

## **Constitutional reform in Russia and comparative analysis with the Constitution of the Republic of Belarus**

On July 1, 2020, the all-Russian vote on the introduction of a number of amendments to the Constitution of the Russian Federation ended. According to preliminary results, the amendments were supported by the majority of those who voted. Thus, the entire list of changes, consisting of 206 amendments, will be made to the Constitution of the Russian Federation. President V.V. Putin issued a decree on the new edition of the Basic Law of Russia, the amendments entered into force on July 4, 2020. The President has repeatedly stated that the amendments will not come into force if the people are against it. Moreover, the citizens of Russia were asked to vote for the entire huge "amendment" package, and not on individual items.

The current Constitution of the Russian Federation was adopted by a popular vote in 1993 (with amendments approved during a nationwide vote on July 1, 2020). It replaced the Basic Laws of the Russian Empire in 1906 and the Constitutions of the RSFSR of 1918, 1925, 1937 and 1978.

The first section includes 9 chapters and consists of 137 articles that consolidate the foundations of political, public, legal, economic, social systems in the Russian Federation, fundamental rights and freedoms of the individual, the federal structure of the Russian Federation, the status of public authorities, as well as the procedure for revision<sup>354</sup>. This article will analyze the constitution before and after amendments in the form of tables.

Amendments to the Constitution of Russia were proposed by President Vladimir Putin in his message to the Federal Assembly on January 15, 2020 and adopted as the Law on Amendment No. 1-FKZ of March 14, 2020 "On Improving Regulation of Certain Issues of Organization and Functioning of Public Power" (206 amendments)<sup>355</sup>.

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<sup>354</sup> The Constitution of the Russian Federation (adopted by a nationwide vote on 12.12.1993 with amendments approved during a nationwide vote on 01.07.2020). 3.

<sup>355</sup> Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public

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According to the Central Election Commission of Russia, the amendment of the Constitution in the recent referendum was supported by 77.92% of those who voted, 21.27% of the participants opposed. The Kremlin called these results "a triumphal referendum to Putin." Thanks to the amendments, Putin was able to remain in the presidency for another two six-year terms<sup>356</sup>.

The main scientific hypothesis of this publication: the constitutional reform in the Russian Federation has common goals and similarities with the constitutional reform in Belarus, therefore, it will contribute to the further integration of the two republics.

To verify this hypothesis, the following questions were posed:

- 1) Are all constitutional amendments in line with democratic principles and legitimate?
- 2) Do these amendments make it possible to re-elect Vladimir Putin for a new term?
- 3) What significant differences does the previous constitution of Russia have after the amendments?
- 4) What are the differences or common features of the Constitution of the Russian Federation after the amendments of 2020 and the Constitution of the Republic of Belarus?

This article includes the historical method as it will help describe the background of constitutional changes. This study uses the method of assessing legal processes and the interpretation analysis (processes methods and the interpretational analysis) because it will show the cooperation of the two political regimes on the territory of Belarus and Russia, and also the possible consequences. This study has the features of versatility and interdisciplinarity, since the norms of law, political science and sociology intersect here.

This publication will use the analysis and synthesis methods. First of all, this will provide an opportunity to clarify the general background of the constitutional reform in Russia and the corresponding constitutional changes in Russia. Further, the genesis and future consequences of constitutional changes in Russia in the context of relations with the Republic of Belarus and the consequences for both countries will be studied. This article will analyze the Constitutions of Belarus and the Russian Federation, the Law of the Russian Federation on an amendment to the Constitution of the Russian Federation, On the Constitutional Commission Decree No. 105 of March 15, 2021 of the Republic of Belarus, the Conclusion of the

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authorities": approved by the State Duma on March 11, 2020. Approved by the Federation Council on March 11, 2020.

<sup>356</sup> Voting on amendments to the Constitution. Interactive map: <https://www.bbc.com/russian/news-53238574>. Access date: 05/03/2021.

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Constitutional Court of the Russian Federation dated March 16, 2020 No. 1-3, and several materials of scientific conferences, as well as quotes from officials in the media.

- 1) Constitutional reform in the Russian Federation in 2020, comparative analysis and genesis in the legal aspect.

### **Constitutional reform in Russia in 2020.**

#### **"Zeroing" and the status of the former president**

Most of all, in connection with the amendments, there was talk of "zeroing" the presidency of Vladimir Putin - creating an opportunity for him to remain in office for another two six-year terms.

