



**THE DILEMMA OF BELARUSIAN CONSTITUTIONAL IDENTITY**

**PROJECT REPORT**

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2021

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The project is financed from the funds of the **Development Cooperation and Democracy Support Programs** of the **Ministry of Foreign Affairs of the Republic of Lithuania**.

The conference was organized in partnership with the **Belarusian Helsinki Committee** and with the participation of the **European Humanities University** and the **Law and Democracy Center/Justice Hub for Belarus**.



## ABSTRACT

On 11 October 2021, the conference "The Dilemma of Belarusian Constitutional Identity" was held at the Mykolo Romerio University. After the anti-government protests in Belarus in the summer of 2020, Vilnius has become the main center for Belarusian refugees, including Sviatlana Tsikhanouskaya, the leader of the Belarusian opposition. Baptized as the political capital of Belarus, the city seems to be an ideal place to gather experts in Belarusian law, politics and history. The purpose of the event, organized on the anniversary of the adoption of the first provisional constitution of independent Belarus in 1918, was to discuss the nature of the new Belarus constitution being drafted by the opposition in exile. Speakers from Belarus, Poland, Lithuania and other European countries discussed the issues of the national identity of Belarusians, the actual and desired cultural affiliation (Eastern or Western Europe) and the heritage of the present and future Belarusian constitutionalism - the Grand Duchy of Lithuania, the Belarusian People's Republic and the Belarusian Soviet Socialist Republic.

The main languages of the event were English, Russian, and Lithuanian. Synchronous interpreters translated in real time, which allowed for establishing a dialogue between all participants, between Vilnius, Minsk, and Chisinau. The event was opened by a speech by the conference coordinator, Associate Professor Ingrida Danėlienė. The opening panel was also attended by the university rector, professor Inga Žalėnienė, Sviatlana Tsikhanouskaya, doctor Mantas Adomėnas, deputy foreign minister of the Republic of Lithuania, and Andrius Kubilius, a Lithuanian MEP. All the speakers mentioned emphasized the importance of the topic.

This report has been drafted so as to precisely reflect the discussions of the conference. It begins with an introduction to the topic. The first part sheds light on the historical elements of national and constitutional identity. The first part is divided in general observations and more specifically looking at the history and traditions of Belarus since the 18th century. The second part focuses on the current developments of the new draft constitution of Belarus from the legal perspective, with the aim of drawing conclusions from the questions posed in the first part and how the past could be best reflected concretely in the new constitution project. Both parts end with a summary of conclusions. The most important documents used as a reference in this report are annexed at the end of the report.

## INTRODUCTION

The Constitution is a set of values that is not only to be created but to be found in the state's own unique political, social, legal history. In general, the European constitutional tradition expresses consent to democracy (democratic values), freedom, and the rule of law.

In Belarus, fraudulent presidential elections of 2020 have once again precluded such development in the latter country, however, on the other hand, invoked progressive movements. In the pursuit of strengthening the democratic processes in Belarus, a new Constitution is being drafted. The identification of the national constitutional identity of Belarus, which derives from the statutes of the Grand Duchy of Lithuania, also the constitutional foundations of the Belarus Peoples' Republic of 1918, constitutes the essential difference from the concept of the constitutional amendments currently engineered by the authoritarian leadership of the country. Therefore, at the core of the constitutional process is the determination of the national and constitutional identity of Belarus. Should Belarus stand distinct from its current state and the Soviet heritage, and lean towards the European legal order? Such and other relevant questions arise in the process.

These questions were thoroughly addressed in a discussion led by professors Alvydas Nikžentaitis and Dainius Žalimas. The keynote speeches were given by Mihail Pliska from Belarus, Prof. Dr. Toma Birmontienė from Lithuania, and Alexandru Tănase, former President of the Constitutional Court of the Republic of Moldova. The first part of the discussions of the conference was dedicated to the topic of which part of Europe does Belarus identify itself, and the speeches were provided by Hienadz Sahanovič, historian from Belarus, Iryna Ramanava, Professor of Academic Department of Humanities and Arts and Coordinator of Institute for Historical Research on Belarus, and Prof. dr. hab. Wojciech Slezynski, Polish historian and Dean of the History and Sociology Faculty at the University of Białystok. The second part of the discussions of the conference were designated to legal aspects of constitutional identity. Therefore, the following members of the working group for the drafting of a democratic constitution in Belarus and experts in the constitutional law of Belarus actively participated therein: Anatolyi Lebedka, initiator of the "People's Constitution" and Representative for the Constitutional Reform of Belarus, Lev Margolin, Coordinator of the group on the Belarusian Constitution, Valery Zhurakovsky, Member of the working group on Constitutional Reform, Elena Jeskova, lawyer from Belarus, Liudmila Ulyashyna, Associate professor at the European

Humanities University, and Aliaksandr Vashkevich, professor and a former judge of the Constitutional Court of Belarus.

## I HISTORICAL ELEMENTS OF NATIONAL AND CONSTITUTIONAL IDENTITY

### 1.1 General remarks on the tradition of constitutional identity

National identity is a precondition of constitutional identity, but the content of the two terms does not coincide. It is certainly a complex issue to determine what is particularly European and what is universal. The patterns on how national and constitutional identity should be reflected in the constitutions, and what relevant traditions may be distinguished are to be further identified.

#### **Prof. Dr. Toma Birmontienė:**

The constitution reflects the soul of the nation and the soul is enshrined in the constitution and in its different articles. It is important to understand what a constitution is and what it reflects; not only the structure of the government, but other elements as well. When depicting the identity in a constitution, we need to be reminded that finding the answer by looking at constitutions of different countries is not easy. Constitutional specificities are rooted in the history of the nation and struggle of independence. If we look for external elements, different constitutions have different bases and interrelations in the international community. Membership of the EU is probably the most specific thing, because that external aspect of a constitutional identity speaks about the relations.

What are the internal aspects then? Some other European constitutions may provide an example. After World War II, there was discussion about the stability and form of government and democracy. Italy and France went on to strengthen the republic. Democracy and human rights stand in the frontline of German constitutional identity. These models prove that regarding constitutional identity, there is no Rubicon between the past and today. Same element and historical link are what constitutes the constitutional identity.

Other elements of constitutional identity that can be found in constitutions are of course the text of the constitution itself and the specific provisions and articles. Also, the preamble plays

an important role. We may ask, why so many countries are looking for identity, and want to see the constitution as something more than the doctrine of the government for categorising human rights? Why do nations want to be unique? Because identity means some kind of uniqueness.

The constitution can be both written and non-written. In many European countries, documents rather rarely get constitutional legal form or character. The basic premise of a constitution is its stability. However, when we expect the constitution to work for a long time, at the same time we are losing its mobility. Constitutions should not be static, but have the possibilities to extend and to develop. In Lithuania, constitutional doctrine and essential principles are unamendable, and the fundamental basis of the constitution is indeed the immutable historical documents.

