

# 1 The Political System Reform in Belarus: Projects and Ideas

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The need for strategies to develop the state system and the society at large may only arise provided there is consensus among the general public on basic political values, and that the political elite is well aware of national and state interests.

Belarus does not meet either condition. A latent civil war between opposing political forces prevents the country from overcoming institutional and functional crisis in the political system.

The country's ruling elite has not changed since the break-up of the Soviet Union, with functionaries of the Soviet times still at its core. As a result, the ruling elite have failed to adapt to changes following the demise of the Soviet Union. The Belarusian ruling elite's ideology is one of interim rulers who, rather than looking ahead, are concerned with present circumstances, and are interested in the politics of 'right here and right now' instead of the country's longer-term development. These features have affected both the political system's reform in Belarus and the discourse around it.

In the first few years of independence, i.e. since 1991, the Communist elite took a step back from discussing the country's prospects for political development. Democrats, who dominated the debate, insisted that Belarus has a future as a parliamentary republic, a widespread form of governance in Western countries. However, the *nomenklatura* managed to retain real powers and maneuver the discourse in such a way as to suit their interests. The Con-

stitution of Belarus, adopted on 15 March 1994, established the institution of presidency.

However it did not offer clear-cut mechanisms for concentrating power in the hands of the executive, the 1994 Constitution did not rule out such a possibility, either. Loopholes in constitutional provisions allowed President Alyksandr Lukashenka and his entourage to set up a tight authoritarian system using i.a. the constitutional referendum in 1996.

The succession of the three models in Belarus during its independence, i.e. a parliamentary republic, the 1994 constitution and the 1996 constitution, determined the country's political thinking.

Those who want the country to embark on a democratic path consider the parliamentary republic to be an ideal pattern. As a means to transition towards the ideal model, they suggest a return to the 1994 Constitution, which was adopted when the government's legitimacy was still unquestioned.

Opponents of the authoritarian regime were preoccupied with restoring the 1994 constitutional order, and did not work on alternative proposals to reform the political system.

The authorities have not considered political reforms either, since they regard the system established by the 1996 Constitution as immune from any, even minor, changes. Amendments of the constitution's status proposed by members of the National Assembly, itself a puppet legislature, provoked a harsh response from Alyksandr Lukashenka.

Some political reform ideas, rather than models or projects can be found in platforms of presidential candidates and political parties, and in papers developed by non-governmental think tanks. Notably, the platforms of presidential candidates and political parties were originally designed as declarations tailored to broad public appeal. They would be of little use for modeling Belarus' actual political future.

## Election platforms of presidential candidates

The first presidential election was held in Belarus following adoption the 1994 Constitution; therefore in their platforms, the candidates viewed the political system as already established.

In his program called 'To Lead the People Away from the Abyss', Presidential candidate Alyaksandr Lukashenka stressed that the government should be directly involved in managing business operators by appointing their chief executive officers<sup>1</sup>. Thereby, he declared that the State retain ownership of the enterprises. This, he purported, would be the key mechanism for consolidating the president's position as the head of State.

The platform of another candidate, Alyaksandr Dubko, entitled 'This Country Needs a Good Manager' lacks understanding of the need to separate the powers. Dubko expressed this even more explicitly than Lukashenka by claiming that 'order should be established in the country from the top downward; the country should have one ruler'<sup>2</sup>.

Both candidates pledged to pursue policies based on the will of the people, thus asserting the president's right to act without any regard for legal or institutional limits.

Lukashenka's pledge to seek 'unification of the former USSR republics'<sup>3</sup>, and Dubko's determination 'not to respond to the Western bait'<sup>4</sup> explicitly indicated that they saw Belarus as being outside Europe.

Democrats Stanislav Shushkevich and Zyanon Paznyak called for privatization and market-oriented changes in their respective platforms entitled, 'Statehood, Democracy, Market: a Path to Prosperity', and 'Economic Program', in order to build the economic foundations for a democratic state. Both candidates pledged to do their best to prevent Belarus from turning into a Russian backwater and establish a Western-style democracy.