This norm appeared among the amendments in March just a day before the State Duma finally adopted the entire package. The initiative was put forward by the deputy from "United Russia" Valentina Tereshkova. And Putin himself agreed to zero his deadlines if the Constitutional Court and the citizens of the Russian Federation support it at the vote. The zeroing of presidential terms has largely clarified the essence of a number of other amendments previously proposed by the president. The limitation on the number of terms remained, but the word "in a row" was removed from the text: according to the new edition, "castling" will no longer be possible when Putin again became head of state in 2012. But the addition to Article 81 of the Russian Constitution directly says that the time limit does not take into account how long the current President has already served. So now Vladimir Putin will be able to participate in the elections in 2024 and 2030, and if he wins, he will be in power until 2036 - then he will be 83 years old.

The next head of state in Russia will not be able to hold this position more than twice. The current norm with the qualifying word "in a row" allowed Vladimir Putin, after eight years of presidency, to move to the chair of prime minister, and in 2012 to return to the presidency for two more terms. This will not be possible now. However, the restriction will not affect Putin himself.

Now the same 81st article says that only a citizen who does not and has never had foreign citizenship or a residence permit can become president, with one exception for those who lived in the territory included in Russia - as long as this applies only to the residents of Crimea. And also, the president should not have accounts and deposits abroad, although nothing is said about the presence of foreign real estate or other property. The candidate must have

permanently resided in Russia by the time of nomination for at least 25 years - before it was 10<sup>357</sup>.

**Table 1. To amend article 81 (on the election of the President)**

What was	What became
<p>1. The President of the Russian Federation is elected for a term of six years by the citizens of the Russian Federation on the basis of universal, equal and direct suffrage by secret voting.</p>	<p>1. The President of the Russian Federation is elected for a period of six years by citizens of the Russian Federation on the basis of universal, equal and direct suffrage by secret voting.</p>
<p>2. A citizen of the Russian Federation at least 35 years old, permanently residing in the Russian Federation for at least 10 years can be elected as the President of the Russian Federation.</p>	<p>2. The President of the Russian Federation may be a citizen of the Russian Federation at least 35 years old, permanently residing in the Russian Federation for at least 25 years, who does not have and did not previously have citizenship of a foreign state or a residence permit or other document confirming the right of permanent residence of a citizen of the Russian Federation on the territory of a foreign state. The requirement for a candidate for the office of President of the Russian Federation that he does not have citizenship of a foreign state does not apply to citizens of the Russian Federation who previously had the citizenship of a state that was adopted or part of which was accepted into the Russian Federation in accordance with federal constitutional law, and who permanently resided in the territory of a state admitted to</p>

<sup>357</sup> Article 81 of the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public authorities": approved by the State Duma on March 11, 2020. Approved by the Federation Council on March 11, 2020

	the Russian Federation or a territory of a part of a state admitted to the Russian Federation. The President of the Russian Federation, in accordance with the procedure established by federal law, is prohibited from opening and having accounts (deposits), keeping cash and valuables in foreign banks located outside the territory of the Russian Federation.
3. One and the same person cannot hold the office of the President of the Russian Federation for more than two consecutive terms.	3. One and the same person cannot hold the office of President of the Russian Federation for more than two terms.
4. The procedure for electing the President of the Russian Federation is determined by federal law.	4. The procedure for electing the President of the Russian Federation is determined by federal law.

Source: compiled on the basis of the Constitution of the Russian Federation

To add to Article 81 a clause on zeroing presidential terms:

3-1. The provision of part 3 of Article 81 of the Constitution of the Russian Federation, limiting the number of terms during which one and the same person can hold the office of President of the Russian Federation, applies to a person who held and (or) holds the office of President of the Russian Federation, without taking into account the number of terms, during whom he held and (or) holds this position at the time of the entry into force of the amendment to the Constitution of the Russian Federation, introducing a corresponding restriction, and does not exclude the possibility for him to hold the office of President of the Russian Federation for the periods allowed by the specified provision.

**Table 2. To amend Article 82 (on the oath of the President of the Russian Federation),  
second part:**

What was	What became
2. The oath is taken in a solemn atmosphere in the presence of members of the	2. The oath is taken in a solemn atmosphere in the presence of senators of the

Federation Council, deputies of the State Duma and judges of the Constitutional Court of the Russian Federation.	Russian Federation, deputies of the State Duma and judges of the Constitutional Court of the Russian Federation.
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Source: compiled on the basis of the Constitution of the Russian Federation

Another important amendment concerning Vladimir Putin personally is the one that defines the status of the former president. Article 92 says that the retired Head of State has immunity, but it can only be deprived of it according to the same procedure that is used in impeachment of the current president:

- one third of the deputies brings charges (high treason or some serious crime);
- a special commission of the State Duma gives an opinion;
- the Supreme Court gives an opinion on the existence of *corpus delicti*;
- the Constitutional Court issues an opinion on the observance of the procedure for bringing charges;

- two thirds of State Duma deputies vote to bring charges;

- two thirds of the members of the Federation Council vote for the removal of immunity.