Constitutional interpretation is one tool to stress and develop the identity of a constitution. Constitutional control exercised through constitutional courts is absolutely necessary and inevitable. If there are no constitutional courts, the identity can be lost. This is what happened for example in Russia with its constitution. Respectively, through constitutional amendments, sometimes we can destroy constitutional identity, the constitution itself and the basics of the constitution. It is important to stress that constitutional identity is not only a theoretical concept, but a part of a living constitution, and living nationals are responsible for preserving, and sometimes destroying, it.

**Prof. Dr. Iryna Ramanava:**

To provide a background for later discussion on developments, it is worth mentioning the national wide discussion of the USSR Constitution of 1936 from mobilisation strategies to master oppression and the Belarus Constitution of 1937.

The Constitution of the USSR in 1936, which is unofficially called the Stalin Constitution, was the main law of the USSR. It was adopted on 5 December 1936 and with some amendments it was in force until 1976. The Belarus Constitution was adopted a year later in 1937, while the elections in Belarus in 1937 were supposed to take place in November. However, right after the nationwide discussion and before the election, starting from August 1937, mass repressions broke out in the country. Between August 1937 and November 1938, over 1,000,000 people were arrested in the USSR and more than 600,000 were later sentenced to be killed. Approximately 55,000 were arrested and 27 were then sentenced to be killed in Belarus.

Consequently, the question arises why the adoption of this Constitution of 1936 suddenly turned to mass repressions in 1937-1938.

The planned socialist system was proclaimed the mass production system, which would be viewed as owned by the state or as a collective farming unit. So what came as the basis of the constitution was the statement that all the citizens have equal rights, and especially the right to vote and elections with several candidates. Therefore, based on this Constitution the so-called “former people”, those are representatives of exploiting classes in the past. So these former people had to become equal members of the Soviet society without any restrictions to purchase food, have education, get an apartment, but nonetheless everyone had to have equal rights and had to partake in the elections. The Constitution also proclaimed the right to work rest, pension, freedom of conscience, speech, protest, and personal communication.

Of course, everything was very nice on paper and absolutely undoable in reality. So the question was why Stalin needed to introduce this the most democratic institution in the world in 1936, just before the horrible years of terror. People who just obtained those rights would suffer from the regime. All the religious people among many other groups were the ones who would eventually suffer, so this was raised by the desire to create a wonderful image of the Soviet Union all around the world.

Political campaigns, of course, were surrounded by mass discussions to select public opinion, and the regional organisations and party organs collected this information, sent it to Minsk, Minsk collected this data and then forwarded it to Moscow. So statewide discussion of a Constitution was a process of monitoring of the public. At the same time, these reports were normally reflecting typical opinions of the general public. However, many people in fact saw that the public should support the system in every way possible, and any kind of protest was not even mentioned in those documents. One of the aims of this public discussion was the indoctrination and victimisation of the regime, so every citizen had to contribute to the building of socialism and now they were ready to move on to the next stage and make every person accountable for their future. The public was not allowed to be passive, it had to be proactive in creating the law, although of course it was an illusion. The authorities requested comments on the Constitution, but everyone who was expressing an opinion that did not fit their agenda was repressed. They wanted to form a unified public agenda across the Union.

During this discussion, many people actually for the first time found out that they are entitled to certain rights, so this discussion was perhaps educating the society and strengthening the understanding of civil rights as such, and some part of the society tried to use those rights. For example, in the USSR over 90,000 signatures were collected to open churches. After this monitoring process in February 1937, Stalin decided that it's too early to grant those rights to people who lost them and the country needed mass and final cleansing. Of course, years of working on public opinion and class-based hatred did not go unnoticed. Unfortunate attempts to communicate with the lower classes of society did not work and they convinced authorities that socialism has not been fully built.

In October 1937, integrating this new “anti-Soviet agenda” and stating opinions of distrust in the election were the basis for an arrest and often death penalty. Instead of cleansing the society of corrupted local authorities all across the Soviet Union, a large number of exemplary and legal cases on the lower level officials in the villages were performed.

### **Hienadz Sahanovič:**

On the topic of the role of Grand Duchy of Lithuania within the Belarusian identity, the fundamental role here is that of history. After the disintegration of Russia, Belarussian and Ukrainian lands were joined to the Grand Duchy of Lithuania. Later on the Lithuanian dynasty managed to join these lands and it became one state.

Speaking about the Belarus nation among our humanitarians and not only speaking about politics and publicists, the dominant opinion is that the predecessors of Belarus were only Slavic nations who were Christian (called Rusyns). At that time, during the Grand Duchy of Lithuania period Rusyns were part of it, but many speak that these Rusyns were actually Russian. Such understanding of Rusyns and of this ethnicity is not true, because in the 16th century Russian nation wasn't one confession. For example, orthodox or ethnic Eastern European origin and speaking about it it is very difficult to name this identity where the Lithuanians in Lithuania, because this is a slavinized term of Lithuanian. Same as for the people of the Grand Duchy of Lithuania, and it depicted all the citizens of the state not only ethical Lithuanians and this term also, Polack peasantry were named by this term Litvin and this was the part also of Dukes of Polish aristocracy, and in this case it was like a denominator for all, and this equality in the rights led to one political nation to its formation and this nation was



formed by the representatives of those who had the function of state, and they had common state values and interests, and that is why they were called Lithuania and Litvins.

The Dukes and aristocracy started to articulate their state. Lithuania and self-identification after the union was even more clear where Lithuanian expansionism was questioned. The ethnically neighbouring nations, Russia and Ukraine opposed this, and this is why we had administrative borders between Belarus and Ukraine and in the past years the neighbours were called Litvin. This was the differentiation between the neighbouring countries and it shows us the perception after the Act of Lublin Union, when Belarus was included into the Polish Union. Another collaboration was between the Slavic nations and other nations of the Grand Duchy of Lithuania. Due to this collaboration the culture of Belarusians evolved, so when the Chmilninski strike broke out in the territory of Belarus, that meant the clash between the different ethical and cultural values and the culture itself. The modern Ukraine, Lithuania, and Belarus were established.

This modern Belarusian identity meant the emergence of Renaissance in the second part of the mid 19th century. This term was given to Belarus only during the last decades of the Russian Empire, and here again the clash of several aspects and also imperial. There were attempts to depict it as the Russian aspect (as we speak about the national renaissance of Belarus), so this was the movement that opposed the russification, Francis Shegobogu as the first ideologist who formed Belarusian ideas as ideological motherland. He highlighted the long-lasting relationship with Lithuania. Because, as he said, Lithuania was the core of this process. This approach gives us the second project, which is radically different from the Belarusian identity that is Western Russia, here we speak about the empire and the unified Russian nation and this understanding of the Grand Duchy of Lithuania, and the assessment of heritage, where the central line clashes between these two main narratives. The national approach as a golden age of Belarus depicted its right to be independent from the family of other nations (the Western Russian narrative).

