



‘Constitution of the New Belarus’ as a Project of Post-Authoritarian Transformation and Decolonisation

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Abstract. In mid-2022, the Belarusian democratic opposition presented a draft constitution for the ‘new Belarus’, which would come into force after the collapse of President Alexander Lukashenko’s regime. The content of the draft constitution is not simply a return to the original text of Belarus’s Constitution of 1994. This is a completely new document intended to protect the nation against a return of authoritarianism. Therefore, the goals of this article are twofold: to give a brief overview of the process of the authoritarianisation of Belarus in the constitutional dimension in the years 1994–2022, and to analyse the content of the draft constitution of the ‘new Belarus’ from the perspective of deauthoritarianisation and decolonisation, recently presented by William Partlett and Herbert Küpper. The following study reveals that the postauthoritarian reverse planned by the draft constitution for the ‘new Belarus’ should include foremostly state-building processes and strengthening parliamentarism. The conclusion is that this project has a number of deauthoritarian features that significantly limit the competences of the head of state, establishing a parliamentary model of government.

Keywords: Belarus, post-Soviet constitutionalism, post-authoritarian transformation, decolonization.

JEL Classification: F50, F54, N44.

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INTRODUCTION

In August 2020, Belarus held the seventh presidential election in its history. Alexander Lukashenko, who officially received 80% of the votes, has been the President continuously since the first elections in 1994. However, the election results were not accepted by the international community. Belarus’s authorities were accused not only of rigging the elections but also of a permanent lack of pluralism, freedom of speech, and freedom of political activity. The election results were also contested by the Belarusian opposition, which organised in the capital city of

Minsk the largest anti-government protests in the history of Belarus. The protests were suppressed with cruelty and did not lead to a change of government as was the case in Ukraine with its revolutions of 2004 and 2014. Nevertheless, for the first time in the recent history of Belarus, the opposition remained largely consolidated after the elections, and its leader, Sviatlana Tsikhanouskaya, maintains foreign political contacts, being treated as a representative of the free political forces of Belarus. In August 2020, the leaders of the pro-democratic movement announced the establishment of a government in exile headed by Tsikhanouskaya. Although the future of Belarus remains uncertain and the prospect of deepening integration within the Union State or direct incorporation into the Russian Federation is not impossible, some steps are being taken regarding the future political reform and democratisation of Belarus.

On the initiative of the Belarusian opposition headed by Tsikhanouskaya, with the support of foreign partners, in July 2022, a draft constitution of the ‘new Belarus’ prepared by an international team of experts headed by Anatoliy Labedzka, Tsikhanouskaya’s Representative for the Constitutional Reform, was made public (Kanstytutsyya Respublikí Belarus’). Moreover, the experts have produced draft laws on the Constitutional Court of the Republic of Belarus (Proyekt zakona «O konstitutsionnom sude Respubliki Belarus’»), on political parties (Proyekt zakona «O politicheskikh partiyakh») and the Statute of the Parliament (Proyekt «Statuta Soyma»). The leader of the Belarusian opposition declares that ‘the Constitution of New Belarus is a modern European constitution, which will ensure the transition from an authoritarian to a democratic, parliamentary form of government, based on the rule of the people, regular, fair and free elections, separation of powers and respect for human rights—and will lay the foundation for the development of Belarus for decades to come’ (Why Belarus still needs...). Neither the draft constitution nor other documents have so far been the subject of scholarly attention and analysis by constitutionalists; therefore, this article aims to fill this gap.

The main aim of this article is to analyse, firstly, the evolution of Belarus’s Constitution towards the contemporary authoritarian model, and, secondly, the content of the above-mentioned draft constitution of ‘the new Belarus’ in the perspective of deauthoritarianisation and decolonisation. In this regard, the model recently presented by William Partlett and Herbert Küpper in the book *The Post-Soviet as Post-Colonial: A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire has been applied* (Partlett & Küpper, 2022). The authors define decolonisation as a change in the constitution that rejects elements of the previous, imposed model, being a path to emancipation and initiation of nation-building and state-building processes. Both researchers analyse political changes in four dimensions: (a) external sovereignty (stipulations preventing recolonisation, confirming the international legal personality of a state); (b) internal sovereignty (ensuring exclusive jurisdiction over own territory); (c) state-building (specific model of relations between the main state power organs); (d) nation-building (regulations regarding specific national features, identity, and symbolism). This paradigm focuses on an institutional design that should protect the state against a possible return to authoritarianism.