Moreover, the former president automatically becomes a senator for life of the Federation Council (Article 95), but he can resign from this post.

### **Whose powers are being expanded and whose powers are being curtailed?**

Putin talked a lot about the fact that the rights of the parliament will expand due to the amendments, while the rights of the president will decrease. However, in reality, everything is more complicated: the new possibilities of the State Duma and the Federation Council in practice will turn out to be purely nominal.

**Table 3. Credentials of the State Duma**

What was	What became
The State Duma agrees to the appointment of the Prime Minister	The State Duma approves the candidacy of the Prime Minister
The President appoints the entire government on the proposal of the Prime Minister	The State Duma approves most of the ministers and all deputy heads of government on the proposal of the Prime Minister. The President cannot reject them

	The Central Bank submits an annual report to the State Duma
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Source: compiled on the basis of the Constitution of the Russian Federation

**Table 4. Credentials of the President**

What was	What became
To remove a prime minister from position, the president must dismiss the entire government.	The president can remove one prime minister from position, leaving the entire government
The President approves the structure of the government proposed by the Prime Minister, and also, on his proposal, makes decisions on all resignations and replacements in it	The president, without intermediaries, appoints five key ministers: defense, internal affairs, justice, foreign affairs and emergencies. Formally, such an appointment should be preceded by "consultations" with the Federation Council, but the senators will not be able to influence the president's decision in any way
If the State Duma rejected the candidacy of the Prime Minister three times, then the President appoints him himself, and the State Duma is obliged to dissolve and appoint new elections	The norm essentially remained the same, but the dissolution of the State Duma and the appointment of new elections are no longer mandatory and depend on the decision of the president
The President independently appoints and dismisses members of the government on the proposal of the Prime Minister	If the State Duma three times rejected the candidacies of government members nominated by the Prime Minister, the President can appoint them independently (in fact, due to this amendment, the new powers of the Duma in practice will only affect the procedure)
The Federation Council appoints and dismisses the Prosecutor General and his deputies on the proposal of the President	The norm essentially remained the same, but the dissolution of the State Duma and the appointment of new elections are no longer mandatory and depend on the decision

	of the president
Previously, the norm was spelled out not in the Constitution, but in federal laws	The President himself appoints the Prosecutor General and his deputies after consultation with the Federation Council, and also dismisses them from office
The presidential veto on the bill can be overcome by 2/3 of the number of senators of the Federation Council and 2/3 of the number of State Duma deputies. After that, the law comes into force	The President submits to the Federation Council for approval the candidacies of judges of the Constitutional and Supreme Courts
The President appoints to the Federation Council no more than 10% additionally (now it is 17 people) of the total number of all its other members	The president can appoint up to 30 senators to the Federation Council, of which 7 can be appointed for life, and life-long senatorship can be obtained for merits in state and public activities
Previously, the norm was spelled out not in the Constitution, but in federal laws	The President submits to the chambers of parliament the candidacies of the head and deputy of the Accounts Chamber, all of its auditors

Source: compiled on the basis of the Constitution of the Russian Federation

As for the Federation Council, apart from the aforementioned “consultation” and an increase in the number of members appointed by the president, there will be no significant changes in it. Members of the upper house of parliament will now officially be called senators, and a 6-year term of office for those appointed by the president will also be approved. Also, for both chambers, the Constitution prescribed the possibility of parliamentary control, which already existed in accordance with the current law.

### **The structure of the Constitutional Court.**

If the amendments are adopted, will be cut from 19 to 11 people. It will be possible to apply to the agency itself for checking laws for violation of the rights and freedoms of citizens only when all other possible judicial instances in the country have been passed<sup>358</sup>

<sup>358</sup> Article 125. Composition, formation procedure and term of office of the Constitutional Court of the Russian Federation (as amended by the Federal Constitutional Law dated 09.11.2020 No. 5-FKZ).