Another thing is that they didn't see their rights at all, they were joining Russia and the Orthodox culture and this key thesis of Western Russia. Also, we can see from the after-war Russia when they had the right to depict Eastern Russian nations as unified and as faceless, and again Belarus had to be joined to Russia. Categorically, this wasn't the case for the Belarusian nation, and for the first time, this was something that was alien for Belarus. It is named as the darkest period in the Belarusian history, because it was done in order to unify and join Belarus

to the Russian world, the culture, the heritage, and due to this influence of these processes or historians optionally link Belarus and Belarusians to Russia and the Orthodox component.

The Grand Duchy of Lithuania and Russia were different from Ukraine and Belarus. It wasn't only the Orthodox representatives, by the end of this age Catholicism was also introduced in these countries and it's only the historical name that was left. It is not correct to relate the beginning of Belarusian nation only to Russians and to Russia. The tradition of Lithuania also belongs to the roots of the Belarus nation, ideologically and theologically. The most important thing is not only the ethnocultural process but also the historical civilization experience that became the heritage of Belarus during the period of being part of the Grand Duchy of Lithuania. Throughout the ages it was the area of open collaboration of Byzantine.

The locals have adopted the state which was European in its essence. It has adopted the European values because Belarus was in the sphere of the impulses of the Latin world and culture, and the Renaissance, and they also embraced the political culture and the concepts of human rights, religious tolerance, and cultural pluralism (talking about the statue of Grand Duchy of Lithuania).

A joint action for common good, that is the fundamental idea of European legal culture, and Belarusian history knows a lot of cases of aristocracy, and that we know that it can be depicted as a constitutional or as a citizenship of some kind. So, this means that all these processes could ensure the strengthening call for the Belarusian identity. Nowadays it is very important to remember that the Grand Duchy of Lithuania was the motherland for many predecessors of Belarusians who were calling themselves Belarusians or Latvians. Lithuania and the Grand Duchy of Lithuania had a key role in strengthening their nation also in the beginning of the 20th century. The heritage of the Grand Duchy of Lithuania also came into play in this process of independence and gaining sovereignty after the USSR. Now when Belarus is in the transition period, that means a preventive role in the reformatting by its citizens. The understanding of themselves and self-identification is very important, and the main components of this European statehood have once been adopted from the Grand Duchy of Lithuania. This is the main part of our heritage and we have to maximize it.

On which basis the new constitution of Belarus should then be built?

## 1.2 Observations from Belarus

### 1.2.1 Roots of the Belarusian national and constitutional identity

Two instruments that have played an important role in the formation of Belarusian tradition: Constitution of 3 May 1791 and Constitution of 11 October 1918.

#### **Mihail Pliska:**

On 3 April 1918, Belarusian language became legally approved as the state language of Belarus, and the white and red flag was also adopted as the Belarusian flag. (We must pay tribute to this event)

- from the first chapter legal norms governing the elections where our foundation comes from
- founding fathers of Belarus saw further and more systematic in building the Belarusian state
- noticeable when analysing the content of the second charter: proclaimed Belarus national republic in which all people have the right to personal and national autonomy
- listing of the rights and freedoms of Belarusian people in the second chapter. relevant even today. Still found in the 1994 and 1996 versions.
- personal, economic and civil rights
- December 1919: prohibited dual citizenship. land ownership rights changed.
- Belarusian and Lithuanian constitutions: assumption that laws adopted can be understood as a complex, interim constitution

Then we come to the period after current Belarus independence and the problem of transformation of the Belarusian identity after the collapse of the Soviet Union. The external approach observes the use of past/history in the political and cultural arena. Something characteristic of almost all democratic countries is that the past is the most important element in the formation of the country. Totalitarian countries have the model of the way the past is used, to reach the goals. The politics of the Soviet Union is a good reminder of this. Any identity which is based on the past very often we see that this identity becomes a mess, as we can see

from what is happening in modern Belarus. The modern Belarusian myth stems from the times of the Grand Duchy of Lithuania and the Slavonic unity, and adapted to the Soviet myth that has been forming over a long period of time. Modern Belarusian identity is a hybrid, which compounded from the foundational myths during the late Soviet era, and also one that was formed during the independent years. Soviet myth is prevailing, and integrated on the narrative of the partisan republic and the friendship between Soviet republics. Belarusian identity is based on deliberation from the German occupation, bringing positive connotations from the Soviet era. Then becomes a period when another identity was formed – the history of the Grand Duchy of Lithuania, oriented towards the West. As opposed to the partisan myth, this was not based on an old myth but formed during the late Soviet era and became more prominent when Belarus was becoming independent, and more pro-western.

The period of 1991-1996 was about the Soviet myth and its prevalence. This is one of the reasons why Lukashenka found so easy to dominate in the political arena, and essentially why constitutional identity is so substantial. This kind of narrative was made to eliminate this other narrative. National anthem and flag were abandoned, because there was resemblance of the ones to Grand Duchy of Lithuania. Speed the process of the Belarusianization of the nation: no opposition to Lukashenka's rule. Other reforms were implemented, Russian orientation, and eliminating pro-western myth. Focus was on the unity of Slavonic nations and to achieve high unity with Russia, as a means to show Slavonic nature of the Grand Duchy of Lithuania, and to reinforce the Slavonic strength.

Restoration of the castles in Belarus that were related to the period of the Grand Duchy of Lithuania. The historic narrative was distorted, and the castles were in fact restored in order to eliminate pro-western values, there was no pro-western orientation in the long run. progressive role of Belarusian nation in the course of history. reburial of the remains of the rebels from 1863-64.

Constitutional leadership has to be formed during the process, and there are several contents of the constitution enlisted. Preamble deals with history and the development of Belarusian statehood. Before the late 1980s it was almost impossible to get information. These different barriers were created by the Bolshevik Russia, Germans and the occupation in general. Access to information became easier only after the abolition of censorship.

- The first document, Feb 21st: people of Belarus have to take their future and identity in their hands – very much in line with other preambles of other constitutions
- The people of Belarus have the right to identity, has to be commissioned in congress

**Professor Wojciech Śleszyński:**

During the communist time, the division of history proposed by the communist state was fully accepted by most citizens of the Belarusian Soviet Socialist Republic. In Soviet Belarus, Lithuania and Poland haven't existed an alternative national version of history. An important stage in the transformation of the Soviet systems was Mikhail Gorbachev's rise to power. He was aware that in a rapidly changing world, the economic crisis and an ARM race, it was impossible to maintain the current state of society's ignorance of the past. The changes began to accelerate. Gorbachev wished only to reform communists, but started to destroy the communist system. The scale of crimes committed in the Stalinist era came into light in the late 80s, and it was a shock for the Belarusian intelligence because generally Belarusians were truly attached to the vision of history propagated in the Soviet time. Characteristic feature of the Belarusian collective identity was its strong connection with the Russian identity.