This article consists of two main parts. The first briefly characterises the constitutional process in Belarus after gaining independence in 1991, then the 1994 Constitution and its subsequent amendments in 1996, 2004 and 2022, which have led to the concentration of power in the hands of the President and the violation of the principle of separation of powers. The thesis of this part of the paper is the assertion that the emergence and consolidation of authoritarian government, mainly resulting from the constitutional reform of 1996, established the personalistic rule of Alexander Lukashenko, violation of the checks and balances principle, concentration of executive power in the hands of the President, limitation of the role of the Parliament and subordination of the judiciary to the President. These reforms, embedded in the paradigm of populist constitutionalism, confirm the fact that, being anti-pluralistic, autocrats ‘embrace’ institutions—they expand the institutional system, offering guarantees of maintaining power, marginalising the risk of political crises caused by the opposition and counter-elite, preserving the image of ‘defenders of the ordinary people’ (Brubaker, 2017, 357-385; Landau, 2018, 521-544). The second part of the article discusses the main features of the draft new constitution of Belarus prepared by the Belarusian opposition in 2022, emphasising the elements intended to create a democratic point of no return. This part consists of four subsections,

in accordance with the dimensions of postcolonial transformation presented by Partlett and Küpper, but discussed in a different order, which better reflects the structure of the draft constitution: it starts with the issue of nation-building, then discusses the problems of external and internal sovereignty, and finally state-building processes (institutional design).

OVERVIEW OF THE EVOLUTION OF BELARUSIAN CONSTITUTIONALISM AFTER 1991

The last Constitution of the Belarusian Soviet Socialist Republic (SSR) was adopted in 1978. This document reflected the general content of the Constitution of the Soviet Union of 1977 and was analogous to the content of the constitutions of other Soviet republics. The highest body of republican power was the Parliament—the Supreme Council, to which the Government was subordinate and accountable. The symbolic functions of the head of state were performed by the speaker of the Parliament. During the period of late perestroika, democratic reforms were introduced by the Soviet leader Mikhail Gorbachev, and similarly to the other republics of the USSR, the Belarusian SSR started to amend domestic constitutional law. On 31 May 1990, the Parliament adopted the bill 'Temporary Regulations of the Supreme Council of the Belarusian SSR' (Postanovleniye Verkhovnogo Soveta Respubliki Belarus' ot 31.05.1990 №13-XII). This extensive document comprised 12 chapters and 151 articles, and since it covered all crucial issues of the government system, it could be described as a 'small constitution'. The Belarusian Parliament did not introduce, like some other republics of the USSR, the institution of the President as the head of the republic. These functions were still performed by the speaker of the Supreme Council. Apart from representing the republic in international contacts, the speaker was involved in current domestic politics, organising the work of the Parliament and, inter alia, presenting candidates for Prime Minister to the Supreme Council. Soon, in July 1990, a Constitutional Commission of 74 members (61 members of Parliament and 13 constitutional law experts) was established (Postanovleniye Verkhovnogo Soveta Respubliki Belarus' ot 20 iyulya 1990 g. №166-XII). Its aim was to develop a completely new Constitution of the Belarusian SSR. It was headed by the speaker of the Supreme Council and the leader of the republican Communist Party, Mikalay Dzyemyantsyey.

On 27 July 1990, the Supreme Council of the Belarusian SSR adopted the Declaration of State Sovereignty (Deklaratsiya Verkhovnogo Soveta Respubliki Belarus' 27 iyulya 1990 g. № 193-XII). This act confirmed the legal personality of Belarus and the supremacy of its law over the Soviet legal system, as well as the separation of powers, a precondition of democratic governance. Next day, the Parliament adopted a constitutional bill that amended the 1978 Constitution. Among other things, it declared political pluralism and expanded the powers of the government of the Belarusian SSR (Zakon Respubliki Belarus' №212-XII). After the so-called Yanaev coup in Moscow, a conservative attempt to overthrow Gorbachev's reforms, which accelerated the disintegration of the Soviet Union, further changes were introduced to Belarus's Constitution on 25 August 1991, confirming full republican authority over its territory. On 19 September 1991, the Belarusian SSR changed its name to the Republic of Belarus (Zakon Respubliki Belarus' ot 19 sentyabrya 1991 g. №1085-XII). At that time, a pro-democratic politician, Stanislau Shushkevich, became the new speaker of the Parliament and head of the Constitutional Committee. Shushkevich, as well as the presidents of the Russian Federation, Boris Yeltsin, and of Ukraine, Leonid Kravchuk, signed the so-called Belovezha Accords, which eventually dissolved the Soviet Union in late 1991.

In 1992, dominated by the former communist nomenklatura, with a small oppositional group of activists of the Belarusian National Front, the Supreme Council was a place of growing conflict. The ruling post-communist elite wanted to resolve it by the adoption of a new constitution and parliamentary elections. Until the end of the drafting of the new constitution, it remained unclear whether the institution of the President of Belarus should be established and what scope of competences it should have. The post-communist elite promoted the model of a directly elected President as the head of the executive power, hoping that the current Prime Minister, Vyacheslau Kebich, would become the President. The national-democratic opposition was against the institution of a strong

President, arguing that it might pose a risk of authoritarianism's resurgence (Czachor, 2016, p. 202). The Supreme Council adopted a new Constitution on 15 March 1994. The adoption was supported by 236 deputies, exceeding the constitutional threshold of 231 members of Parliament (Czachor, 2016, p. 205).