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Also, the changes prescribed the requirements for officials, which for the most part have already been enshrined in legislation. So, members of the government, heads of regions, senior officials, senators and deputies of the Duma, judges and the human rights ombudsman should not have foreign citizenship or a residence permit, as well as accounts or deposits abroad - about real estate, again, the amendments are silent ... These provisions have long been in Russian legislation, so that many opposition politicians call their appearance in the Constitution populism. Also, now the basic law will prescribe a norm that a person who has reached 30 years of age can apply for senior positions in public administration or for a place in the Federation Council.

The conflict between different levels of government, primarily between governors and mayors of large cities, has a systemic nature. The first always tried to subjugate the mayors, and mayors resisted to the last. Moreover, the Constitution directly states that local self-government (ie, including city authorities) is “independent” and is not included in the system of state authorities, that is, it should not be directly subordinate to the authorities of the constituent entities of the Federation. Over the long years of confrontation, the governors won the right to influence the appointment of heads of large cities, but this problem was not systematically resolved. Now a new constitutional concept is being introduced - “a unified system of public authority”. What it is, the text of the amendments does not explain in any way. And it is not yet clear how the inclusion of local self-government in this unified system will be combined with the article on its independence, which was not edited.

### **Possible strengthening of the vertical.**

Some of the amendments hinted at strengthening the role of the president in the work of the executive branch. Article 110 declares that executive power is exercised by the government under the general leadership of the president, although earlier in this paragraph nothing was said about the head of state at all. Article 83 says that the president determines the agencies in the structure of the executive power, which are led by himself, as well as those led by the head of government. Finally, Article 113 states that the Prime Minister is personally accountable to the President for the work of the government.

Also, new amendments to the Constitution may provide for the possibility of centralizing power to the detriment of regional agencies. Article 67 says that federal territories will appear in the country, the organization of management of which will be specified by federal law: it is possible that they will be directly subordinate to the central government. The deputies who made the amendment proposed to include closed cities, protected natural areas, and the

whole region - the Arctic. Already in article 71 it is said that the organization of public power - that is, in fact, all power in the country - is under the jurisdiction of the Russian Federation, and in article 80 that the president ensures the functioning and interaction of all bodies of the public power system. From all this, we can conclude that the federal center will have the constitutional right to influence regional authorities<sup>359</sup>.

### **Ideology and populism.**

The fundamental law of any state must have an impeccable legal technique. Translated into ordinary language, this means that its provisions should be free of ambiguity and should be applied in practice.

Some of the most discussed were the amendments that do not bring any significant changes to the country's legal system. They look more like decorative, designed to gain popularity among different groups of the population.

The most significant of them, apparently, is indicated in article 67, which speaks of the inadmissibility of actions to alienate Russian territories. Now disputes over the ownership of the Kuril Islands and Crimea cannot be settled simply by transferring these territories or parts of them to Japan and Ukraine. Another important norm, many Russians consider the one that says that decisions of international agencies and international treaties that contradict the Constitution should not be implemented. However, this state of affairs already existed thanks to the laws in force on the Constitutional Court.

The list of "ideological" amendments can include statements about Russia as the legal successor of the USSR and Russian as the language of the state-forming people, mentioning in the basic law of faith in God, honoring the memory of the defenders of the Fatherland and preserving traditional family values.

Therefore, the introduction into it of provisions such as "The Russian Federation, united by a thousand-year history, preserving the memory of ancestors who passed on to us ideals and faith in God" or "Russian as the language of the state-forming people" only overloads the Constitution with unnecessary and not amenable to a clear legal definition of information that makes it difficult to understand and interpret.

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<sup>359</sup> Articles. 67, 71, 80 of the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of March 14, 2020 N 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public authorities": approved by the State Duma on March 11, 2020. Approved by the Federation Council on March 11, 2020.

Patriarch Kirill of Moscow and All Russia was the first to propose to include a mention of God in the Constitution. "If the hymn can contain "God-guarded native land", why can't our Constitution say about it?" - said the patriarch. He noted that the "majority" in Russia believe in God - whether they are Christians, Muslims or followers of other confessions<sup>360</sup>.

A populist amendment can be considered, in which the minimum wage is guaranteed not lower than the subsistence level - such a norm was already legislatively enshrined last year. It also talks about the mandatory indexation of social benefits and pensions - in the latter case, at least once a year<sup>361</sup>.

Opponents of same-sex marriages are in favor of the amendment that appeared under the joint jurisdiction of the Russian Federation and its subjects to "protect the institution of marriage as a union of a man and a woman," although in fact it does not explicitly state that only such a union is considered a marriage. Prior to that, the Constitution did not mention marriage at all<sup>362</sup>.