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<sup>1</sup> *Сборник альтернативных программ развития Беларуси, под ред. В. Шлындикова, Минск, Бестпринт, 2001, р. 203.*

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

In 1999, with the expiration of Lukashenka's term of office under the 1994 Constitution, Belarus' democratic forces held an alternative presidential election. The candidates, Paznyak and former Prime Minister Mikhail Chyhir, called for reinstating the 1994 Constitution.

Both candidates also proposed substantial changes to the political system once established by the organic statute of 1994. They suggested introducing a statute of mixed-member proportional voting system for parliamentary elections, with 50 percent of the seats awarded in single-member districts and 50 percent based on political party lists, or the proportional representation system. Chyhir suggested that the stipulated turnout threshold of 50 percent, which enabled Lukashenka to torpedo the formation of Parliament and local government councils, should be lowered to 25 percent.

Russia's role in the emergence of a severe authoritarian regime in Belarus prompted Paznyak to spelling out clear foreign policy priorities such as joining NATO and building close ties with the European Union. Paznyak said it was essential for national security.

The need for political reform became apparent during the 2001 presidential election. Opposition candidates Syamyon Domash and Uladzimer Hancharyk called for constitutional reform aimed to vest the Parliament with real powers, ensuring independence of courts and the media, giving more powers to central and local governments. Domash suggested introducing a mixed-member proportional voting system<sup>5</sup>.

## Political party platforms

The first party document calling for political reform was the Belarusian Popular Front's 'Program for Perestroika "Revival"' dated 1989.

The program was based on the following political principles:

- Belarus must be a sovereign state and the nation has the right to self-determination;
- political pluralism;

<sup>5</sup> Праграмны выступ кандыдата ў прэзідэнты С. Домаша, «Народная воля» 2001, 28 жніўня.

- the rule of law;
- development of direct forms of democracy;
- independent judiciary and trial by jury;
- freedom of expression, assembly and association, with non-governmental organizations registered pursuant to the notification principle.

The Belarusian Popular Front's 1993 platform further developed the principles of sovereignty and democracy. It suggested the mixed-member proportional voting system for the parliament (*Sojm*) with 80 members (50 percent) elected from political party lists. The party suggested that lawmakers should be barred from holding posts additional to their parliamentary duties.

The program said that strong parliamentary factions would guarantee the parliament's effective operation.

The party also cautioned that the introduction of presidency is fraught with the risk of dictatorship given strong positions of the former Communist *no-menklatura*.

At the same time, the program said that the presidency in Belarus was possible provided that effective checks and balances were in place. This implies parliament playing the key role in the political system and, along with the judiciary, counterbalance the executive. The program called for using the referendum which, at the time, was widely thought to be an effective mechanism of direct democracy. The program reaffirmed the BPF's adherence to the idea of independent judiciary and trial by jury. The document also called for reforming local government and the administrative-territorial system, stressing that changes should be in line with the European Charter on Local Government.

The multi-party system, separation of powers and independence of the media were regarded in the program as an integral part of democracy.

The BPF warned against and declared its opposition to the Russian electronic and print media dominating the market in Belarus, and noted that security of information was important for democracy and independence of Belarus.

The BPF's foreign policy priorities included cooperation with the 'Baltic-Black Sea Community' member states and countries in Central and Eastern Europe and withdrawal from the Commonwealth of Independent States.

On the heels of the Conservative Democratic forces came the Liberal Democrats with their 'Declaration of Program Goals and Principles' adopted by the United Democratic Party of Belarus (UDPB) in 1991. Like the BPF, the UDP called for building a state with effective rule of law, developing civil society institutions and establishing democracy based on the separation of powers and decentralization of government. The program did not offer any model for Belarus' future political system as it was adopted shortly before the 1994 Constitution.

The Conservatives and the Liberals differed in economic and national identity issues. The latter, apart from historic and cultural, had political roots: the UDPB did not regard Belarus' eastern neighbor as a threat to the country's sovereignty.

