



THE NEW CONSTITUTION OF UZBEKISTAN INCREASES THE DEGREE OF AUTOCRACY IN THE COUNTRY

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Prehistory

On April 30 this year, a referendum will be held to approve the new constitution of the Republic of Uzbekistan. The idea to update it was originally was initially proposed by President Shavkat Mirziyoyev in his inaugural speech on November 6, 2021 after having been re-elected to his post for the second time.¹ A month later, in his speech on the occasion of the 29th anniversary of the Constitution of the Republic of Uzbekistan, he proposed to adopt amendments to the 30th anniversary of the constitution, that is, by December 8, 2022.²

On May 20, 2022, a constitutional commission was formed to prepare draft amendments at a joint session of the Senate and the Legislative Chamber of the Oliy Majlis (the name of the Uzbek parliament).³ A month later, on June 20, 2022, at a meeting with members of this commission, Mirziyoyev proposed to adopt amendments to the constitution through a referendum. The next day, the draft amendments were submitted to the Legislative Chamber, which approved them in the first reading on June 24, and the next day the draft was published in the press. Initially, only 10 days were allotted for its discussion by the public. However, subsequent events made significant adjustments to these plans.

When it became clear that the amendments provided for depriving Karakalpakstan of the status of a sovereign republic within Uzbekistan with the right to secede from it through voting in a referendum, mass protests broke out in this autonomous republic on July 1 last year. Outraged by the fact that they were put before the fact of these amendments, without having been consulted and informed well in advance, the people there took to the streets. Uzbek security forces brutally suppressed these protests, but President Mirziyoyev was forced to withdraw that part of the constitutional amendments concerning the status of Karakalpakstan.⁴ For Mirziyoyev it became clear that haste to change the constitution is fraught with a serious political crisis. As a result, it was decided to postpone the adoption of all constitutional amendments for a certain period.

Only in 2023, the process was resumed. On March 10, 2023, the Legislative Chamber of the Oliy Majlis ruled that it was necessary not only to amend selected chapters of the basic law but to adopt a new constitution, allegedly for the reason that 65% of its previous version was to be updated. Thus, it was decided to get the new version approved by voting in the referendum on April 30.⁵

Motives for amending the Constitution

The main purpose of the initiative to amend the Constitution was clear from the very beginning - to justify nullifying Shavkat Mirziyoyev's first two presidential terms to give him the right to be "elected" for the next two terms, that is, to another 14 years, given the fact that the term of a single term of the presidency was to be increased by the new constitution from 5 to 7 years.

In principle, this kind of pseudo-legal trick to justify the extension of the presidential terms of an authoritarian ruler after the expiration of the first two was nothing new in post-Soviet realities. Almost the same trick was used by the previous president, Islam Karimov, who eventually managed to rule the country for 26 years, until his death. A similar practice was resorted to, for example, by Russian President Vladimir Putin, Belarusian President Alexander Lukashenko, Kazakh President Nursultan Nazarbayev, as well as the leaders of all other Central Asian republics. Almost all authoritarian rulers, at least in the post-Soviet space, intended and still intend to rule virtually for life, but at the same time to comply with certain formal legal procedures to create the appearance of legal legitimacy of their extended rule.

The true motives behind the decision on constitutional changes in Uzbekistan were revealed back in June last year by Sadyk Safayev, the then Deputy Chairperson of the Senate of the Oliy Majlis. In his interview with Kun.uz he said that if the new Constitution of Uzbekistan is adopted, Shavkat Mirziyoyev will be able to run for the next presidential elections again, since his previous two terms will not be taken into account due to the new legal realities.⁶ This point was repeated in March 2023 by the Constitutional Court of Uzbekistan, which stated that with the adoption of the new constitution, when applying the rule on limiting the presidency to two terms, it'll not be taken into account how many terms the incumbent president has held his post so far.⁷

At the same time, the authorities presented the decision to adopt a new constitution with the desire to create a legal foundation for further transformations in the country, carried out under the leadership of the current president. They also justified this decision by the need to introduce a number of progressive constitutional norms. Indeed, a number of such norms have been added to the draft of the new constitution. However, some of them are either purely declarative in nature, or could be introduced by the adoption of ordinary laws, or it would be enough to adopt selected amendments that would not lead to justifying the nullification of Shavkat Mirziyoyev's current presidential terms.