In addition to the "material" claims to the proposed amendments, we also note the "procedural" ones. A plebiscite on such issues should imply equality in the opportunity to express their positions to supporters and opponents of the amendments, ensuring honesty and transparency in the counting of votes, and the presence of independent observers.

There is no trace of all this. The Central Election Commission under the pretext of "informing" is openly campaigning for amendments, rallies of opponents of the amendments are prohibited under the pretext of a difficult epidemiological situation (which, at the same time, allows parades to be held), voting is extended for a week, access for free observers to polling stations is closed, which increases the likelihood of falsification and fraud ... In addition, state employees are driven to polling stations on a "voluntary-compulsory basis".

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<sup>360</sup> Access mode: <https://www.rbc.ru/politics/01/02/2020/5e358efc9a79474fd8a2585b-ljcneg> 03/01/2020. Access date: 05/03/2021.

<sup>361</sup> Article 5. The Russian Federation respects the work of citizens and ensures the protection of their rights. The state guarantees a minimum wage not less than the subsistence minimum of the working-age population as a whole in the Russian Federation. Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public authorities": approved by the State Duma on March 11, 2020. Approved by the Federation Council on March 11, 2020.

<sup>362</sup> Conclusion of the Constitutional Court of the Russian Federation dated March 16, 2020 No. 1-3 "On compliance with the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation of the provisions of the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation" On improving regulation of certain issues of the organization and functioning of public authorities ", As well as on the compliance with the Constitution of the Russian Federation of the procedure for the entry into force of Article 1 of this Law in connection with the request of the President of the Russian Federation."

### Comparison of the situation with Belarus

Talks about a possible amendment to the Constitution of Belarus began back in 2018. True, then Alexander Lukashenko resolutely rejected this idea. However, a year later, in March 2019, the Head of State returned to this issue during the Big Conversation. He said that he instructed the Constitutional Court to develop a draft of a new constitution, providing for the redistribution of powers between the branches of government and even a possible transition to parliamentary elections based on party lists<sup>363</sup>.

Changes to the constitution are not new in the modern history of Belarus: amendments to the Basic Law were introduced in 1996 and 2004<sup>364</sup>. But then there were obvious political prerequisites for this. In 1996, the adoption of the amendments was the result of a prolonged conflict between the president and parliament, and the changes in 2004 were necessary in order to enable Lukashenko to be re-elected to the post of head of state an unlimited number of times.

As you can see, thanks to the amendments in Russia, the president will have more powers in appointing and dismissing the prime minister and ministers, as well as dissolving the Duma, but at least nominal restrictions will remain. One can judge the degree of similarity in some aspects of the constitutional norms of Belarus and Russia - with amendments.

**Table 5. Belarus – Russia. Comparison of the situation**

In Belarus	In Russia
President's term - 5 years	President's term - 6 years
The number of terms is not limited	Maximum two terms after the approval of amendments
The president appoints the prime minister, which must be agreed by the lower house of parliament	The president appoints the head of government, who must be approved by the lower house of parliament
The President himself determines the composition of the government	The President, after consultation with the upper house of parliament, appoints five ministers: defense, internal affairs, justice,

<sup>363</sup> Демичев, Д. М. Конституционное законодательство Республики Беларусь: состояние, проблемы и направления совершенствования / Д. М. Демичев // Государственно-правовое регулирование интеграционных процессов на постсоветском пространстве : материалы Междунар. науч.-практ. конф., Витебск, 20–21 апр. 2020 г. / М-во образования Респ. Беларусь, Витеб. гос. ун-т им. П. М. Машерова ; редкол.: А. А. Бочков (отв. ред.) [и др.]. Витебск, 2020. С. 19.

<sup>364</sup> 1994 Constitution of the Republic of Belarus (with amendments and additions adopted at republican referendums on November 24, 1996 and October 17, 2004).