October 1995 saw Liberal Democratic forces rally round the United Civic Party (UCP). The UCP program did not differ much from that of UDPB, yet it highlighted the growing confrontation between the executive and the legislature. The document stressed that executive by-laws must not limit human rights or impose other unlawful restrictions. The program emphasized the need for establishing a professional parliament (that is, where lawmakers work on a full-time basis and have no right to hold additional posts), enhancing the role of the Constitutional Court in the system of checks and balances, and the need for democratizing local government. The UCP suggested selling the State stake in printing plants to the newspapers and fostering the development of independent media.

The Social-Democratic forces evolved slowly in the post-Communist society. It was only in 1996 that the Belarusian Social Democratic Party 'Narodnaya Hramada' (BSDP) adopted its platform. When set against programs of other democratic parties, their section on Belarus' political future offers little in the way of novelties.

The platform asserts that Belarus should be a parliamentary republic, with the government accountable to the legislature (Supreme Soviet). The lawmakers should be selected on the basis of a mixed-member proportional representation system.

As a rule, political parties do not debate political reform issues outside their platforms. The only exception is the program for a social and economic reform

put forward by the United Civic Party (UCP). However, it presents the political reform from the perspective of social and economic changes. The platform calls for establishing ‘an open political system that would encourage political competition’. The UCP sees the system as a parliamentary republic with parliament being the formative factor for the executive power.

## **Political reform concepts and programs developed by independent experts**

Research on the issue conducted by Belarus’ non-governmental think tanks was either limited to specific aspects rather than looking at the political system’s big picture, or tended to be descriptive instead of being concerned with devising alternative models.

On March 18, 2000 experts of the Stratehiya think tank and those led by the former parliamentary speaker Myacheslaw Hryb communicated a national development strategy entitled ‘The Strategy for Belarus’. The experts, including foreign ones, noted that the document focused on economic reforms and lacked the political dimension. In particular, Piotr Kozarzewski of the Warsaw-based Center for Social and Economic Research (CASE) advised the authors to substantiate the need for transforming Belarus into a parliamentary republic and describe the role of the president, the parliament and the government.

## **Political system models as seen in 1994 and 1996 Constitutions**

The organizational and functional weakness of the Belarusian opposition, and the geopolitical situation made it possible for the former Communist elite to maneuver the political system’s transformation in such a way as to stay in power.

Separation of powers was non-existent in the political system of the Belarusian Soviet Socialist Republic (BSSR). Article 6 of the 1978 BSSR Constitution provided that ‘The Communist Party of the Soviet Union shall be the guiding

and directional force of the Soviet society, the core of its political system, state and public organizations'<sup>6</sup>.

After the break-up of the Soviet Union, the government banned the Communist Party of the Soviet Union in Belarus and declared separation of powers. In fact, however, this was not the case. An extensive network of 'patron-client' rings led by former party bosses enabled Prime Minister Vyacheslaw Kebich and his entourage (former Communist party secretaries) to exercise control over the Supreme Soviet and the judiciary, which were only notionally independent of the executive.

Concentration of powers in the Council of Ministers throughout 1992 and 1993 set the stage for introducing the institution of presidency in Belarus. A draft Constitution aiming to serve the interests of Kebich and lobbied by Kebich-controlled parliamentary majority, was designed to give the *nomenklatura* powers and tools for influencing the legislature and judiciary.

The Constitution, adopted by the Supreme Soviet on March 15, 1994, declared separation of powers (Article 6), but did not provide sufficient safeguards for maintaining it.

In addition to purely legislative functions, it vested the Supreme Soviet with considerable powers to form other governmental agencies. Under Article 82 Part 7, the Supreme Soviet appointed judges to the Constitutional, Supreme and Supreme Commercial Courts, the Prosecutor General, the chair and board of the Audit Chamber, and National Bank governors. The Supreme Soviet was also empowered to form the central electoral commission, define domestic and foreign policy priorities (Article 83 Part 9), ratify and renounce international treaties (Article 83 Part 12).