In the new political reality after 1991, the Belarusian historians were faced with the task of changing the current Marxist-Leninist image of the past. A reference point had to be found against which a new vision of history was to be built. The nation state concept said that although the name Belarus(?) did not exist historically, in the state nomenclature, Belarusians had their own state. The struggle to contrast a historical message gained a lot of importance in 1994 during the presidential campaign. The election of Alexander Lukashenko as president at the level of historical communication was a specific act of opposition to the vision of the history propagated by the national circles, in the new post-election reality, it was contrasted with the rebuilt strong historical union of Eastern Slavs. The return to the "good old Soviet times" was to be activated by bringing together Belarus and Russia. The post-Soviet rhetoric became dominant in the official historical message. The discussion around the national symbols and the Belarusian language was one of the elements of the organic political struggle to make the president's power stronger.

The method of revolving political dispute proposed by the Lukashenko administration, which also included the debate of the perception of history, was in fact a choice between the model

of democratic capitalist state and authoritarian post-communist state. Most importantly, the division of the history proposed by Lukashenko was accepted by a large number of the citizens as their own. It was easy, because similar to the Soviet era in this time the economic aspect remained as the most important thing for the citizens. Belarus was able to go through that difficult economic period only because it was “blessed” with the genius of Lukashenko, just as in the years of the WWII strong leader Stalin who united and led the Soviet people during dramatic times, so has today the president of Belarus led the state in the “rough water” of the post-Soviet world. The cult of personality, a well-known concept from the Soviet times, has been an important element of state ideology during Lukashenko’s reign.

New period for Belarusian political historians started in the beginning of the 21th century, along with the new conflict between Moscow and Minsk. The new ruler of the Kremlin, Vladimir Putin, viewed the Russian-Belarusian generation in a much more pragmatic way than Boris Yeltsin. In this new time, Lukashenko decided to modify political history. Lukashenko’s administration very skilfully knocked out a large part of the arguments with historical content from the opposition. The National Circle was presented as a group unable to change. Proceeding with the Russophobia unacceptable by the majority of the Belarusian society, Lukashenko turned out to be much more modern against their background. Without questioning the historical link with the Orthodox Ruthenian heritage, he did not cut off from the heritage of the Grand Duchy of Lithuania and the times of the first Polish republic either. Lukashenko’s administration correctly noticed that the old value system from the Soviet period already had to be adapted to a new time and challenges. Thanks to this, it was possible to create an eclectic picture of history where Russia, Soviet, Polish, and Lithuanian heroes appear side by side. The Lukashenko administration can show one time a strong relationship with the Eastern heritage, but another with the Western one, and this depends on the political situation. It was very useful for creating historical police. Generally, the historical message created in the Independent Republic of Belarus during the last 30 years was a radical form, only in the short period of time during 1991- 1994 was the search for the possibility to open it up to a price concept similar to the standards of democratic states. After 1994, the state historical message began to dominate.

The circle of the Belarusian opposition, unlike for example the Polish minority in Belarus, failed to create a universal national vision of history on the basis of memories of the traumatic past events, such as the deportations or Stalinist repression. The essence of the Belarusian nation cannot be measured, for example, in parallel with Polish, Lithuanian or Latvian.

Belarusians are not a community that can be easily described only with the use of terms and categories characteristic for the nation of Western Europe. Today's sense of nationality and conscience of Belarusians is a conglomerate of Orthodox heritage, nostalgia for the Soviet Union, and the product of the contemporary model of patriotism proposed by Lukashenko's administration. In this vision of the past, Russia is not a country bordering Belarus, but part of the Belarusian heritage. Even the present demonstrations cannot change these perceptions. The Eastern heritage is too deeply rooted in contemporary Belarusian culture to be so easily dismissed. Belarus, unlike Ukraine, for example, does not have an alternative vision of history.

In recent years the opposition circles have been too weak to break through to the general public with their own historical message. Belarusian society doesn't need a completely new vision of history, but needs more connection with the Western culture. It's very difficult work, not only for this time but for the new generation as well.

### 1.2.2 Language as an element of national identity

One specific issue regarding identity is the one with language. In the provisions of the current Belarus constitution, there are two official state languages. What is the role of language as the element of national and constitutional identity?

Language is a significant element in building a national sense of identity and belonging. The Soviet occupation in most federal states left behind the problems of bilingualism, hence the feeling of a division into "my own" and "unfamiliar". Lithuanians are an example of a nation that managed to nurture its language to such an extent that it became the official language without any problems after gaining independence, as emphasized by Professor Alvydas Nikžentaitis. The Moldovans succeeded in this to a lesser extent. Alexandru Tănase, the former Minister of Justice and former Chairman of the Constitutional Court of that country, concentrated on the issue of identity and the importance of the national language in implementing reforms in Moldova. Nevertheless, the solutions adopted in Moldova can serve as an example for the Belarusian opposition, which is struggling with the dilemma of the language in which the new constitution should be used - in the national Belarusian or the more common Russian. All this was in line with a historical introduction by Mikhail Pliska, a

Belarusian legal historian, who opened the panel with a detailed description of the constitutional efforts of the Minsk elite in 1918.

**Alexandru Tanase:**

Moldova and Belarus are different nations but there are similarities due to the fact of being part of the Soviet empire, where social experiment led to killings, deportations, and oppressions. One connective factor is the language identity. The Soviet empire tried to create a new type of human that had to speak Russian and go through the process of sovietisation. Forcefully the latin alphabet was changed to kyrilic alphabet. Soviet regime created the so called moldovian language to legitimise the occupation of this territory.

The constitutional court in its ruling defined what the constitutional identity of the republic of Moldova is. It clearly defined that the national language of the country is Romanian. Moldova has become part of the Soviet through signing the Molotov Ribbentrop pact. The ruling stated that constitutional identity especially from the linguistic point is European in its roots (going through total integration).

The Court assessed the relationship between the Declaration of Independence, the Preamble and the Constitution of the Republic of Moldova. The Court deemed it necessary to address the correlation and competition between the two fundamental acts regarding the name of the official language of the country by assessing the elements and principles having interconnected constitutional value, as well the national and linguistic identity. (In para 50, the Court states: “The Declaration of Independence is the most concise statement of the constitutional ideals of the Republic of Moldova. In the historical context of the country, this legal document has articulated the constitutional values of the newly independent state, from which the legitimate power of those governing the Republic of Moldova nowadays arises.) The Court moved on to assess the legal value of the preamble, representing the fundamental principles and values for the state, its population and the society. Compatibility has also been considered for example in Estonia, Macedonia, Ukraine and Germany. The Court reasoned that the Constitution in its preamble enshrines constitutional values, and these values (“constitutional understanding of the founding fathers and national belief”) are most clearly reflected by the proclamation of independence, which is “the national conscience that defines the constitutional identity of the Republic of Moldova”. This includes elements such as “aspirations for freedom, independence



and national unity, linguistic identity, democratization, rule of law, history, and norms of morality.” In this respect, the declaration of independence carries a value of constitutional text.