The Constitution of 1994 declared Belarus a unitary, democratic, social state of law (Article 1), introducing the democratic principle of separation of powers (Article 6). It established the institution of the President of Belarus, directly elected for a five-year term, acting as the 'head of state and executive power' (Article 95). The President, with the consent of the Supreme Council, a unicameral Parliament with 260 members elected for a five-year term, appointed and dismissed the Prime Minister (Article 100). The President was provided with the right to issue decrees and orders and to supervise their implementation (Article 101), as well as the right of legislative initiative. The Parliament exercised many creative powers, including the right to amend the Constitution and interpret its norms, to elect judges of the highest judicial bodies, and to appoint members of the Central Electoral Commission (Article 83). The President did not have the right to dissolve the Parliament—this could be done only by self-dissolution. The Supreme Council could dismiss the President in an impeachment procedure in the case of a violation of the Constitution or a serious crime (Article 104).

In July 1994, in the second round of elections for the first President in the history of Belarus, Alexander Lukashenko became an unexpected winner. He won the elections using slogans of the populist rhetoric of 'restoring order', fighting corruption and the abuses of the previous government. However, the former model of power was, in fact, continued, and members of the previous government, although dismissed, were not held responsible. Shortly after the elections, Lukashenko stated that the Constitution did not allow him to effectively implement his programme of healing the state. In particular, he demanded additional competences in the field of legislation and the creation of a hyper-centralised executive model (Czachor, 2016, p. 310).

The system of government established in 1994 was undermined in two stages, in a manner typical of populist autocracies. On 14 May 1995, the first referendum called by Lukashenko was held. The majority of voters, in accordance with the President's will, supported deeper integration with Russia and the restoration of Soviet state symbols. The idea of the referendum was fiercely protested by the opposition deputies, who suffered repressions and persecution as a result. Simultaneously with the referendum, parliamentary elections were held. Due to the complex electoral law, not all seats in the Supreme Council were filled. In response, Lukashenko presented the concept of 'direct presidential rule', implemented through the Presidential Administration, a non-constitutional body strictly subordinate to him. Having strong legitimacy that stemmed from a direct election, he believed that he was the best representative of the people's interests. Such position was confirmed by the presidential decree of 21 August 1995, 'On Some Measures to Ensure Stability and Legal Order in the Republic of Belarus' (Ukaz Prezidenta Respubliki Belarus' ot 21.08.1995 № 336; Czachor, 2016, p. 326).

The remaining seats of the Parliament were filled during the second round of elections in December 1995. Meanwhile, six months of practice of direct presidential rule allowed Lukashenko to create a mechanism of governance in which there was no place for the Parliament. Therefore, in January 1996, he stated that it was necessary to amend the Constitution to reflect the new political realities and introduce 'a strong power concentrated in the hands of a strong leader' (Vasilevich, 2002, p. 20). The opposition tried to block the referendum and impeach Lukashenko, but the head of the Constitutional Court, Valery Tikhinya, who supported the President, stopped the procedure. The referendum took place in November 1996 and, apart from amending the Constitution, it also addressed other matters, including the abolition of the death penalty. The amendment to the Constitution proposed by the President was officially supported by 70.45% of voters (Pastukhov, 1998, p. 304).

The November 1996 amendment to the Constitution began a new period of full-fledged authoritarianism in Belarus. It resulted in a deep reconstruction of public institutions and the state management mechanism, having not only a formal but also an informal dimension. The informal aspect, built on hierarchy, dependence and loyalty to the higher bureaucratic apparatus, became the basis for the durability and resilience of the authoritarian regime. Belarusian academic literature claimed that the new political system of Belarus went beyond the traditional

framework by 'significantly strengthening the theory and practice of constitutionalism, strengthening the independence and authority of the government', calling it a 'presidential republic of authority' (Tikovenko, 1997, p. 5; Parechina, 2002, p. 79). The total number of amendments to the Constitution was about 50, of which almost 40 comprised completely new fragments that affected all parts of this document.

In the context of the authoritarianisation of the Belarus regime, strengthening the position of the President was of key importance. The President was defined as 'the head of state embodying the unity of the people, guaranteeing the implementation of the basic principles of internal and external policy, and the representative of the country in relations with other states and international organizations' (Article 79). He was provided with law-making and control powers, i.e. the right to issue decrees and decrees having the force of law, the right to dissolve the Parliament, appoint and dismiss the Prime Minister, and appoint to the highest positions in the judiciary, the Central Electoral Commission, as well as the Prosecutor General and the State Control Committee. He became the only state organ authorised to announce referenda. The constitutional amendment of 1996 weakened the position of the legislature. The previous unicameral Supreme Council was transformed into a bicameral Parliament. The lower chamber (House of Representatives), consisting of 100 members, was directly elected, while the upper chamber (House of the Republic), consisting of 64 deputies, was elected indirectly by local authorities and the President, who appointed 8 members. The President acquired the right to dissolve the Parliament if it rejected the President's Prime Minister nominee twice. At the same time, the parliamentary procedure of the impeachment of the President was complicated and, considering the political realities, practically impossible to carry out successfully.

The 1996 reform was criticised by Western countries and international organisations, including the Council of Europe. The Venice Commission assessed it as not meeting the minimum standards of European constitutionalism (CDL-INF(1996)008e). Importantly, the amendment included a provision (Article 144) that Lukashenko's term of office should start from the beginning. As a result, he could serve two more five-year terms.