The Constitution gave the Supreme Soviet considerable powers to control public finance. The parliament was designated to pass national budgets, budget performance reports, distribute taxes between central and local budgets (Article 83, Part 10), fix national taxes and duties, and control money supply.

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<sup>6</sup> Канстытуцыя (Асноўны Закон) Беларускай Савецкай Сацыялістычнай Рэспублікі, Менск, Польша, 1978, р. 3.

The Constitution also empowered the Supreme Soviet to impeach the president. The legislature also had certain influence on the Cabinet.

Under Article 107, the Supreme Soviet approved the presidential appointment of prime minister, also deputy prime ministers, foreign, finance, defense and interior ministers, and the chair of the Committee for State Security (KGB).

The parliament had powers to hold any Cabinet member accountable. The Supreme Soviet could recommend dismissal of a Cabinet member for breach of the Constitution or laws.

Under the Constitution, the president was declared Head of State and of the executive (Article 95).

In its declaration of branches of power as being independent within their remit (Article 6), the Constitution was ineffective, however, as it enabled the president to upset the system of checks and balances without resorting to direct violations of the organic statute.

In post-Soviet Belarus, broad powers given to the legislature did not guarantee its full independence from the executive. Firstly, with the Communist party nomenklatura retaining its dominance, the majority voting system for the Supreme Soviet provided the ruling elite with a good opportunity to insert its candidates, while the democrats could only count on minor representation in the parliament. Secondly, the Constitution allowed lawmakers to perform their duties while holding management or civil service positions. Article 92 provided, 'A deputy of the Supreme Soviet should exercise their duties in the Supreme Soviet on the professional basis or, if they wish, without abandoning their entrepreneurial or civil service activity'<sup>7</sup>. The loophole offered the executive an opportunity to plant executive officials in the parliament.

The executive retained control over the majority of State-owned assets, thus having additional tools to influence the lawmakers, most of whom held senior management positions before being elected to the Supreme Soviet.

The Constitution provided that the government should guarantee a level playing field for all forms of ownership (Article 13). However, it did not compel

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<sup>7</sup> *Канстытуцыя Рэспублікі Беларусь*, Менск, Беларусь, 1994.

the government to supporting the private sector. The concentration of power and property in the hands of the executive was a crucial factor in consolidating its political position and creating an environment for power to be concentrated in the hands of the head of state.

An important mechanism for strengthening political positions of the president was his personnel policy. Article 100 Part 11 allowed the president to appoint a wide range of government officials and managers to key positions in government and the state-controlled sector of the economy. In a post-Soviet society, in circumstances where not only the greater part of the electorate, but also political and economic elites advocated political ideas of the leader, personal loyalty to the head of state proved essential for pursuing a political career.

The Constitution preserved the Soviet-era administrative division of the country into regions (*oblast*), districts (*rayon*), cities (*horoda*) and other entities (Article 9). It stipulated that citizens should exercise local governance through local soviets, executive and administrative authorities (Article 117). Article 119 provided as follows: ‘Local soviets, within their powers, address local issues with regard to national interests, the interests of the local population, and follow decisions of superior governmental agencies’<sup>8</sup>.

The clause actually codified the existence of ‘the executive power’ before the adoption of respective laws. Lukashenka only needed to qualify ‘executive power’ with ‘presidential’. The power has de facto been run by Lukashenka ever since he came to power.

The Constitution authorized the president to appoint judges, with the exception of those elected by the Supreme Soviet (Article 100 Part 10). The provision enabled the Belarusian ruler to resort to prosecuting his opponents under the penal code.

The Constitution banned censorship and the government’s monopolization of the media (Article 33). However, sufficient guarantees were not provided for the freedom of expression because the country’s major printing plant, Belaruzki Dom Druku, remained under State control. The Constitution did not specify

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<sup>8</sup> Ibid.

the ownership or status of state-owned television and radio stations run by the Belarusian State Television and Radio Company.

The executive still has an opportunity to dominate the information space by resorting to legal proceedings and tax raids to oppress private media, or by denying them a license.