Importance of bringing the aspects raised by the authors of the application as a matter of interpretation to the constitutional court. Its first task was to bring back national identity and restore language, important for the Belarus of today. Under Lukashenka’s regime in Belarus, Russian language remained as the main language of administration. They got rid of Belarusian symbolics, and moved back to Soviet values. The Neobelarusian communist identity preserved identity throughout the years. These were hypothetical conversations, nonetheless when the Belarusian nation becomes free, they need to start building a new Belarus and new constitution based on modern values, but first they have to maintain constitutional values which are an integral part of constitutional identity.

Statutes of the Grand Duchy of Lithuania were written in Belarusian language; they constitute the origins of the rule of law, separation of powers and equality of citizens. In the attempt to break down the constitutional identity of Belarus, the Grand Duchy of Lithuania and the historical roots of Belarusians, no matter how hard we try to interpret, are part of European civilization and European culture. After Lukashenka, Belarusians will go back to where they belong, building a state although through a difficult process to find their identity. Politics of positive discrimination of Russian language cannot be avoided. Without national functionality on the administrative level of Belarusian, you cannot speak of Belarusian identity. The Soviet regime was not only conducting politics of russification but also a lot of lies of nonexistent nations. This is how moldovan language was created out of thin air. Belarus has to go through the same process as Moldova – de facto talking about identity, going back to European roots, Belarus will be going back to the European family of nations, overcoming serious issues and building its national identity.

The Constitutional Court of Lithuania, accordingly, looked at the experience of Moldovan constitutional court. Finding super-constitutionality in the statements that are derived from the declaration of independence.

The topic of the first part was the history of Belarusian constitutionalism and the process of shaping national identity. A country's constitutionalism cannot exist without a sense of constitutional belonging and national identity. On the other hand, the constitution helps to form a feeling of unity. It is impossible to tell the history of Belarus without mentioning that these

lands belong to the Grand Duchy of Lithuania. In his speech, the Belarusian historian Hienadz Sahanovič described the processes that strengthened the national spirit in Belarus. Despite the divisions, Belarusians agree that they are a nation that straddles the East and the West, is diverse in terms of culture and religion, and does not fit into the categories of national belonging and identity to the West. Perhaps it was thanks to the openness of the Belarusians that it was easy for the Soviets to subjugate this nation. The population of today's Belarus was an example of how close the Soviets were to establishing homo sovieticus. Nevertheless, as Alvydas Nikžentaitis emphasized, Belarusians never became ideal Soviet citizens, but rather an intermediate figure - homo belarusicus. This thesis was, in a way, confirmed by what Professor Iryna Ramanawa told about the aftermath of the constitutional reforms introduced by the Soviets in 1936. Contemporary Belarusians found themselves in a situation where most of them did not know how to completely reject socialism, which made them so willing to give up power to Lukashenka. Professor Wojciech Śleszyński presented the steps taken by the Belarusian president and the longings he has been referring to so far in order to maintain support for his regime. Belarusians are not only stuck between East and West, but also between the past and the present. Finding a binder for people who pass each other on almost all levels is extremely difficult. There is a strong consensus among historians, scholars, legal experts and politicians, that the concept of national and constitutional identity of Belarusians should include common European roots. There are different approaches on how to achieve this. **Wojciech Śleszyński's** opinion is that even the present recent demonstration cannot change these perceptions. Therefore, the Eastern heritage is too deeply rooted in contemporary Belarusian culture to be easily dismissed. Belarus, unlike Ukraine, for example, does not have an alternative vision of history.

In recent years the opposition circles have been too weak to break through to the general public with their own historical message. Belarusian society doesn't need a totally new vision of history, but needs more connection with the Western culture. It's very difficult work, not only for this time. But for the new generation as well.

**Hienadz Sahanovic** says that nowadays it's very important to them and to tell them that the Grand Duchess of Lithuania was the motherland for many predecessors of Belarusians who were calling themselves battle Belarusians or Latvians and Belarus really taking they have to understand that this is. This is the key that Lithuania and the Grand Duchy of Lithuania had the key role in strengthening their nation and also at the beginning of the 20th century. They were

also speaking about his independence and they were looking back at the history of the Grand Duchy of Lithuania, next gaining this sovereignty after the USSR. It also meant that the heritage of the Grand Duchy of Lithuania also came into play in this process. Now when Belarus is in the transition period, that means a preventive role in the reformatting by its citizens. The understanding of themselves and self-identification is very important, and Grand Duchy of Lithuania saying that main components of European statehood have once been adopted to or at on this Belarusian land, and it worked well at some point, so this is the main part of our heritage and we have to maximally use it.

## II CURRENT LEGAL DEVELOPMENT

### 2.1 Developments relevant to Belarus

**Andrius Kubiliaus** raises the point of how to assist the people of Belarus and implement international justice, bringing the responsibility of the Lukashenka regime for the actions against the Belarusian nation. According to Kubiliaus, the future of Belarus has to be based on Belarusian constitutional identity, which should best reflect the European constitutional tradition and values.

**Anatolyi Lebedka:** Part of a congress where out of 347 MPs more than 90 % were not only communist but actually belong to the communist political formations. Legal experts put it into historical context. Voting in favour of the red and white flag and the historical coat of arms. What is missed in Belarus today is the opportunity to speak freely and to hear each other's point of view. Sadly, many people who touch upon politics in Belarus face some kind of repression on the part of the state. Starting from March 2019, now the situation is almost exactly identical to the times of the previous constitution. Preamble went through a number of significant changes; important to note and put down some of the key aspects of the discussions, for example it has a reference to the period of the Grand Duchy of Lithuania and it represents a consensus position within the framework of the working group and constitutional committee with a reference to the statute of the Belarusian People's Republic. The majority believes that we also need the remark on the Belarusian constitution too, which covers the Soviet period. Still up for the discussion. The Constitution of May 1991(?) leaves a lot of open space for discussion for historians and legal experts to be informed, in order to have a successful format.

Opportunity to find different arguments of what the preamble should look like – modern, relies on historical and legal history and is a choice of the European path of development.

Discussion where we can compare constitutional development of the GDL and BPR on one hand and also discussion about whether we should actually draw upon the constitution of the Belarus Socialist Republic as such.

**Lev Margolin:** When we talk about the new const of Belarus, we must understand that we are talking about a combination of democratic legal norms and our historical identity. First of all it comes from the history of people. Re-evaluating our history that was taught in the Soviet times. Less and less Belarusians associate themselves with the Russian federation but when we talk about the constitutional process things become more complex.

The French and their legal system have developed over hundreds of years. Belarusians did not have this opportunity. So, can we, based on that, deny the value of the statute of GDL for the current const, of course not.

