to contradict Art. 86 (no other offices for the President) and art. 6 (separation of powers). An

usurpation of power is punishable under article 357 part 2 of the Criminal Code (unconstitutional seizure or retention of power).

88¹). But the new constitution also narrows the understanding of state and society. While it is currently still the case that "[democracy] in the Republic of Belarus [...] is based on the diversity of political institutions, ideologies and opinions" (Art 4, 1), the "ideology of the Belarusian state" is now to be enshrined instead. What this means can be determined by the regime itself, but the new Articles 54(2) and 15(2) give a first impression. The former imposes on citizens the duty to "show patriotism and preserve the historical memory of the heroic past of the Belarusian people" - this probably does not mean the centuries-long wars against Moscow. The second obliges the state to "ensure the preservation of historical truth and the memory of the heroic deeds of the Belarusian people during the Great Patriotic War". Observers interpret this - like the entire constitutional project - as a step from authoritarianism to totalitarianism and see parallels to developments in Russia. In future, parties and associations are no longer to "contribute to the determination and expression of the political will of the citizens and participate in elections", but only to "contribute to the exercise and protection of the rights, freedoms and interests of man and the citizen" (Art 5). It is also noteworthy that a new article (45(4)) requires citizens to "take measures to preserve and promote their own health." In view of Lukashenka's selective denial of the corona pandemic, critics see this as a retreat of the state from its responsibility to protect.

Foreign policy implications

The referendum took place not only during wartime but under conditions that the democratic forces call "de facto occupation" of Belarus itself. Over 30,000 Russian soldiers are in the country – not just across the Ukrainian border, but pretty much everywhere. The entire Belarusian army does not count many more of its own personnel. A referendum under the eyes of Russian combat troops brings back memories of Crimea 2014, although this coincidence is probably more a coincidence with a high

symbolic effect. What is ground-breaking, however, is that the claim currently formulated in the constitution to be a country free of nuclear weapons and to be geopolitically "neutral"³ is thrown out of the constitution. Russia could therefore station nuclear weapons in Belarus (again). It is of little comfort that for this the formulation is included that "the Republic of Belarus excludes military aggression from its territory against other states". While Belarusian troops actively participated in the suppression of the uprising in Kazakhstan as early as January, the use of Belarus' territory by Russian forces has been key to the invasion plans and even parts of the Belarusian army have been put to alert – some claim they are already operating in Ukraine.

Discussion of the draft

After the draft was published in December 2021, there was officially a three-week period of "citizen participation". Although the period of Christmas and New Year celebrations is classically considered a "dead period", according to the National Legal Information Centre, the draft was accessed 230,000 times from the website and 8,919 suggestions were received from citizens, 99.25% of whom supported the draft in principle. These figures are not verifiable. On the other hand, cases became known of criminal proceedings being brought against citizens who submitted critical proposals for amendments because of "incitement to hatred and enmity". Critics therefore condemn the "discussion" as a farce that primarily served agitation within state-owned enterprises and organizations. The Venice Commission of the Council of Europe criticizes that there was neither transparency nor serious participation of society and the opposition in the creation or deliberation of the draft, and thus the "minimum standard of necessary inclusiveness" was not achieved.⁴

On 27th of February, or since February 22, in early voting, the 6.8 million Belarusians eligible to vote found a simple question on the ballot paper: "Do you agree with the proposed amendments?" This

³ In view of the existing economic, military and integration alliances (CSTO, EEU, CIS, Union State) with Russia, this only been true to a limited extent. On the other hand, in the years 2015-2020 Minsk had

endeavoured to emphasise neutrality to the maximum and proclaimed its goal becoming an „Eastern European Switzerland “.

gave them a choice between Lukashenka's current constitution and a version he said he "dictated himself". The return to the 1994 constitution – before the authoritarian changes introduced under Lukashenka – favoured by quite a few people is not on the ballot.

Strategy of the democratic forces

The draft of a "people's constitution", which the democratic forces have prepared under the moderation of Sviatlana Tsikhanouskaya's constitutional commissioner Anatoli Lebedko, was also (unsurprisingly) not on the ballot. Work on this project had already begun in spring 2019, a year and a half before the rigged presidential election, when there was still hope of reaching common compromises with state representatives on some issues. In view of the new realities, the democratic forces are now focusing on their own "ideal proposal", which was discussed with international experts and civil society. Between July and October, around 17,000 users registered for this via chat-bot, 1,600 amendment proposals were received and almost 5,000 people took part in the final vote. According to a weighted online survey, 37 per cent of citizens had heard of the project. More than 40 international constitutional law experts were asked to review and comment – most recently at a closed hearing of the PACE in Strasbourg at the end of January 2022, including before representatives of the Venice Commission.⁵

On the one hand, the democratic forces fundamentally reject the referendum as illegitimate. Since Lukashenka himself has already lost all legitimacy, he may not rewrite the constitution now either. The Venice Commission also warns that democratic referendums are not possible without respect for human rights, especially freedom of expression, press and assembly, and political self-organisation - and according to human rights organisations, a climate of "total fear" prevails in Belarus. There are almost 1,100 recognised political prisoners (the number of unreported cases is more likely three times as high), organised civil society has been largely destroyed and the structures of the state apparatus have also been politically purged.

