

Constitutional Changes in Post-Soviet States and Eastern Europe

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Abstract: Democratic transit for >20 states that have been started after the collapse of Soviet Union was accompanied by rewriting and adopting new constitutions that have to fixed new democratic norms of politics. Any constitution might be amended and new constitutions were not an exceptions. This study investigates sufficient constitutional change in Eastern Europe. We concern form of government and political regime as independent variables and number of amendments as dependent variable. The study shows that causality between variables is strong but not exhaustive.

Key words: Constitution, constitution change, amendments, political regimes, Eastern Europe

INTRODUCTION

The fall of communist regimes in Eastern Europe led to a revision of old and new constitutions. The process of transition from authoritarian to democratic regimes was not only accompanied by a change in the institutions of the old states. The most dramatic part of this process was the destruction and disintegration of the old and the emergence of new states. All these processes lead to the creation of new constitutions which largely had to solve similar tasks: to consolidate the democratic foundations of the existence of new states to determine the basis for the functioning of society by the rules of market economy, create an institutional design that would prevent future possible usurpation of power. Researchers of the constitutions faced several important problems. One of the most important of which was to select a suitable form of government. Another important aspect addressed the question of what form will the new constitution in relation to the degree of difficulty in making changes to their text.

CONSTITUTIONAL CHANGES AND POLITICAL ACTORS: DIFFERENT COMBINATIONS

Constitution in the former socialist countries and the former Soviet Union were not being adopted simultaneously but enough time has passed, since that moment when the state became free in matters of constitutional structure. Under the influence of various factors, some of these states received more constitutional amendments than others.

The Russian Federation has not changed its constitution up to the end of 2008. The only state that this indicator was on a par with Russia was Poland. In the text of its constitution, adopted in 1997 was not amended until

2006 when the amendment was adopted authorizing the extradition of Polish citizens on the European arrest warrant. In this context, the constitution fair to compare it with similar Russian constitution of Poland as Poland and Russia have similar provisions in the constitutions, regarding amendment procedures as well as taking into account not so much difference in time when these constitutions were adopted. Of course in the former USSR and Eastern Europe now there are constitutions which have not changed but this is due to the fact that they have been taken recently the cases of Hungary and Kyrgyzstan.

In order to answer the question of how the complexity of procedures for constitutional amendments affecting their frequency, it is necessary to compare the constitutional provision states where such amendments are adopted relatively common and states where there was a small number of constitutional amendments. For example in Slovakia, only eight amendments have been made of changes in the constitution. In particular Slovakia introduced direct presidential election in 2004, prohibited the combination of positions of MP and the European Parliament, etc. According to paragraph 4 of Article 84 of the constitution of Slovakia to change the articles of the constitution of Slovakia, a majority of three fifths of deputies of the Parliament.

In Lithuania, there are similar constitutional provisions regulating the process of adopting amendments to the constitution. In chapter 14 of the constitution of Lithuania and a necessary number of votes in two thirds of the members of the Parliament. A special consent of the Lithuanian President is not required if he does not sign the law within 5 days, it signed by the Chairman of the Seimas, the law is published and comes into force. Over the entire history of the Lithuanian Constitution was adopted in 1992 amendments to 7 (Roberts, 2009).

A large number of amendments during its existence has gone through the constitution of Latvia. The explanation for this phenomenon lies in the plane of low constitutional requirements for the adoption of constitutional amendments (vote 2/3 members of Parliament by the usual items or a referendum on the key articles of the constitution) and the specifics of the Constitution itself. The fact is that after the secession from the Soviet Union, Latvia has returned to the Constitution of 1922. Thus, the required adoption of certain amendments that would have made the Constitution of Latvia corresponding to the realities of modern times (Facts on File, 2006).

In Estonia, there is a norm of the constitution under which there are alternatives to the adoption of constitutional amendments. The first option a draft law on constitutional amendments by two successive memberships of the Estonian Parliament. The second option a referendum. Such, a rule was introduced in the event that any political party can initiate an amendment by parliamentary means in a situation of shortage it has enough votes. The third option a consideration of amendments to the emergency operating staff of the Parliament. During the existence of the Estonian Constitution of 1992 amendments were made only twice but soon will be the adoption of the amendment on the accountability of the armed forces of the Estonian government not the president. Thus, there will be the finalization of Estonia as a parliamentary republic.