As purely declarative, one can name the intention to declare Uzbekistan a social state, as well as the fact that now the principle "man - society - state" would supposedly be observed, replacing the principle "state - society - man". One can also consider declarative the provision, according to which the honour and dignity of a person are inviolable, and nothing can justify discrimination against a person. Given the established authoritarian practice of governing the country and the frequent disregard by the authorities of already adopted laws, primarily constitutional norms, these declarative statements sound like an empty phrase and can only serve as a decorative design of the new constitution.

At the same time, a number of articles of a progressive nature have been introduced into the draft of the new constitution, which may have a certain positive impact on how state institutions function. Among these norms are an article on compliance with the principle of "habeas corpus" (that a person cannot be detained for more than 48 hours without a court order) and the "Miranda rule" (explaining to a person his rights during his detention and the grounds for detention). But for their introduction into the practice of state affairs, it was enough to adopt ordinary laws or presidential decrees. But most importantly, their implementation needed and still needs political will, as well as the independence of the judiciary. Moreover, the principle of "habeas corpus" is not a new legal norm for Uzbekistan. It was adopted in 2005 by the Decree of the President of Uzbekistan "On the transfer to the courts of the right to issue a sanction for detention", the main provisions of which were to come into force on January 1, 2008.⁸ However, Human Rights Watch, having analyzed the practice of detention of persons by Uzbek law enforcement agencies, concluded that this principle is not observed in reality by Uzbek enforcement. In this regard, the question arises, if so far Uzbekistan's obligations to implement the principle of "habeas corpus" have remained mainly on paper and have not been implemented in practice, then why on earth will it be fulfilled after it is included in the constitution?

Steps towards strengthening autocracy

If it were only about creating quasi-legal grounds for extending the terms of Shavkat Mirziyoyev's presidency for two more terms, then this would be half the trouble. It would only be a question of postponing indefinitely the prospects for establishing truly democratic rule in the country.

Things turned out to be worse. Unfortunately, few observers have noticed so far that some changes in the constitution only strengthen the authoritarian nature of the ruling regime in the country, undermining the principle of separation of powers.

We are talking here about the division of powers between the president and the parliament on the matter of appointments to key government posts, such as Prime Minister, members of the Cabinet of Ministers, Prosecutor General, and the Chairperson of State Security Service. According to the constitution, which was in force until April 30, 2023, the president proposes candidates for these positions, and the parliament approves them. Of course, the parliament remains tame for the president, because only pocket parties are admitted to the parliamentary elections, the president has *de facto* himself decided so far whom and to what position in the highest echelons of power to appoint. Still, he had to follow a certain procedure provided for by the principle of separation of powers. According to this procedure, he had to submit for approval by the parliament candidates for these posts, even if that was just a matter of formality.

Now, with the new constitution, this order is radically changing, since the parliament, albeit fully controlled by the president, is going to be deprived of formal rights to approve candidates for key government submitted by him. Let us explain exactly what has happened.

According to Articles 78 - 80 of the Constitution, which was in force until April 30, 2023, the candidacies of the Prime Minister, members of the Cabinet of Ministers, the Chairman of the National Security Service, as well as the Prosecutor General were approved by the Oliy Majlis on the proposal of the President. In the draft of the⁹ new constitution, specifically in Articles 94 and 95 which are about the appointment of the aforementioned categories of officials, instead of the words "approval" (in Uzbek – *tasdiqlash*, in Russian - *utverzhdenie*), another word is used - "endorsement" (in Uzbek - *ma'qullash*, in Russian – *odobrenie*).¹⁰

With such a terminological substitution, the meaning of the procedure changes radically: if "approval" means the decision of a formally sovereign branch of power, an act of power as such, then "endorsement" sounds only like an expression of support for the president's decision that has already taken place. In this situation, only the president's decision is an act of power. The role of the parliament, thereby, turns out to be only advisory, not decisive.