On 17 October 2004, due to the approaching end of Lukashenko's second term, a consecutive referendum was held. It concerned an amendment to the Constitution—a removal of the restriction on holding the office of President for two terms (Article 81). The referendum question openly named Lukashenko. Officially, almost 88% of voters were in favour of the amendment and the turnout was 90%. This amendment enabled Lukashenko to hold the office of the President for life. It was severely criticised by the Venice Commission as strengthening the power imbalance and deepening the shortcomings of Belarusian democracy (CDL-AD(2004)029).

The most recent amendment to Belarus's Constitution was passed in 2022, after a wave of unprecedented protests that broke out after the presidential elections of August 2020. The reform was initiated by Lukashenko, who declared that the amended Constitution would transform the state after he stepped down from the office of the President. The official legal doctrine of Belarus defines the reform as 'a response to the needs of modern times', including strengthening the legal position of citizens, traditional values, the state and the people's sovereignty (Vasilevich & Vasilevich, 2022, p. 5). In practice, the amendment embodies the core features of a mature authoritarianism and prepares the country for the transfer of power when Lukashenko decides to step down from the presidency. The reform officially introduced the All-Belarusian People's Assembly into the system of state bodies as the 'supreme body of the people's government'. It is intended to play the role of a super-parliament, with power to adopt strategic documents regarding domestic and foreign policy, the right to initiate law-making procedures, repeal legal acts, and to appoint judges of the Constitutional Court and the Supreme Court. The reform guarantees Lukashenko immunity after the end of his term and a lifetime membership in the House of the Republic, the second chamber of the Parliament. The stipulation that Belarus would be a nuclear-free and neutral country has been deleted. Some conservative elements were added, e.g. guarantees of family protection, the definition of marriage as a union of a woman and a man, and the protection of the historical memory of World War II.

MAIN PROVISIONS OF THE POLITICAL SYSTEM OF 'THE NEW BELARUS' IN THE CONTEXT OF DEAUTHORITARIANISATION AND DECOLONISATION

The draft constitution of Belarus presented by the democratic opposition in 2022 consists of 173 articles grouped into 19 chapters: 1. 'Basis of the Constitutional System'; 2. 'Human Rights, Freedoms and Obligations'; 3. 'Elections'; 4. 'Referendum'; 5. 'Soyuz'; 6. 'President of the Republic of Belarus'; 7. 'Government of the Republic of Belarus'; 8. 'Local Government'; 9. 'Judicial Power'; 10. 'Constitutional Court'; 11. 'Prosecutor's Office'; 12. 'The Bar'; 13. 'Plenipotentiary for Human Rights' (Spokesperson); 14. 'Audit Chamber of the Republic of Belarus'; 15. 'Committee for Supervision over the Activities of Intelligence and Security Services'; 16. 'Committee on the Ethics of Public Service and Counteracting Corruption'; 17. 'State Finances'; 18. 'Amendment of the Constitution'; 19. 'Transitional and Final Provisions'. The most extensive chapter, 2. 'Human Rights, Freedoms and Obligations', comprises 44 articles.

Nation-building

According to Partlett and Küpper, nation-building elements in postcolonial constitutions concern regulations aimed at building national identity, regulating issues of citizenship, language, national holidays and state symbols (Partlett & Küpper, 2022, p. 3).

The relatively short preamble of the draft constitution begins with the words 'We, the people of Belarus', without any indication of its ethnic or civic character. It refers to the traditions of the Principality of Polotsk, the Grand Duchy of Lithuania, the Belarusian People's Republic and the Belarusian SSR, pointing to the historical continuity of Belarusian statehood and the role of legal monuments—the Statutes of the Grand Duchy of Lithuania and the statute (*gramota*) of the Belarusian People's Republic and the constitutions of the Belarusian SSR. The document proclaims an inalienable right of the Belarusian people to self-determination, state independence, and respect for national identity, language and culture.

The issue of the status of state languages is left to be settled in the future through a referendum (Article 7). The project of the constitution stipulates that the capital is Minsk, and also regulates state symbols, including the flag, emblem, anthem and motto, directly drawing on the historical symbols of the Belarusian People's Republic (apart from the anthem, about which details the document is silent, Article 8).

External sovereignty

As Partlett and Küpper assert, the issue of external sovereignty in postcolonial constitutions is manifested in the particular emphasis on the international legal personality of the state, reference to international law as a guarantee of its independence, territorial integrity, or constitutional confirmation of membership in particular international organisations.

According to the draft constitution of Belarus, the state should have full power over its territory and provide internal and foreign policy independently (Article 1.3). It should protect its sovereignty, territorial integrity, constitutional system, and ensure respect for law and order (Article 1.4). State territory is defined as 'a natural condition of the existence of the country', and therefore its inviolability, integrity and indivisibility are guaranteed by the constitution (Article 4.1–2).