The Constitution stipulated that referenda may be conducted to make decisions on most pressing issues (Article 73). In fact, the head of state could use his executive division to obtain the desired result at a referendum. The executive, in turn, used the soviets to control and brainwash the electorate in the provinces. Near-total control of the media enabled the executive to manipulate public opinion. The ability to predetermine referendum results allowed the president and his entourage to dictate domestic and foreign policy priorities without any regard for the opinion of the Supreme Soviet. Moreover, referendum results could be used as a powerful tool to subjugate the parliament.

The above-said weaknesses of the constitutional checks and balances system enabled Lukashenka to expand his influence in the first year of presidency.

By November 1996, Lukashenka tightened his grip on power and no longer needed to conceal the strings he pulled to control the Supreme Soviet and boost his political clout. Yet, he needed to legalize his informal influence in order to deprive the democrats of the ability to appeal to the Constitutional Court against the Head of State breaching the Constitution.

At the referendum on November 24, 1996, 70.5 percent of the total turnout said 'yes' to Lukashenka's constitutional amendments that expanded his powers.

The president was empowered to call a referendum (Article 84, Part 1). Article 85 empowered the president to rule by decrees 'in instances provided for by the Constitution'<sup>9</sup>. However, the Constitution does not clearly say in what instances the president may resort to decrees.

The Constitution marked a sweeping victory for Lukashenka's team and their efforts to build an effective 'executive division'. Under Article 119, 'heads of local executive and administrative bodies should be appointed and dismissed by

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<sup>9</sup> Ibid.

the President of the Republic of Belarus or by his/her order, and their appointment should be subject to approval by local councils of deputies'<sup>10</sup>.

Constitutional provisions concerning the legislature's role in the political system enhanced presidential powers at the expense of the legislature.

The parliament, now called the National Assembly, consists of two chambers – the House of Representatives (lower) and the Council of the Republic (upper). The powers of the lower chamber are limited to lawmaking. The only exception is that it has the right to endorse the president's choice of prime minister (Article 97, Part 2).

Article 92, which bars members of the lower house from holding governmental, managerial or other posts in addition to their parliamentary duties, does little to elevate the status of the House of Representatives. In fact, the Constitution placed the House of Representatives under total control of the upper chamber, the Council of the Republic.

The Council of the Republic is the house of territorial representation. The six regional and Minsk city soviets each appoint 8 members to the upper chamber, with eight members appointed by the president (Article 91). Thus, the Council of the Republic consists of officials directly or indirectly appointed by the head of state.

Article 98, Part 1 provides that the Council of the Republic should 'approve or reject draft laws adopted by the House of Representatives with regard to amendments and addenda to the Constitution; and provide interpretation of the Constitution and other draft laws'<sup>11</sup>. The clause suggests that the formally elected lower house of the Parliament is not an independent legislative body.

Under Article 98, Part 2, the Council of the Republic confirms the presidential appointment to chair of the Constitutional Court, chair and judges of the Supreme Court, chair and judges of the Supreme Commercial Court, chair of the central electoral commission, the prosecutor general, chair and governors of the National Bank.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

The Council of the Republic appoints six judges to the Constitutional Court (Article 98, Part 3), and six members of the central electoral commission (Article 98, Part 4). The other six Constitutional Court judges and commissioners are appointed by the president (Article 84, Parts 4 and 10).

Considering that the Council of the Republic is formed by presidential appointees, it is easy to gauge the Belarusian leader's real powers by changing the chamber's name to 'president'. Under such circumstances, the Constitution-stipulated impeachment requirements are extremely difficult to meet.

The 1996 Constitution codified the political system whereby the executive, legislature and judiciary are concentrated in the hands of the president.

Efforts to model a democratic political system for Belarus were largely limited to the political system set out in the 1994 Constitution. However, this model is not optimal. A flawed system of checks and balances, as provided for by the 1994 Constitution, enabled Lukashenka's success in establishing a tight authoritarian regime.

This project is the first attempt undertaken by NGO representatives to create a sound political model that would allow a Belarus guided by the principles of sovereignty and democracy to make steady progress in the context of European integration.