Mentality is the part that remains throughout centuries. In Belarus, we had the development of democratic principles. Russian empress Catherine came to reign and was very soon forced to abolish her beliefs, suffering from oppression. Own different mentalities, that day to day lie between the nations, religious unity, national awakening following 30 years of the Soviet reign, led us to a situation where Belarusian schools were wiped of and autocratic regime of Lukashenko was possible, and through those periods we have to remark the political of the past. He takes the US constitution as an example, where living practice has shown that this model does not work here. There is a parliamentary presidential system, fairly detailed paragraphs of the elections, not just preamble. Rely on historical experience but also talk about specific paragraphs. Sees the necessity of Belarusian peculiarities to be included in the constitution, citizens support those ideas over the discussion that lasted 6 months. Specific questions about national and state language, election of local officials, judges and local police. Maybe surprisingly, many people don't trust past and present parliaments but even future parliaments, people are not confident that the parliament elected through democratic elections would be able to put into life the ideas that were prescribed in our constitution project. The aim is to include as many details as possible in the constitution and leave as few as possible for the interpretation.

Total liquidation of president post – conclusion: based on the fact that people/individuals become dictators, not their positions, this does not mean that the next charismatic leader would not be able to take over this power. Role of the president is the key. Also, language problem: in the Constitution of 1999(?) the language of the state is Belarusian. Many believed that Lukashenko succeeded in elections and the first year of power was explained through that the 2 state languages were introduced. A period of assimilation did not go unnoticed. Margolin concludes that in order to preserve Belarusian identity, Belarusian language must be developed and for a foreseeable future it must become the only state language. Last issue drawing a lot of attention to the discussion is the question of the election of local officials, especially judges and local police officers. Judges should be elected and not appointed. The constitution should reflect the Belarusian mentality, the roots of which go back to the statute of the Grand Duchy of Lithuania, which brings us to a conclusion that the Belarusian nation deserves a truly European constitution.

Speaking about the heritage of the Belarusian National Republic, it reminds of the history of the Georgian constitution of 1921. It was adopted but did not come into life to manifest itself, however the Georgian state takes its basis from there. Similarly, the heritage of Belarus National Republic was not manifested but there were certain documents. How is the historical heritage depicted in the current project?

**Zhurakovsky:** Constitution drafting is not taking place in the historical context at the moment and it's not happening as it should be, at least in the social context. For the last 25 years, the main narrative of state propaganda is based on the fact that the main achievement of Belarus is that WWII was won. First presidential elections brought about independence. It is important for the working group of the new Constitution to show this and to remind the historical Belarus statehood starting from the times of the Grand Duchy of Lithuania.

Speaking about the legal framework, we have focused on legal documents that were written in Belarusian language, also the statutes of the Grand Duchy of Lithuania and other important documents of Belarus National Republic and Belarusian Soviet Socialist Republic. These comprise the essence of Belarusian statehood and its independence.

It is questionable whether the constitution of 1791 needs to be included in the new Constitution or not. This constitution was written in Polish and Belarusian language, and was only in force for one year. It's significance was probably not as great as that of the Grand Duchy of Lithuania. Peculiarities of Belarus constitutional identity and the constitution clash between the opposition and the state, symbols and independence day celebration, these were then symbolic messages of the renaissance.

Poll of half a million people in June 2021: 71 % of the people understand the Belarus national flag as their symbol; 91 % of the opponents of the regime focusing on state symbolic – we need to understand that this part of the society is not that radical in their opinion, they are more conservative, and willing to adopt symbols that are adopted now in the state. It is not a clear process – all of society does not agree with the language identity. 70 % support the two official state languages, Belarusian and Russian. Besides this, the working group had to take into account this opinion of the society. The next factor of development: directly in the preamble, we need to respect the soviet identity, culture and language – why respecting the right to use the language that means the development of the Belarusian language as the state language. Aim is to try to find the factor of the development of Belarusian identity as it is today.

**Vashkevich:** National and constitutional identity are two overlapping definitions and phenomena. How are these terms to be understood? Constitutional identity is of course related to the text. The Constitution embodies the core fundamental elements and constitutive values of a given state that represent the peculiarities of the individual values of this state, and these values and elements are engraved in the constitution, but it is important how they are implemented in practice and viewed in constitutional court. In Vashkevich's opinion, nowadays in Europe, the discussion of constitutional identity is very often narrowed down to the international legal system and the European legal system correlation, and some members of the European Union use this formulation not to stick to national norms and not to discuss with national authorities.

Europeanisation of the Belarus constitution. Proposing the declaration of synergy between Europe and Asia. Values are interrelated. Reference to this description was first made in 2015. Vashkevich thinks it is too early to speak about the constitutional identity of Belarus, and it needs at least a 100 more years, at the moment most probably it does not exist. We cannot doubt that Belarus is a European state. He agrees that the constitutional development of the country has to be shown in the preamble and the assessment of the values made therein. The

working group has considered the Constitution of 1994. What is important in the realisation of the constitution is that it should strive for neutrality. Talks about religious tolerance: 4 state languages (pol, jid, bel, lit) – historians argue about it. Why could the Constitution of 1994 not enable constitutional identity, since it was a working constitution for 30 years? There is a certain ambiguity between national, historical, and constitutional identity. The constitution was adopted but the society did not manage to change alongside it as quickly. This constitution has not manifested itself for a long enough period, hence we have to speak about it later.

**Elena Jeskova**, lawyer of the Belarusian Congress of Democratic Trade Unions, in her speech talks about which human rights should be represented in the constitution, and does the current constitution reflect human rights and how they should be developed, from a general legal perspective. In her view, speaking purely about terminology, identity is tightly related to the development of state and the particular point in history. In the case of Belarus, it is not possible to cross out the Soviet period. Many international conventions and declarations were forced to be ignored. Consequently, human rights were not preserved. We cannot cross out of our history. Relation to the constitution of 1994 was of course based on the documents of Belarus National Republic and for the first time gave Belarusian national context on the questions regarding human rights. In the beginning of 2000, these fundamentals were adopted by the opposition.

With the help of international experts, Belarus moved further away from the constitution of 1994. One of the tendencies was concentrating the power of the president. This led to massive changes in 1996. The new constitution was never really able to be realised in practice, because all the power was concentrated in the hands of Lukashenka, and the presidential decree has higher judicial value than any decision of the parliament.

In the constitutional drafting process, priority should be given to the individual and the interaction of the state. We are against it because identity and individualism is something that has been seen in the Soviet times. Priority should be human rights and their preservation and protection, and this should be reflected throughout the main articles of the constitution. Human rights belong to each individual, it is not the state that grants these rights. For many years this was the position that Lukashenka tried to put on the people. Events of 2020 show that the national identity of Belarusians was alive and well and was formed among the youth, who are in touch with technology, aware of human rights and what they are. The youth will not let things remain as they are currently. Rights such as freedom of association, freedom of religion, right to protest should be included. In the process of drafting the new constitution, many

European constitutions and a large number of other documents have been studied. Constitution drafting will never reach perfection, and different versions have to be relied on during the process. We also have contributions from other countries, such as Israel, to get a glimpse of the kind of democratic constitution that we never had in Belarus before.