The draft constitution stipulates that Belarus respects international law and the obligations arising from it, and that the country must not enter into international agreements inconsistent with the constitution. Ratified international agreements should have priority over national legal acts (Articles 5–7). As regards foreign policy, Belarus should be committed to commonly recognised principles and norms of international law, ensuring foreign policy security and independence, and the well-being of its citizens, and should support a peaceful and just international order.

The document states that Belarus strives for the status of a neutral state, free from weapons of mass destruction, including nuclear weapons (Article 6.1–2). Such stipulation was abrogated with the latest amendment of the Constitution in 2022. According to the norms of international law, Belarus should guarantee itself the right to join and leave international organisations. Membership in international organisations that require a partial transfer of state sovereignty to them requires consent expressed in a referendum. The document stipulates that Belarus may not join international structures that would result in the loss of independence and international legal personality (Article 6.4).

Internal sovereignty

Internal sovereignty in postcolonial constitutions is manifested through stipulations regarding exclusive jurisdiction, prohibition of external interference in domestic politics, regulations regarding the economy and property rights (e.g. limiting the purchase of real estate by foreigners).

Chapter 1 of the draft constitution states that ‘The Republic of Belarus (Belarus) is a unitary, democratic, social state ruled by law’ (Article 1.1). It then says that ‘man, his rights and freedoms are the highest value. The main goal of the state is to recognize, respect, guarantee and protect human rights and freedoms, and to create conditions for a happy life, free and dignified development of the individual’ (Article 2.1). It guarantees compliance with the principle of separation of powers and the existence of local self-government (Article 3.1–3), compliance with the principle of the supremacy of law and compliance with generally recognised norms of international law (Articles 5.1 and 5.5).

The document announces the nation as the only source of power and sovereignty (Article 2.2). No one can usurp the power of the nation. Usurpation of power or misuse of authority is punishable by law (Article 2.4). The nation as a whole and each citizen individually have the right to oppose tyranny and anyone who attacks the foundations of the constitutional system and the implementation of democratic human rights and freedoms if the use of means provided for by law is impossible (Article 2.5). Citizens have the right to disobey apparently unlawful orders and instructions of the authorities (Article 49).

Chapter 2 contains an exhaustive catalogue of rights and freedoms of individuals, which are intended to protect against the return of authoritarianism. In particular, it is emphasised that human rights and freedoms are natural and inalienable, and public authorities are obliged to apply them directly (Article 10.3–4). Everyone is guaranteed the inalienable right to life and the prohibition of the death penalty (Article 13.1–2). Overall, the rights and freedoms listed in the document are consistent with generally recognised international law regulations. Article 25, titled ‘Marriage and Family’, does not contain legal definitions of the two concepts, including possible restrictions on the gender of people entering into a marriage and creating a family, instead saying that marriage, family, motherhood and fatherhood are under state protection (Article 25.4). It strongly emphasises the prohibition of discrimination based on ‘sex, age, skin colour, race, origin, gender identity, sexual orientation, culture, nationality, citizenship, language, religious beliefs, ideology, political or philosophical views, marital status, economic and social situation, type of work, level of education, disability, intellectual and physical capabilities, pregnancy and other conditions’ (Article 27). Moreover, ‘the state promotes the popularization of gender equality, gender education and upbringing’ (Article 28). The draft constitution provides separate provisions guaranteeing the rights of people with disabilities (Article 43) and the right to protect intellectual property (Article 46). Such regulations are progressive and not widely recognised by the constitutional law of contemporary post-Soviet republics.

The document does not explicitly establish a broad catalogue of individual obligations. It includes the norm that every person, exercising his or her rights and freedoms, is obliged to respect and observe the rights, freedoms and dignity of other persons (Article 10.5), an obligation of adults to care for unable to work, elderly parents (Article 25.2). Citizens have the right and the duty to participate in the defence of the independence, sovereignty and

territorial integrity of Belarus (Article 48.1). Every person residing in Belarus is obliged to obey the law and pay taxes (Article 50).

Chapter 3 states that citizens over 18 years of age have the right to vote (Article 54). Elections are to be held in accordance with the principles of universality, equality, directness, freedom, transparency of the electoral process and secrecy of voting (Articles 55–59). This chapter establishes the Central Electoral Commission as an independent institution responsible for the organisation of elections. It should have 11 members, who are appointed from the candidates presented by all political parties having their deputies in the Parliament—the Soym (Article 63). The document introduces the possibility of deciding on the most important issues through a national or local referendum. The initiative to organise a national referendum belongs to the Parliament and a group of minimum 250,000 citizens. Referenda should be announced and organised by the Central Electoral Commission (Articles 65–66).

State-building

State-building issues in postcolonial constitutions are related to the design of institutions of state power, mechanisms of governance, and control over them. Such regulations not only create the institutional architecture of the state, the position of legislature, executive, judiciary, the army and the financial system, but are also intended to ensure a minimum of institutional efficiency.