Interesting to examine is the case of Romania. In 2003 a referendum was passed a "package" of 14 amendments to the Constitution. These amendments were primarily associated with the entry of Romania into the EU. The Constitution describes the process of Romania's adoption of the amendments, "the revision of the constitution" and sets strict requirements for this revision: a majority of two thirds vote in both houses of parliament and the approval of the amendments in a referendum. On the one hand there is a large number of amendments to the existing constitution, on the other hand if you break away from a pure quantitative analysis of these amendments, it becomes clear that these amendments were passed in the special conditions of the country's accession to the European Union with all its consequences. The analysis of the political process in modern Romania also showed that the president is actively trying to enforce a few important amendments reforming the structure and configuration of the highest authorities in the country. In 2009 a referendum was held at which the citizens of Romania asked about the reform of the bicameral parliament in a unicameral to a number not exceeding 300

members. The population responded in the affirmative but as mentioned above, the Constitution of Romania establishes the requirement of approval of the constitutional amendments from both houses of parliament. From this point of adopting these amendments is uncertain as will the members of the upper chamber of the Romanian Parliament to vote for the elimination of his job even in the face of what the referendum most Romanians were in favor of such reforms? The answer, obviously will be negative. Through, the referendum, the president is primarily pursued political goals and wanted to show voters that the true defender of the interests of the people is just the president not parliament.

Changes that were made in the constitution of Belarus, clearly reflect the concentration of power in the institution of the presidency. In 1996, there was a transition to a semi-country and in 2004 were removed from the constitution of the presidency of the time limits (Myasnikovich, 2006). The procedure for making amendments in Belarus becomes more complicated structure of the bicameral Parliament but all of the adopted amendments is always passed, through a referendum. This was due both to the issues put to the vote and with the desire of the Belarusian leader to get the most legitimacy in the eyes of voters.

Dramatic events unfolded around the amendments to the Ukrainian constitution. To change the majority of its articles of suitably qualified majority in two thirds of deputies of the Verkhovna Rada. Only the draft amendments to some sections that define the framework of the constitutional system as requiring the approval of the Parliament and the national referendum (Venislavsky, 2010). In 2004, took place the so-called political reform, according to which part of the powers transferred from the president to the prime minister and parliament. However, an acute awareness of the inter-party struggle and the various political forces that in its current configuration is the institution of presidency is the most influential of all other institutions have led to the fact that in 2010 the new administration of President of Ukraine made every effort to make the Constitutional Court of Ukraine recognized the political reform in 2004 year does not correspond to the constitution and abolished it. This case study, we see that an active participant in the process of changing the constitution supports the Constitutional Court (Borisov, 2011). In other states, the judiciary is also involved in the process of supervision and control over the process of constitutional change but only the case of Ukraine, this branch has become a truly active participant in the constitutional process becoming in a row with the president and parliament.

CONSTITUTIONAL CHANGE UNDER MIXED REGIMES

The constitution of the Russian Federation is an example of the most difficult one in terms of amending. Unlike other states as the former Soviet Union and the European countries of the former socialist bloc, Russia is a federal state. Two important consequences of federalism are as follow. First, the Russian parliament is bicameral (it is one of the hallmarks of a federal state) and therefore to adopt the draft amendments to the constitution requires the consent of both chambers. Secondly, the approval of constitutional amendments must make at least two thirds of legislative bodies of the total number of subjects of the Russian Federation. In comparison with the previous cases considered shows that the requirements for the procedure for the adoption of constitutional amendments in Russia are the highest on the territory of the former Soviet Union and in European countries of the former socialist camp.

The analysis showed that in the absence of constitutional amendments need of approval by the upper house of Parliament amendment procedure becomes much easier and the probability of making a larger number of corrections increases.

Another important conclusion is that the parliamentary form of government make constitutional changes more easily than with mixed forms of government. In this case, it makes no sense to talk about the presidential forms of government as there are no such states in this study. In parliamentary systems, political power is concentrated in the hands of the government which is formed by the Parliament on the basis of the winning party or coalition of parties. If the ruling party or coalition want to amend constitution with a majority in parliament, there will be not much of resisting for such amendments. In the mixed forms of government in which the president is endowed with real power, we can observe some controversy between him and the parliament. The outcome of this political struggle, we can observe in the adoption of constitutional amendments as in the case of Ukraine, Belarus and possibly Romania. But, the more complex institutional structure creates a more complicated procedure of harmonizing different interests in the force acceptance of an amendment.