The Constitution is not just a reflection of identity that we have right now. The Constitution of 1996 was adopted, legitimately cannot reflect those values. Elena Jeskova disagrees that the state and the regime have to understand that change is needed. They only have to protect it. In Belarus, the constitutional committee has now come to a point of no return. No one knows how to proceed with the project. Only pro-governmentalization should be involved and it is realistic to believe that the change can happen and will happen, but not sure how.

One thing that there now seems to be a consensus, is that the new constitution should reflect internationally accepted human rights that correspond to the Universal Declaration of Human Rights. Understanding the separation of power, creation of a council of judges. The project should be a basis for the development of a truly democratic state, where every person could say that they live in a free democratic country free from oppression, killings, and torture. This document should serve the future of Belarus and our perception of constitutional identity should correspond to what the specialists are saying and working on.

## GENERAL CONCLUDING OBSERVATIONS

Crises often provide opportunities for radical change, which can at least begin to address the constitutional problems that have sometimes been unresolved for decades, but, of course, not always in a positive direction. After the fraudulent presidential elections in Belarus, the country no longer has the visibility of a constitution, as the dictatorship no longer respects its own openly authoritarian letter of the constitution. The situation in the country can be called a complete collapse of the legal system. Paradoxically, this situation provides an opportunity to write a new constitution for Belarus, which, under favourable circumstances, would allow the rule of law and democracy to be restored.

This is one of the most important tasks for Belarusian civil society leaders, which has already begun: a special working group led by Tsikhanouskaya's representative on constitutional reform is finalizing a draft constitution for Belarus, which will be proposed as a democratic alternative to the country. Upon the initiative of the regime, however, a commission headed by



the president of the constitutional court is also preparing a draft constitutional amendment that would allow the dictator to improve his image by offering innovations that look externally attractive. Of course, this also seeks some legitimacy for the regime.

So there is a good opportunity to discuss the concepts of both projects while avoiding further details. They best reveal the constitutional crossroads that Belarus is at.

The first project, Belarusian civil society, is based on a sense of European identity. The preamble of the project clearly indicates the source of the constitutional traditions of Belarus - the statutes of the Grand Duchy of Lithuania, which show the beginnings of the Western traditions of the rule of law and restriction of power, equality and parliamentarism. The tradition of the short-lived People's Republic of Belarus, proclaimed in 1918, whose constitutional acts proclaimed modern democratic principles of constitutionalism and state-building, similar to those enshrined in the then temporary constitutions of the Lithuanian state, is also mentioned. This creates preconditions for talking about an autonomous constitutional identity, different from that of neighboring Russia and Belarus, which is even closer to the Lithuanian one.

This identity is reflected in the provisions of the project establishing the form of government in Belarus. According to them, Belarus must become a parliamentary republic, the model of which is very similar to the Lithuanian one. The government will have to be formed on the basis of the trust of the parliament, only it will be accountable to the parliament and only the parliament will be able to remove it by expressing no confidence.

This is a stark contrast to the super-presidential authoritarian model of governance established so far. Due to the decades of Lukashenko's rule, there has been considerable scepticism in Belarusian society about the necessity of a presidential institution in the face of the threat of dictatorship; to hear even votes proposing to limit themselves to the institution of a prime minister appointed by parliament. However, it has been decided to preserve the institution of the directly elected president as head of state by significantly narrowing his powers: for example, he will no longer be considered a "constitutional guarantor", will be implemented together with the government. Thus, the drafters of the project considered the experience of Belarus and other post-Soviet countries themselves, that a stable pluralist democracy is best

guaranteed by a parliamentary republic, and that the presidential regime usually leads to authoritarianism.

It was decided to change the existing two-chamber parliament to one, and the historical name of *Soim* (Seimas) was chosen instead of the Supreme Council. The procedure for appointing judges is fundamentally changing: political institutions will be eliminated from the judicial appointment process, and judges will be selected and appointed, as will be the case with the current "judges", by an independent Council of Justice, with only half representing and the other half. civil society organizations.

Following the example of Lithuania and some other countries, the draft provides for an unchangeable (eternal) constitutional provision that Belarus is a sovereign democratic state governed by the rule of law. They will not be replaced even by a referendum and will not have to be opposed by any amendment to the constitution. I will remind you that the text of the Constitution of the Republic of Lithuania does not directly provide for this, but the Constitutional Court has clarified that the provision of Article 1 of the Constitution regarding the independent democratic state of Lithuania is unchanged, as it arises from 1918. February 16 Independence Act.

In the field of human rights, a clear innovation in Belarus' new draft constitution for Belarus is the explicit abolition of the death penalty (Belarus is still the only European country to use such a penalty). The inherent dignity of the human person and the nature of their rights are at least recognized as an international standard for the protection of those rights. The specifics of the project focus more on those rights that are most violated by the current dictatorial regime (such as the right to liberty, protection from torture, protection of privacy, the right to effective judicial protection, the right to strike, the right to vote, the right to freedom of expression and the media). , as well as human rights institutes (such as the Bar, the Ombudsman, the Committees for the Control of Special Services and the Fight against Corruption). By the way, it is proposed to establish European guarantees for non-discrimination, equal opportunities and the protection of family life.

In view of the actual situation and public opinion, it is proposed to leave the two official languages, Belarusian and Russian, for the time being. However, a certain priority is given to the Belarusian language: for example, the oath of office of the President is provided only in

this language, the state is obliged to take special measures to expand the use of the Belarusian language with the prospect of becoming the only state language. The national symbols include the Belarusian national white-red-white flag, *Vytis* and the motto "Živie Belarus".

It is planned to maintain the country's goal of permanent neutrality, but it is mentioned that the country has the opportunity to join supranational organizations (possibly the EU) while prohibiting membership in unions that would deny the country's independence (such as a visible union with Russia).

The draft constitutional amendments drafted by the regime, in which it is difficult to see the country's national identity because it is based on the myth of "Soviet partisans" dating back to the "Great Patriotic War", have the exact opposite content. Such an "identity" cannot be separated from the Russian one, which has also recently been fed by the myths of the achievements and victories of the "Soviet people". Belarus's statehood here is best associated with the Belarussian SSR, if not only with Lukashenko's presidency. Understandably, such a concept creates excellent preconditions for the eventual reunification of the country with a larger neighbour, as greater national differences between the two countries are not recognized in this concept.

In general, the draft constitution being drafted by the regime shows many of the characteristics of the states belonging to the Eurasian space (such as Russia or Kyrgyzstan). First of all, last year's amendments to Russia's constitution heroized the role of "defenders of the homeland in the Great Patriotic War," bringing the glorification of the Soviet past to the level of state ideology, along with the search for and expression of Belarusian national identity.