	foreign affairs, and emergencies. The rest of the members of the government are appointed by the president after approval by the lower house of parliament on the proposal of the head of government
The President may dismiss any member of the government	The President may dismiss any member of the government
If the lower house has twice rejected the candidacy of the prime minister, the president has the right to dissolve it and call new elections and acting. Prime Minister	If the lower house rejects the candidacy of the head of government three times, the president has the right to dissolve it and appoint new elections and the head of government
The President can dissolve the lower house and call new elections if it expresses a vote of no confidence in the government	The president can dissolve the lower house and call new elections: if she has not approved more than a third of the candidates in the government three times; if she twice expresses a vote of no confidence in the government on her own initiative; if it expresses a vote of no confidence in the government in response to a request from its head
The President appoints the Attorney General with the consent of the Upper House of Parliament	The President appoints the Attorney General and his deputies in consultation with the Upper House of Parliament
A presidential veto on a law can be overcome by 2/3 of the number of members of both houses of parliament	A presidential veto on a law can be overcome by 2/3 of the number of members of both houses of parliament.  BUT: the president can send a bill to the Constitutional Court for verification; if violations are found there, the law does not enter into force

The President appoints 6 of the 12 justices of the Constitutional Court	The President nominates all 11 Constitutional Court judges to the upper house for approval
The President can remove from office the judges of the Constitutional Court	The President can ask the upper house to remove the judges of the Constitutional Court from office for misconduct
The President appoints no more than 8 senators out of 64 to the upper house	The President appoints no more than 30 senators out of 200 to the upper house, of which 7 can be appointed for life

Source: compiled on the basis of the Constitution of the Russian and Constitution of the Republic of Belarus (with amendments and additions adopted at republican referendums on November 24, 1996 and October 17, 2004)

Meanwhile, there are not so many specialists in constitutional law in Belarus, whose level is sufficient for preparing amendments to the constitution, especially for writing a new one. A retired judge of the Constitutional Court, professor of the Belarusian State University Mikhail Chudakov, who took part in the development of the draft Constitution of Belarus, adopted in March 1994, argued that this time no one turned to him for an examination<sup>365</sup>.

The protest December and the beginning of the year showed that Russia has a lot of its own problems (in particular, urgently to start making amendments to the Constitution), behind which the integration agenda is erased, at best, to one of the working issues on Putin's table.

At first glance, Vladimir Putin simply followed the path of Alexander Lukashenko and many other authoritarian rulers of the world. On the second - most likely, it is also exactly that. There is a limitation for practically eternal reign - to remove the limitation. This is exactly what Lukashenka did in Belarus back in 2004.

Apparently, Putin is doing the same. Valentina Tereshkova's proposal to zero the presidential terms of the current owner of the Kremlin, the amicable support of this initiative by the majority of the Duma, Putin's imminent arrival in the Duma at the invitation of the speaker, and even a written text or theses that the Russian president looked into during his speech in the Duma, commenting on the "unexpected" idea of the former cosmonaut - all this indicates that Tereshkova's idea was not her personal initiative, but a planned and coordinated operation. There were hundreds of various proposals on how to amend the Russian Constitution,

<sup>365</sup> Божанов, В. А. Конституция Республики Беларусь: политологический анализ : учеб.-метод. пособие / В. А. Божанов ; Белорус. гос. ун-т, Респ. ин-т высш. шк. – Минск : РИВШ БГУ, 2018. 66 с

but only on the occasion of “zeroing out” Putin was invited to the Duma, he quickly arrived and said yes rather than no.

The current imitation of the constitutional reform in no way solves these issues, especially taking into account that the process is entirely under the control of the President of the Republic of Belarus. Belarusian state bodies create the appearance of a public discussion, just as they did when the last Soviet constitution was adopted in 1977 year<sup>366</sup>. Hundreds of thousands of amendments and proposals from Soviet workers' collectives and organizations resulted in purely formal changes that did not significantly change either the political system of the USSR or the life of ordinary citizens.

Soviet parallels are not limited to props surrounding the adoption of a constitution. The intention of Alexander Lukashenko to revive other elements of the Soviet political system under slightly different names is becoming more and more obvious<sup>367</sup>.

We are talking about the potential transformation of the All-Belarusian People's Assembly (VNS) into an analogue of the Congress of the Communist Party of the Soviet Union (CPSU) by prescribing VNS in the Constitution as a body that would determine the main directions of domestic and foreign policy. Judging by the way the pro-government commentators began to promote this idea, such a scenario is not just a fiction, but one of the most likely scenarios of government agencies.

In this situation, the Presidium of the VNS (an analogue of the Politburo of the CPSU Central Committee) would become a formal governing state body in the period between congresses, and only Lukashenko would head it. In the event of strong Kremlin pressure or even more powerful protests, Lukashenko would try to formally transfer the presidential office with reduced powers to a loyal person in his team, securing the real reins of government through a "new" influential constitutional status.