However, since social-political work is hardly possible at all under the given conditions, a broad alliance of political and NGOs - including Tsikhanouskaya's staff, the National Anti-Crisis Management, the Coordination Council and the initiatives ZUBR, Golos and Honest People - called on people to participate in the vote but to express their rejection of the process by invalidating the ballot papers by ticking yes and no boxes. They also appealed to people to photograph the ballot papers as they did in the summer of 2020 and send them to the online platform "Golos" for documentation. A joint operational staff of democratic forces was set up in Vilnius to coordinate communication and actions. While more radical opposition voices called for a total boycott, remarkably, the team of former presidential candidate Babaryka did not participate in the joint campaign, but presented its own strategy. While this is almost identical to the other, it leaves people free to vote no instead of invalidating and encourages people to smile at each other in the queue outside the polling stations - as a gesture of solidarity of the oppressed democratic majority.

„More like a police action “

Lukashenka named the strategy „ridiculous“. ⁶The fact that the regime is nevertheless nervous can be seen from the fact that the curtains of the polling booths are being removed - officially for reasons of Corona protection - but presumably to make it more difficult to photograph the ballot papers. In addition, a massive contingent of different security forces is supposed to guarantee that there will be no "riots". Even the Ministry of Civil Protection is providing 5,000 officers, so that the referendum, in the words of political scientist Karbalevich, is "more like a police operation".

The democratic forces themselves have not called for mass protests. Although the discontent of the people in the country has only been suppressed by violence, it has by no means disappeared. Polls show that a majority continues to demand change, the rule of law and an end to violence. Sociologists put Lukashenka's supporters at no more than 30 per cent, and his sworn "bastion" of supporters at less than 15 per cent. ⁷ But the personal risk for protests seems

disproportionately high in view of the state's readiness to use violence. The fact that, if necessary, a few thousand Russian soldiers could also provide "administrative assistance" does not improve the mood. But even on its own, the mobilisation potential of the referendum is quite low. In the 2020 presidential elections, people believed in the possibility of positive change. This time, only a minority does, according to data from the Analytical Workroom. In fact, only a third expect a reduction in social division. While in 2020 strong candidates gave hope a face, Lukashenka is now on the agenda twice. As he himself noted in a major speech at the end of January: "If the people vote for the new constitution, the dictator wins, if they don't vote for it, he wins too". And yet, in mid-January, the special police and the Ministry of Interior conducted anti-riot exercises. Better safe than sorry.

Sterile election commissions and observers

For the first time, there was not a single member of a democratic party among the almost 60,000 members of the 5,510 local election commissions. The 42 applications received had been rejected. Instead, the commissions are "traditionally" recruited from pro-state organisations and trade unions, such as the Women's Union, Belaya Rus and the Republican Youth Federation BRSM, as well as parties loyal to the government. The change in the chairmanship of the Central Election Commission - Yarmoshina, notorious among democrats, retired in December and handed over to former Education Minister Ihar Karpenka - ensured that a regime loyalist controlled the process. Although Art. 34 of the election code actually requires the publication of lists of members of election commissions, in many places these were kept secret or only appeared in local newspapers. The Minister of the Interior justified this with security concerns, as the "members were threatened". The democratic forces had pointed out that (according to the current law of the Republic of Belarus!) falsifying elections is forbidden under penalty and appealed to the members of the election commissions to count the votes truthfully and to report on it.

Independent election observation, however, was not possible, apart from the campaign of photographing ballots. Among almost 45,000 national observers, only (or: "at least"?) one from the opposition parties is said to have been admitted.⁸ The rest were recruited from the same state-affiliated associations as the commission members. This time, the democratic parties and NGOs were not able to carry out the usual linked observation campaign "Right to Choose". Police and prosecutors had summoned many activists for "preventive talks", searched homes and temporarily locked some away.⁹

Almost 200 people attended the international election observation - most of them from countries of the CIS, the CSTO or the Shanghai Cooperation Organisation.¹⁰ The OSCE Office for Democratic Institutions and Human Rights (ODIHR) had not been invited and the EU didn't send an official election observation mission either, although supposedly "30 EU citizens" were expected to observe on their own. The tactic of documenting electoral fraud through exit polls outside global embassies, which was successful in 2020, was not an option this time. Voting abroad had simply been cancelled - with a potpourri of justifications from Corona about security risks, lack of personnel and the indication that only a few people would be affected anyway. According to estimates, up to half a million foreign Belarusians were deprived of their right to vote.