According to the draft constitution, Belarus should have a unicameral Parliament, the Soym, defined as the highest representative and the sole legislative body (Article 69). The number of deputies is to be 220, elected in five-adjective elections for a four-year term from among candidates aged at least 21. The document also defines electoral rules, i.e. proportional elections in multi-member electoral districts (Article 70.4). To be valid, proceedings of the Soym have to be attended by at least half of its members (Article 77.4). The principle of incompatibilitas should be applied—a parliamentary mandate cannot be combined with the mandate of a local-government council deputy, the office of the President, the position of a judge or other paid activities that would be related to benefiting from public property (Article 74). The Parliament should be headed by the Speaker of the Soym. The Parliament can be self-dissolved by a resolution of two-thirds of the full number of deputies. The President's right to dissolve the Parliament is limited only to the case of inability to appoint the Prime Minister (Article 72.1–2).

Main competences of the Soym include: adoption and amendment of the constitution; adoption of legal acts—bills and resolutions; approval and rejection of presidential decrees regarding the introduction of martial law; partial or full mobilisation; and government decisions on the announcement of a state of emergency. In relation to the government, the Soym appoints the Prime Minister, accepts his or her resignation, expresses confidence or lack of confidence in the government, and accepts the government's resignation. Additionally, the Soym, at the request of the President, the Speaker of the Soym, the Chairman of the Supreme Court, appoints judges of the Constitutional Court; at the request of the President, appoints the Prosecutor General and the Chairman of the National Bank of Belarus, and dismisses them; at the request of parliamentary committees, appoints the Chairmen and members of the Control Chamber and the Supervision Committee over the Activities of the Intelligence and Security Services and the Committee on State Service Ethics and Counteracting Corruption. In relation to the President, the Parliament accepts his or her resignation, and adopts a resolution regarding the dismissal of the President (Article 87.3).

The draft constitution contains a catalogue of laws adopted by the Soym, i.e. constitutional, organic and ordinary bills. Constitutional laws are legal acts amending the content of the constitution. Organic laws may regulate, among others, issues of citizenship and the status of foreigners, organisation of elections and referenda, organisation and activities of the Parliament, mode of exercising the powers of the President, organisation and activities of the government, activities of the judiciary and the status of judges, local government and the administrative-territorial system. For other issues, ordinary legislation may be adopted (Article 81). A constitutional law may be adopted in the procedure of the constitution's amendment, an organic law by the majority of the Parliament, and an ordinary

bill by a simple majority of votes, but not less than by one-third of the full members of the Soym (Article 85.2). Legislative initiative is limited to groups of members of the Parliament, the government and a group of minimum 25,000 of citizens with voting rights (Article 83). The legislative procedure includes three readings during three separate parliamentary sessions (Article 84).

The draft constitution states that the President is the head of state, the commander-in-chief of the armed forces and the representative of Belarus in international relations (Article 89). The President is elected in general elections for a five-year term. The person elected for President should be older than 35 and may not hold office for more than two terms during his or her lifetime (Article 90.1–2). If none of the candidates in the first round of elections get more than 50% of the votes, a second round is organised in which the two candidates with the highest result participate (Article 90.7). The President assumes office after taking the oath (Article 91.1).

The President may lose the office as a result of resignation, which must be approved by the Parliament; due to a health condition resulting in the President's inability to hold office—such a decision is adopted by the majority of two-thirds of the full number of the Soym members; as well as in an impeachment procedure (Article 92.1–3). Impeachment may be initiated at the request of minimum one-third of the members of the Parliament in the case of the President's abuse of power, violation of the oath or a crime. The initiative must be supported by at least two-thirds of the deputies. The final decision to impeach the President is made by the Constitutional Court by a majority of minimum two-thirds of judges (Article 92.4). If the office of President becomes vacant, until another President is elected, presidential powers are exercised by the Speaker of the Soym (Article 93).

The draft constitution stipulates that the president of Belarus has mainly symbolic and representative functions, not being directly involved in the executive. His competences in relation to the executive and legislative power include: presenting a candidate for the Prime Minister to the Parliament and appointing the Prime Minister; presenting to the Parliament candidates for the offices of Prosecutor General and Chairman of the National Bank of Belarus; delivering speeches to the Soym; signing legal acts. Additionally, he or she can exercise the right of pardon and granting state awards. In certain cases, he or she may dissolve the Parliament, and in the event of a military threat, may impose martial law and announce mobilisation, which should be approved by the Parliament (Article 95.1). The document states that the President in cooperation with the government takes measures to protect state sovereignty, national security and territorial integrity, and decides on foreign policy issues (Article 95.3). The National Security Council is to operate under the President's office, whose task is to coordinate the activities of state bodies in the sphere of security and defence (Article 96). Within the scope of his or her competences, the President issues decrees, which are commonly applicable normative acts. To be valid, they require the countersignature of the Prime Minister (Article 97.1–3). The President has no legislative initiative. He or she may refuse to sign a bill. In such case, it is returned to the Soym, where the President's veto can be overridden by a simple majority of votes (Article 86).

The government is defined as the highest collective body of the executive power, which is subordinate and accountable to the Parliament (Article 99.1–2). The government is headed by the Prime Minister, who is accountable to the Soym and presents a report on the government's activities to it once a year (Article 105). Members of the government are responsible for the unlawful performance of their functions, but criminal proceedings against them may be initiated only by the Prosecutor General (Article 101.2–4). The government should submit a resignation after a new Parliament has been elected (Article 103.1). The Prime Minister may request a vote of confidence for the whole government. The Parliament may dismiss the Prime Minister and the government through a vote of no confidence, at the same time appointing a new head of the government (Article 103.3–4).

