

**Notes:**

1. Superior courts are formed by the parliament.
2. Judges are appointed to mid-level courts by the president from among candidates proposed by judicial self-governance bodies.
3. Justices of peace are appointed by the justice minister for three years from among candidates put forward by judicial self-governance bodies.

## The Constitutional reform

by Mikhail Pastukhou

The planned reform of the legislative, executive and judiciary should be codified in the constitution. The question is what version of the constitution should be used as the basis of reform – the one adopted on March 15, 1994, or the amendment enacted on November 26, 1996.

The new edition cannot be regarded legitimate as it was adopted with numerous violations of the law. It was enacted regardless of the Constitutional Court's ruling of November 4, 1996, that constitutional amendments subject to a referendum should not be binding.

The 1994 constitution is the only legitimate basis for a constitutional reform in Belarus. Restoration of that constitution will enable the rule of constitutional law in the country.

On the other hand, much time has elapsed since the 1994 constitution was replaced. Legislation has changed significantly, a new system of governmental agencies has been established and new legal relations have been formed. It is not advisable for laws to retroact. It would be better to use the 1994 constitution to prepare a Small Constitution for the transition period. The Small Constitution should outline principles of the constitutional and government system and map out prospects for drafting the constitution proper.

The preparatory stage of the constitutional reform would be spent drafting the Small Constitution for the transition period, with major political forces discussing its text.

Once the Small Constitution is drafted and finalized, key political forces should call on the public to convene a constitutional assembly with political parties and non-governmental organizations represented according to quotas. Members of the 12<sup>th</sup> and 13<sup>th</sup> Supreme Soviets could also be invited, provided that they recognize the 1994 constitution.

An organizing committee should be formed to comprise leaders of political parties and non-governmental organizations so as to prepare the constitutional assembly. The assembly could be held in Belarus or in a neighboring country, depending on the political situation. The following items are recommended for the assembly's agenda:

- 1) elect the chair and three deputy chairs of the assembly;
- 2) approve the structure and mode of setting up commissions of the assembly;
- 3) provisional rules of procedure of the assembly;
- 4) the small constitution of Belarus ;
- 5) provisional laws that would govern presidential, parliamentary and local elections, the central and local electoral commissions, cabinet formation, the judiciary, Constitutional Court, Parliamentary Audit Chamber, human rights ombudsman, Prosecutor General's Office etc.;
- 6) resolutions on new presidential, parliamentary and local elections.

The constitutional assembly would hold sessions until it addresses all items on the agenda. The constitutional assembly and people who organize its work would have no official powers.

After appointing the central electoral commission, the constitutional assembly would set the date (or dates) of elections.

Before legitimate authorities are formed, the existing governmental institutions and agencies, including the president, the Council of Ministers, ministries, departments, the Committee for State Security, the Prosecutor General's Office and courts, would retain their functions and powers.

With a two-third majority vote, the constitutional assembly may form a public commission to investigate abuse of power during Alyaksandr Lukashenka's rule, and set up a public tribunal made up of lawyers who have not compromi-

sed themselves by working for the regime. The constitutional assembly should prepare regulations regarding these agencies. Once a legitimate judiciary and law enforcement agencies are formed, the public tribunal transfers its case files to courts.

Presidential, parliamentary and local elections should be monitored by international and domestic observers to prevent fraud. Election results are made public and may be appealed against in court. The final results of the vote must be approved by the constitutional assembly.

With the president and members of parliament sworn into office, the mandate of the constitutional assembly is terminated.

Judges of the Constitutional Court, Supreme Court, the Supreme Commercial Court, and other courts (as the case may be) are elected by the parliament from among candidates put forward by judicial self-governance authorities, legal research and education establishments, national human rights organizations, parliamentary factions. All the candidates must meet the criteria for the post.

The human rights ombudsman is elected from among candidates nominated by human rights organizations.

It is necessary to restore the Audit Chamber in the parliament (which would have the status of a standing parliamentary committee). Apart from lawmakers, the Audit Chamber will have experts on staff.

The prosecutor general is elected from among lawyers nominated by parliamentary factions. The prosecutor general is accountable to the parliament and abides by the constitution and laws of the Republic of Belarus.

The next stage of the constitutional reform would consist in drafting an amended constitution on the basis of the Small Constitution. For this purpose, the parliament forms a constitutional commission of lawmakers, politicians, lawyers, economists etc. to draft a new constitution. Work on the constitution should be open to the public, and constitutional provisions should be discussed by parliamentary committees, the entire parliament and in the media.

The parliament votes on the new constitution by roll call. The draft needs a two-thirds support to pass in the parliament. Upon parliamentary approval,

the constitution is put to a referendum. The organic statute takes effect immediately upon receiving support of at least 50 percent of registered voters.

The new constitution takes effect on its approval by the people at a referendum. The referendum should be followed by presidential, parliamentary and local elections.

The constitutional reform may be considered complete after the formation of new representative authorities.