The President of Belarus would remain the supreme leader of Belarus, even formally losing his presidency. As follows from the recent speech of Lukashenka, it is the VNS that is going to strengthen, and not the parliament and the government<sup>368</sup>.

Joining the formal process of constitutional amendments controlled by Lukashenka means his legitimization and disregard for the protest movement. Those political forces that

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<sup>366</sup> Канстытуцыя Рэспублікі Беларусь = Конституция Республики Беларусь : пытанні і адказы / пер. з рус. мовы В. І. Пастуховай. Мінск : Беларусь. С. 38.

<sup>367</sup> Aydin Atilgan, Meaning of Contemporary Constitution in Aydin Atilgan, *Global Constitutionalism: A Socio-Legal Perspective* 121 (Berlin: Springer, 2017).

<sup>368</sup> Transcript of the All-Belarusian People's Assembly of 02/11/2021

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will engage in imitation of constitutional changes will become political corpses in the new democratic Belarus.

The opposition also shows a desire, like the Belarusian authorities, to reform the constitution. On both sides, it all comes down to the essence of the amendments to the Constitution. Moreover, this is the only thing that at the moment unites the authorities and the opposition. But the essence of the approaches is very different and directly conflicts between the two subjects. Lukashenka has not fully announced his vision and it is pointless to make specific assumptions, there may be a lot of options for the distribution of presidential powers, there is no single world standard in this.

In the case of the united opposition, if it nevertheless chooses to return to the old configuration of the early 90s, the general meaning of the amendments will also boil down to weakening the role of the president and transferring most of his powers to other representative elected agencies.

The president and the opposition agree on both fundamental things: the head of state should have less powers, while other state institutions should have more. But which ones - this is already a big question. Because if the reform is implemented, for example, according to the scenario (still secret) of Lukashenko, then additional powers may be transferred, for example, not to the parliament or the government, but to the so-called "governors" - today's chairmen of regional executive committees who are now appointed by the president, but who can be successfully elected directly by citizens, which means they have a completely different political weight. And this is just one of the possible combinations.

In this case, the referendum (if it will take place at all, which also remains in question) can make more insignificant, formally democratic amendments. And then an extraordinary congress of the All-Belarusian People's Assembly or its Presidium will approve unlawful amendments such as granting Lukashenka the status of the leader of the nation according to the Kazakh-Tajik model.

It is also possible that Lukashenka is considering the option of replacing direct presidential elections with parliamentary elections, and introducing a mixed electoral system in elections to the lower house of parliament. In addition, the term of the presidency can be increased, and the age limit - reduced.

On December 12, 2020, Russian Ambassador Dmitry Mezentsev said at a meeting with members of the government of the Republic of Belarus: "This initiative of the President of the Republic of Belarus Alexander Lukashenko is designed to involve representatives of all strata



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of Belarusian society in the national dialogue, ensuring the improvement of the political system for the benefit of further democratizing the life of the state, strengthening its sovereignty"<sup>369</sup>.

The positive assessments of the constitutional process in Belarus by the Russian ambassador and Russian officials are a side effect of a game of a different nature. The Kremlin, like Lukashenko (here they are situational allies) share the opinion that talking about props with a nationwide dialogue and amendments to the Constitution can divert public attention to the side and bring down the political mobilization of the population. Massive acts of civil disobedience and unprecedented street protests make it difficult to "calmly" advance the new integration pact.

Statements about the importance of dialogue and amendments to the constitution are also a kind of Moscow's attempt to keep a good face while playing badly with the Belarusian people. On the one hand, the Kremlin provides Lukashenko with political, informational and economic (albeit very metered) support. On the other hand, he is trying not to completely and completely lose the pro-Russian feelings among the Belarusians.

In addition, the Kremlin consistently paints a dilemma for Lukashenko "deeper integration with you or without you". The periodic promotion of messages about a parliament with great powers by the pro-Kremlin media is not at all from a desire to help Belarusians with the establishment of the rule of law in the country and a more democratic political system. It is rather a consequence of Lukashenko's delay in deep integration. In addition, an alternative plan with strengthening the parliament and pumping up pro-Russian parties for Moscow is important if Lukashenko does not keep the situation in the country.

Lukashenko said the constitutional changes would not serve the purpose of preserving his power after leaving the presidency.

By August 1, 2021, the Constitutional Commission must submit to the President of Belarus the developed proposals to amend the Basic Law of the country for their subsequent submission to the republican referendum<sup>370</sup>.