The candidate for the Prime Minister is proposed by the largest parliamentary faction and presented to the Soym by the President within a month after the resignation of the previous government. If the Parliament does not accept the candidate, the President presents another or the same candidate within seven days. If the candidacy is not accepted, another candidate is to be appointed and approved by the Soym within 14 days. If this procedure fails, the

President either appoints as Prime Minister the candidate who received the greatest support from the deputies, or, after consulting the presidium of the Soym, decides to dissolve the Parliament (Article 102.1–5).

The government's main duties include: implementation of law, including international agreements, developing the main directions of internal and foreign policy, developing the state budget, and supervising the activities of local-government bodies (Article 104).

The draft constitution guarantees the existence of local government at the basic level. The local community of citizens, called hramada, should be independent and perform local tasks under its own responsibility (Article 108). The division of competences between central-government and local-government bodies is to be based on the principles of subsidiarity and proportionality. The bodies of the local legislature and executive are to be elected and their term of office should be four years (Article 111.1). The number of tiers of local government should be determined by an organic law. Local government units are guaranteed the right of association and legal protection. The scope of supervision over local government by central-government bodies is to be determined in ordinary bills (Articles 115–117).

The draft constitution provides that judicial power in Belarus should be exercised only by courts (Article 119.1). The highest judicial body, the Supreme Court, rules on all matters apart from those related to constitutionality, which fall under the Constitutional Court (Article 119.5). Judges are guaranteed immunity and independence in the performance of their duties (Article 122). The appointment of judges, with the exception of judges of the Constitutional Court, should be made by the National Judicial Council of Belarus in accordance with the procedure established by law (Article 121). The National Council of the Judiciary of Belarus should be the body responsible for forming a highly qualified judicial corps and for the independence of the judiciary (Article 125.1). Half of the members of the Council should be elected by the Congress of Judges of Belarus, the other half—by representatives of scientific institutions of law, lawyers and social organisations operating in the field of law protection. The term of office of members of the National Council of the Judiciary should be five years (Article 125.1–3).

The Constitutional Court of Belarus should consist of 15 judges appointed for a nine-year terms from pre-selected candidates. Five judges are to be appointed by the Soym from among candidates proposed by the President, the Speaker of the Soym and the Chairman of the Supreme Court (Article 127.1). Every three years, one-third of the staff of the Constitutional Court should be replaced. The Chairman of the Constitutional Court is to be elected for a three-year term by the judges of the Constitutional Court in a secret ballot (Article 127.3–4). The main functions of the Constitutional Court include: checking the compliance of legal acts with the constitution at the request of the President, the government and a group of minimum one-fifth of the total number of deputies of the Soym; review of the constitutionality of legal acts relating to individual rights and freedoms, at the request of the Ombudsman (Spokesperson for Human Rights); rulings on violations of constitutional rights and freedoms at the request of each injured individual, in the procedure determined by an ordinary bill (no *actio popularis*); rulings on the removal of the President from his or her position by impeachment, at the request of the Soym; and resolving disputes over competences between state organs, at their request (Article 128.1).

The draft constitution provides for the appointment of the Prosecutor General by the Parliament for a five-year term of office, a person nominated by the President. The same person should not hold the office for more than two consecutive terms (Article 131.1).

The Spokesperson for Human Rights is intended to be an institution acting to support and protect human rights and freedoms. He or she should be nominated by the Parliament for a five-year term from among candidates participating in an open competition. The draft constitution guarantees to the Spokesperson independence and immunity (Articles 135–137). The Spokesperson's tasks should include, among others: receiving complaints from any person whose rights have been violated and taking action on his or her own initiative; monitoring of the observance of human rights and freedoms; cooperation with national and international bodies in order to protect rights and freedoms (Article 138.1). The document gives the Spokesperson the right to summon state authorities,

including local government, to provide explanations, to request courts and other bodies to protect individual rights and freedoms, and to request the Constitutional Court to review the constitutionality of legal acts (Article 138.2).

The Audit Chamber of the Republic of Belarus should perform control functions only in the field of public finances (Article 140). Its Chairman and members should be appointed for a ten-year term by the Soym from among candidates proposed by a parliamentary commission (Article 141). The competences of the Audit Chamber include, in particular, legality, efficiency and financial audits in public institutions, as well as annual control of the performance of the state budget and issuing opinions on the draft state budget for the following year (Article 142.1).