Possible consequences

While Lukashenka said in early December that he would not hold the referendum if war broke out, the regime carried through with the vote anyway. Early voting started on Tuesday, Feb 22nd, presumably to give the impression that everything is under control. It was claimed that more than 40 per cent of voters made use of early voting. After the referendum, the CEC announced a preliminary result of 78,63 percent voter turnout out of which 82,86 percent supposedly supported the changes. The final results will be announced on March 3rd. According to the electoral code, in a constitutional referendum, more than half of all **eligible** voters have to vote yes - that is, almost

3.5 million people.¹¹ With the numbers presented, that threshold was “comfortably” met with almost two thirds of eligible voters in favor. Prior to the vote, independent forecasts had indicated that the turnout could be around 60 per cent – which already seemed high – and that exactly half of the voters were likely to support the changes. Up to 20 per cent were expected to invalidate ballots. If the real numbers are close to those projections, then the result was inflated by more than 100 per cent!

Accordingly, the EU condemned the results as falsified – whereas recognition came from countries like China. The amendments will come into effect in mid-march, ten days after the publication of the final result. But since some provisions on the All-Belarusian People's Assembly are unclearly worded, a separate law will have to be drafted. The Council of Ministers has already announced that it will prepare a draft by September 2022.¹²

For many commenters the referendum was a non-event since no real change is expected and attention is obviously on the war with Ukraine. Belarus has already been dragged into the aggression war against Ukraine through the use of its territory by Russian troops. It is barely possible to predict what this will mean for developments in the country - even among supporters of the regime this development seems to be highly unpopular. Still, following the referendum the crisis in Belarus is now also likely to be exacerbated internally by the aspect of a constitutional crisis: From the regime's point the new constitution will soon be in force, but for its opponents the old one will still be valid. In the long run, the crisis in Belarus can only be solved by a reconciliation process that includes free and fair new elections. But now another question will first have to be answered: New elections on the basis of which constitution?

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¹ Venice Commission (2022): Urgent interim Report on the constitutional referendum, online under: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)002](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)002) Page 4. Retrieved on 24.02.22

² According to a December 2020 ZOIS poll, about 20 percent of Belarusians saw constitutional reform as the way to overcome the crisis. 44.9 percent of Belarusians wanted new elections. Online under: <https://www.zois-berlin.de/publikationen/wie-vereint-ist-belarus-gegen-das-regime>

³ Ria Novosti of 02.12.21: Лукашенко рассказал о проекте новой Конституции Белоруссии, online under: <https://ria.ru/20211202/konstitutsiya-1761745563.html>. (retrieved on 24.02.22)

⁴ Venice Commission (2022): S 8f. (footnote 1).

⁵ <https://kanstytucyja.online/>, <https://narodnaja.com/>

⁶ Radio Svaboda of 01.12.2021: Чаму ГУБАЗіК баіцца несапраўдных бюлетэняў на рэфэрэндуме? Тлумачыць былы чыноўнік Адміністрацыі прэзыдэнта. Online under: <https://svb1234.azureedge.net/a/31588903.html> (Abgerufen am 22.02.2022).

⁷ According to the former head of the Institute of Sociology of the State Academy of Sciences Korschunau <https://svb1234.azureedge.net/a/31708756.html>. Data from the ZOIS also suggest this: <https://www.zois-berlin.de/publikationen/gesellschaftliche-fragmentierung-in-belarus>.

⁸ Overview of the composition of the 24 February 2022 election observers:

<https://rec.gov.by/uploads/folderForLinks/elect6.pdf> (abgerufen am 24.02.2022).

⁹ Belsat of 23.02.2022: Какие законы уже нарушили во время подготовки к «референдуму». Online unter: <https://belsat.eu/ru/news/23-02-2022-kakie-zakony-uzhe-narushili-vo-vremya-podgotovki-k-referendumu/> (retrieved 23.02.2022).

Overview of the composition of the 24 February 2022 election observers:

<https://rec.gov.by/uploads/folderForLinks/sved2.pdf> (abgerufen am 21.02.2022).

¹¹ Electoral Code of the Republic of Belarus Art 121, Cf. Belta of 16.02.22: Более 6,8 млн граждан включены в списки для голосования на республиканском референдуме, online under: <https://www.belta.by/society/view/bolee-68-mln-grazhdan-vkljucheny-v-spiski-dlja-golosovanija-na-respublikanskom-referendume-485135-2022/>, (retrieved on 21.02.2022).

¹² Nascha Niwa of 10.02.222: Закон аб Усебеларускім народным сходзе плануець падрыхтаваць да верасня. Хоць яшчэ не прагаласавалі па новай Канстытуцыі, online under: <https://nashaniva.com/?c=ar&i=284500> (retrieved on 25.02.22).