Secondly, following the example of the Kyrgyz parliament, it is planned to create an inter-parliamentary structure - a general assembly of Belarus, consisting of deputies at all levels (parliament and local councils). This may seem irrational, because in Belarus there are already two houses of parliament completely under Lukashenko. However, it is the authoritarian regimes in the Eurasian space that are particularly keen to imitate democracy by demonstrating the alleged exercise of true "people's power" (*narodovlastije*) in such "national assemblies". On the other hand, it is possible that Lukashenko, having appointed his successor in Kazakhstan like Nazarbayev in Kazakhstan, will step down as chairman of the Belarusian General

Assembly, from which he will be able to continue to lead the country effectively without formal responsibility.

It seems that under the draft regime, the powers of the president can only be curtailed symbolically, as the original idea of at least depriving the president of the power to legislate is abandoned. There are also no plans to abolish the death penalty by alluding to a possible referendum on the issue in the future. In general, in the field of human rights, it is planned to emphasize the greater responsibility of the individual to "society and the state", after which the restored control of the life of the Soviet-type people, their "civic and patriotic education" is hidden. Of course, the defense of "traditional values" against the degrading West, which is emphasized in the amendments to the constitutions of Russia and Kyrgyzstan, has not been forgotten.

The regime also does not forget declarative provisions that could be welcomed by some Western observers who do not understand the essence of a fictitious constitution. As in the Belarusian civil society project, the regime proposes to establish the possibility of an individual constitutional complaint. However, it should be noted here that such a possibility will inevitably be only theoretical and fictitious. After all, unlike the civil society project, the so-called constitutional court itself will not be reformed.

What it deserves is eloquently told by the facts: last year, acting without a constitutional basis, this "court" declared the presidential election legitimate and declared the Coordinating Council of Belarusian Civil Society, which called for new democratic elections, unconstitutional; This month, Belarus's "constitutional court" has justified the postponement of local council elections that could have endangered the dictatorship, even though the term of office of these councils is clearly set out in the constitution of the regime. Finally, for almost a decade, this "court" has not exercised any constitutional control, as no one has complained about the regime's legislation (and who could dare to do so), so the "court" has a function of blessing bills before they are signed by the president. ). This function should be called a "blessing" because the "court" never finds the laws unconstitutional. Thus, the "constitutional court" of Belarus should be more accurately called the branch of supporters of the law of the Office of the President.

Finally, the dictator intended (perhaps following the Kremlin's order) to abandon the goal of permanent neutrality declared in the constitution. It is probably uncomfortable to see a

continuing clear violation of this provision when Belarus is a member of the Collective Security Treaty Organization, integrating its armed forces into the Russian military system.

The constitutional crossroads in Belarus will not be overcome very soon. Amendments to the constitution being drafted by the regime are likely to be passed in a fictitious referendum scheduled for February next year. On the other hand, it is doubtful whether anyone will recognize them as legitimate, nor will they be legitimate in the eyes of the people of Belarus. It is therefore likely that such action by the regime will further boost support for the new draft constitution for a democratic Belarus prepared by civil society. Of course, it will only become a reality with the fall of Lukashenko, but in the long run, such a project gives hope to have a European state, with a clear national constitutional identity that will prevent the extinction of Belarus as a nation and state.

The new democratic constitution should inevitably be based on the essential values that express the country's constitutional identity. If they are derived from the tradition of the GDL statutes, it is possible to speak of a separate autonomous and European Belarusian constitutional identity. Then there would be no reason to question the statehood of Belarus, denying the historically formed Belarusian identity in general. Undoubtedly, the Belarusian constitutional identity is also expressed in the BLR constitutional acts, which designed the democratic vision of the country in 1918.

## ANNEXES

### ANNEX 1

Programme of the conference

#### INTERNATIONAL CONFERENCE: THE DILEMMA OF BELARUSIAN CONSTITUTIONAL IDENTITY

11 October 2021, Mykolas Romeris University, Vilnius, Lithuania

10:00 – 10:15 Welcome speeches

- Assoc. Prof. Dr. Ingrida Danėlienė, Law School, MRU, Project Leader
- Prof. dr. Inga Žalėnienė, Rector of Mykolas Romeris University
- Sviatlana Tsikhanouskaya, Leader of the Belarusian opposition
- Dr. Mantas Adomenas, Vice-minister of the Ministry of Foreign Affairs of the Republic of Lithuania
- Andrius Kubilius, Member of the European Parliament

10:15 – 11:00 Keynote speeches

- “The “Unknown” Constitution of Belarus of 11 October 1918” | Mihail Pliska, lawyer, politologist
- The transformation of Belarusian identity after the collapse of the Soviet Union. A Look from the Side | Hab. prof. dr. Alvydas Nikžentaitis, Historian, Head of the Lithuanian Institute of History and President of Lithuanian National Historians Committee
- The Concept of Constitutional Identity and its Expression in the Constitution | Prof. Dr. Toma Birmontienė
- Language as an Element of National and Constitutional Identity“ | Alexandru Tănase\*, former President of the Constitutional Court of the Republic of Moldova

11:00 – 11:15 Coffee Break

11:15 – 12:00 “Belarussian National Identity: Which Part of Europe Does Belarus Identify Itself With?”

- The Position of the Grand Duchy of Lithuania within the Belarusian identity | Hienadz Sahanovič, Belarusian historian
- The Relicts of the Soviet Period within the Belarusian identity | Iryna Ramanava, Professor of Academic Department of Humanities and Arts, Coordinator of Institute for Historical Research on Belarus
- The Peculiarities of Lukashenko's history policy | Wojciech Slezynski, A. Polish historian and Dean of the History and Sociology Faculty at the University of Białystok.

12:00 – 13:15 “Belarusian Constitutional Identity: Between Heritage of Grand Duchy of Lithuania, Belarusian People’s Republic and Belarussian SSR”

- Anatoliy Lebedka, Initiator of the “People's Constitution” (2020-2021), Representative for the Constitutional Reform, Sviatlana Tsikhanouskaya Office, Chairman of the United Civil Party (UCP) 2000-2018
- Lev Margolin, Coordinator of the group on the Belarusian Constitution
- Valery Zhurakovsky, Member of the working group on Constitutional Reform
- Elena Jeskova, Lawyer of the Belarusian Congress of Democratic Trade Unions
- Liudmila Ulyashyna, Associate professor, the Head of the Center for Constitutionalism and Human Rights, European Humanities University
- Aliaksandr Vashkevich, Professor at the Center for Constitutionalism and Human Rights of the European Humanities University, former judge of the Constitutional Court of Belarus

13:15 – 13.30 Closing remarks

## **ANNEX 2**

Judgment of the Constitutional Court of Moldova of 5 December 2013 on the interpretation of Article 13, par. (1) of the Constitution in correlation with the Preamble of the Constitution and the Declaration of Independence of the Republic of Moldova (Applications No. 8b/2013 and 41b/2013): <https://www.constcourt.md/public/ccdoc/hotariri/en-Judgment-No36-of-5122013-on-Romanian-Language-eng82ea4.pdf>