### **Conclusion**

In the event of a sharp increase in Russia's influence in the coming months, the references to the Union State and other integration associations promoted by Moscow, fixed in

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<sup>369</sup> Access mode: <https://www.belrynok.by/2021/03/17/reforma-beloruskoj-konstitutsii-vyzovet-novyj-politicheskij-krizis/>. Access date: 05/03/2021.

<sup>370</sup> On the Constitutional Commission Decree No. 105 of March 15, 2021. Access mode: <https://president.gov.by/ru/documents/ukaz-no-105-ot-16-marta-2021-g>. Access date: 05/03/2021.

the Constitution, as well as the exclusion of the wording about the pursuit of neutral status - something that pro-Russian forces are actively lobbying, could be dangerous. In addition, the situation of combining the referendum on the Constitution with the referendum on the Constitutional Act of the Union State would be dangerous if the Kremlin succeeds in pushing through it due to the extreme economic and political dependence of Lukashenka.

Taking into account the tragic lessons of modern times in Belarus, a number of provisions should be clearly fixed in the Constitution that would neutralize the existing system of election fraud, reformat the competences of the three branches of government, introduce mandatory elections for local authorities and prohibit the state's monopoly in the audiovisual sphere.

It is important to ensure the maximum independence and professionalism of the judiciary, while usually the discussion focuses on the executive and legislative branches. A separate block or blocks of the Constitution concerning the foundations of the constitutional order and the most important democratic provisions must be proclaimed not subject to change.

Such changes and a real discussion of society and professionals about significant democratic reforms and their format during Lukashenko's direction are not possible.

Marginal political forces such as the Liberal Democratic Party, the Republican Party of Labor and Justice, and a number of pro-Kremlin organizations are included in this process to one degree or another, but the participation of more popular political forces is unlikely. Lukashenko expects to cause a split in the leading democratic opposition forces on this issue, including through the involvement of Babariko's team in opposition to Tikhanovskaya.

Ultimately, if the pseudo-constitutional process succeeds, then three main types of changes can be expected in the new Constitution:

First, as already mentioned, giving the All-Belarusian People's Assembly a constitutional status with the Presidium and possibly also formal representations in the regions, and securing constitutional status and important powers for the All-Belarusian People's Assembly.

Secondly, formally democratic, but insignificant, amendments to increase the competence of the legislative branch and regional authorities, possibly the introduction of a jury. As follows from the proposals formulated by the commission of the Novopolotsk City Council of Deputies, the appearance of holding free elections of local authorities in a very distorted version can be created. Namely, instead of appointing heads of local executive committees, it is proposed that residents elect a head from the candidates proposed by the chairman of the regional executive committee.

Thirdly, other insignificant changes that will not affect the political system or the lives of residents in any way (such as the abolition of village councils).

The implementation of a two-stage special operation through the introduction of the All-Belarusian People's Assembly as a Trojan horse into Article 140 of the Constitution is not ruled out. We are talking about a possible addition to it with the wording that the main sections of the Constitution can be changed not only through a national referendum, but also through the All-Belarusian Assembly.

### **Streszczenie:**

Artykuł analizuje reformę konstytucyjną w 2020 roku oraz zmiany w Konstytucji Federacji Rosyjskiej. Pytanie brzmi, na ile te zmiany pozwolą Władimirowi Putinowi na „wyzerowanie” kadencji prezydenckiej i kandydowanie na kolejne dwie sześcioletnie kadencje. Artykuł został podzielony na dwie części oraz podsumowanie. W pierwszej części artykułu autor dokonuje analizy porównawczej zmian dokonanych w Konstytucji Federacji Rosyjskiej, starając się wyjaśnić istotę tych poprawek w kontekście Sądu Konstytucyjnego Federacji Rosyjskiej i prawa do ich stosowania. W drugiej części artykułu autor dokonuje analizy porównawczej Konstytucji Federacji Rosyjskiej i Konstytucji Republiki Białoruś oraz skutków prawnych ich zmian. Autor podejmuje również próbę znalezienia podobieństw w niektórych aspektach norm konstytucyjnych Białorusi i Rosji (poprawki). W podsumowaniu autor analizuje możliwe konsekwencje polityczne, jakie mogą pojawić się w trakcie reform konstytucyjnych dla obu krajów.

### **Słowa kluczowe:**

Rosja, Białoruś, Konstytucja, reforma, rząd Federacji Rosyjskiej, Trybunał Konstytucyjny.

### **Keywords:**

Russia, Belarus, Constitution, reform, government of the Russian Federation, Constitutional Court.

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