Further, analysis of both quantitative and qualitative aspects of the constitutional amendments adopted shows that in addition to institutional factors such as the special conditions of the amendment procedure, patterns of forms of government plays an important role as the essential characteristic of the political system. The fact is that often changes in the constitutions of countries undergoing the transition from authoritarianism to democracy is representative of the struggle for political power.

For example in the current constitution of Turkmenistan there is no provision limiting the number of presidential terms for one person. For a long time irremovable President of Turkmenistan was Saparmurat Niyazov. He was first elected president in 1990. In 1999, the National Council appointed him president for life. After his death in 2006 there was constitutional reform but to talk about the democratization of Turkmenistan is too early. September 26, 2008 in Turkmenistan adopted a new version of the constitution, implying an increase in the term of the President from 5-7 years (Khaitov, 2011).

In Kazakhstan, the problem of extending the presidential term has also been solved with the help of a referendum and constitutional amendments. The June 18, 2007 the Parliament of Kazakhstan adopted in the second and final reading amendments to the constitutional Law on the President of the Republic, according to which the term of office of head of state is reduced from 7-5 years. This regulation comes into force in 2012 when the term of office expires on President Nursultan Nazarbayev who was elected to the office in 2005. The current constitution states that one and the same person cannot be elected president of Kazakhstan for more than two consecutive terms. At the same time, according to the constitutional amendment adopted by a referendum in 2011, this provision does not apply to the first (and currently in office) President of Kazakhstan.

At the end of 2008 in the Russian constitution was amended to increase the constitutional term of office of the President and term of Russia's State Duma and the increased responsibility of the Government of Russia to the lower house of parliament. Comparing the Russian constitution with similar constitutions of neighboring countries it should be noted that the Russian constitution while remaining unchanged for a long time, served the important function of institutional stabilizers of political system as the confidence of political actors in the political firmness of the rules and regulations is an important feature of the democratic regime. In analyzing, the texts of the constitutions of the former Soviet Union to the question of degree of complexity of the procedure for adopting a new constitution, it becomes clear that often these institutional barriers are not critical in the process of constitutional amendments. Political regime is much more important. Russian political practice here is very indicative, since after the establishment of the constitutional control over parliament after the 2007 elections the ruling elite took advantage of this and took the best for yourself amendment. Key role in the adoption of amendments to the Constitution of the Russian political actors played the desire to push the "time horizons" in the low accountability of politicians to the public. In this case, the adoption of rules establishing a quasi-government responsibility to the parliament can not be regarded as a

serious change in the institutional environment as in this case the Parliament does not receive additional powers to influence the government, it can only affect the establishment of control over a particular agenda. The social context in Russia's case did not play any meaningful role. Perhaps if the ruling elite decided to be serious political reform and modernization of the political system, constitutional amendments would wear a different character.

RESULTS

The study showed that institutional limitations on the procedure for constitutional amendments or particular forms of government are not the factors that may be completely and fully explain the nature of changes in the constitutions. Complexity of politics itself, the relationship of law and politics all this lies at the heart of the difficulties faced by the researcher in the study of constitutional change in the politico-legal sphere of the young states that emerged from the former Soviet Union and Eastern Europe. And if the European countries that joined European Union can boast of having the rule of law, the post-Soviet countries has much to be done in this direction.

CONCLUSION

In the area of constitutional change democratic countries are guided primarily by the law and the formal democratic institutions. At the same time in countries such as Belarus, Russia, Kazakhstan, especially the political regime, the desire of political elites and leaders to keep their grip on power lead to changes in the constitutions and formal institutions rules. In other words, patterns of constitutional development in democratic countries will not always be true for countries where the law is not an authority and the main regulator of politics but only a formal, easily changeable pattern of politics.

Constitutional provisions that regulate the process of amendment are very important variable that explain the frequency of amendments of particular constitution. But, the significance of this variables decrease when we study countries with authoritarian trends in politics.

The same causality was observed between form of government and the frequency of amendments of particular constitution. As parliamentary regime is more friendly to amending, regime stay as the main variable for explanation the logic of constitutional change in Eastern Europe nab post-Soviet area.

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