The draft constitution introduces two additional bodies intended to protect the country from a retreat to authoritarianism: the Committee for Supervision over the Activities of the Intelligence and Security Services and the Committee on the Ethics of Public Service and Counteracting Corruption. The former is defined as an independent supervisory body assessing the effectiveness, independence and rule of law of the activities of the intelligence and security services as well as the quality of control over them by the executive power. The Chairman and members of the Committee should be appointed for a ten-year term by the Parliament from among candidates presented by a parliamentary commission (Articles 144–145). The Committee should be accountable only to that parliamentary commission. The Commission should submit an annual report on its activities to the parliamentary commission and the members of the government who are responsible for security issues (Article 147). The Committee for Ethics, in turn, should be an independent institution of coordination, investigation, and monitoring of the fight against corruption. The Chairman and members of the Committee should be nominated by the Parliament for a six-year term from among candidates participating in an open competition (Articles 149–150). The Committee should be accountable to the Soym (Article 152.1).

The draft constitution provides that the proposal of a constitution amendment may be submitted by a group of minimum 150,000 citizens who have the right to vote or by a group of at least one-fourth members of the Parliament. Such an initiative should be considered by the Parliament. Amendments to Chapter 1, 'The Basis of the Constitutional System', and Chapter 18, 'Amendments to the Constitution', are possible only through a referendum, while other changes can be made by a constitutional act (Articles 159–160). Article 1.1 of the constitution ('The Republic of Belarus is a unitary, democratic, social state ruled by law') cannot be changed. Amendments that would be contrary to generally applicable norms of international law are not allowed (Article 162).

The last chapter of the draft constitution contains final and transitional provisions. According to them, the Parliament should adopt a number of laws related to the new legal order. Bills on the organisation of elections and referenda, the organisation of the Soym, the legal position of the President and other state bodies—within one year after the adoption of the new constitution; bills on the organisation of the judiciary, Prosecutor's office, National Council of the Judiciary, status of judges and organisation of local government—within two years; other acts—up to five years (Article 164.3). Any person should have the right to complain to the Constitutional Court against the inactivity of the Soym in amending the legislation (Article 164.5). The draft constitution provides for the organisation of presidential elections within five months of the adoption of the new constitution. Only groups of citizens should nominate candidates for office in the first elections after the adoption of the new constitution, while the right to nominate candidates by political parties should apply only from the second presidential election (Article 167).

CONCLUSIONS

The first Constitution of Belarus, adopted in March 1994, introduced a parliamentary model of governance, with a directly elected President who had some significant powers in the field of the executive. President Lukashenko, elected in July 1994, expressed his ambitions in a populist manner—to 'lift the country off its knees' and 'restore order' in the legal dimension. This resulted in a serious amendment to the Constitution in November 1996. In fact, it introduced a new system of government—super-presidentialism (crown-presidentialism), where the President 'embodies the authority of the state', heads the executive power, and, by domination, disturbs the checks

and balances mechanism (Partlett, 2022, p. 204-236). The rampant authoritarianisation of Belarus, the effects of which are clearly visible today, included, firstly, strengthening the position of the President, who is practically irremovable from office and can rule for life without being controlled by other state bodies; secondly, limiting the position of the Parliament, which is not effective in the control of the government, deprivation of the independence of the judiciary; and thirdly, as the party system and civil society were being destroyed, the illusion of a direct bond between the nation and 'its' President was created.

The draft constitution presented by the Belarusian opposition in 2022 is intended to be a tool for the democratisation of the state after Lukashenko's removal from office. However, this is not simply a return to the system of governance adopted in the Constitution of 1994. It provides for a parliamentary model of government, with the unicameral Soym playing a crucial role in the state politics. The project envisages maintaining the institution of a directly elected President, but with limited powers that would prevent the person holding the office from trying to concentrate power and re-authoritarianise the country.

In the text of the draft constitution of the 'new Belarus' one can find clear features of deauthoritarianisation and certain features of decolonisation, which were recently the subject of research by Partlett and Küpper. Due to the fact that the authoritarian nature of Belarus results from the dominant position of the President in relation to the legislative and executive powers, this project envisages a limited role for the President in the political system. His or her role is essentially reduced to that of a 'government notary', which is a common practice in parliamentary systems. At the same time, the direct election of the head of state is planned to continue. The direct election is an element of the nation-building and state-building processes, since the President is the supreme authority whose strong legitimacy is intended to consolidate society and the state. The President is given certain powers in the field of executive power shared with the government. Another manifestation of deauthoritarianisation is a wide catalogue of individual rights and freedoms and the constitutional regulation of the position of the Prosecutor's office, the establishment of the Ombudsman, the Committee for Supervision over the Activities of the Intelligence and Security Services and the Committee on the Ethics of Public Service and Counteracting Corruption.

The document also contains specific norms that can be interpreted as decolonisation. It is a declaration of state sovereignty, territorial integrity, pursuing a sustainable foreign policy and neutrality, and the right to freely join and leave international organisations. Another manifestation of decolonisation is the inclusive understanding of the nation-building process, the document's failure to refer to settlements with the past, the failure to introduce the institution of transitional justice and the failure to resolve the issue of the state language (i.e. whether the Belarusian language should be the only state language and what status should the Russian language have). The document lists side by side the various historical forms of Belarusian statehood, from the Grand Duchy of Lithuania to the Belarusian SSR, which is a manifestation of the desire to build a civic nation, not an ethnic one, and the desire to avoid political divisions and animosity within society.

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