This advisory role of the Oliy Majlis is particularly evident in the appointment of the Chairman of the State Security Service. If, according to Article 80 of the constitution, which was in force until April 30, 2023, a candidate for this position was subject to approval by the Senate on the proposal of the president, then in the new constitution the president only consults with the parliament represented by the Senate when appointing him. In this case, the Senate is not even expected to "approve" the submitted candidacy.

Given these changes in the key provisions of the constitution relating to the formation of the state apparatus, it can be concluded that the new constitution undermines the principle of separation of powers. The parliament begins to lose the status of a branch of power and to look more like an advisory body. This is where the president seizes several legislative powers, thereby reinforcing the authoritarian nature of Uzbekistan's governance system. It can even be said that this system of government to a certain extent begins to resemble a monarchical one.

President's motives for undermining the principle of separation of powers

Why is President Mirziyoyev taking this step, changing the established legal order in the country, which provides for the separation of powers, let it have been so far implemented just formally? Most likely he has lost confidence that he will be able to maintain full control over the parliament in a crisis if he continues relying on the formal and informal mechanisms for ensuring political control over the country and the state apparatus he inherited from the previous president, Islam Karimov, and has not changed since then. Let us recall what these mechanisms are. This is:

- first of all, control by the president of law enforcement and security agencies, as well as the military, which allows him to subjugate the entire society and all state institutions under the threat of force;
- the admission to the parliament of exclusively pocket political parties, which means the exclusion of the real political opposition from the electoral process and the ban for its operation in the country;
- full control by the president of local authorities through the direct appointment by him of the heads of local administrations. This allows the president to control not only the local administration itself but also the Senate, which is formed out of representatives of local authorities. The regional hokims who are reporting directly to the president decide exclusively who is going to represent their region in the Senate. It should be also added here

that the authoritarian nature of power in the country is manifested at the local level even more than in the center.

- in addition to controlling the delegation of representatives of local authorities to the Senate, a number of senators are appointed directly by the president himself. According to the constitution, which was in force until April 30, 2023, the Senate consisted of one hundred senators, sixteen of whom were appointed by the president. Under the new constitution, the number of senators is reduced to 65, nine of whom will be appointed directly by the president. Reducing the number of senators will make it easier for the president to control this chamber of the parliament.

Mirziyoyev has concluded that these mechanisms would not be enough for him to guarantee full control over the government and the country. That is why he has decided to hedge his bets by arrogating key powers previously assigned to the parliament.

His feeling of insecurity was already aided by two political crises he has already experienced during his reign. The first crisis was the above-mentioned mass protests in Karakalpakstan in early July 2022. Although the authorities brutally suppressed those protests, President Mirziyoyev's political legitimacy was severely undermined. The observers noticed another crisis which also hurt the legitimacy of Mirziyoyev's rule. This time crisis occurred in December 2022, when, with the onset of frost, the gas and electricity supply system in the country collapsed, which caused considerable discontent among the population, especially in the capital. Mirziyoyev was forced to dismiss some of his closest officials, such as the Tashkent Mayor Jakhongir Artykhodjayev,¹¹ and even detain several heads of state energy enterprises.¹² Perhaps Mirziyoyev perceived this collapse of the country's energy system as a conspiracy against him aimed to provoke mass protests and, in their wake, leading to his removal from the CE. He was likely convinced that in the event of a recurrence of such crises, he might face the risk of losing control over the government and the country.

He was also probably frightened by the political crisis that took place in Kazakhstan in January 2022, when Kassym-Jomart Tokayev's presidency wobbled beneath him due to the mass unrest that initially broke out in the country due to socio-economic reasons, but eventually escalated into attempts to overthrow the government.

Implications for the country's development

In my article "Mirziyoev-Led Uzbekistan: Balancing Between Political Legitimacy and Autocracy", published in January 2022,¹³ I examined how authoritarian regimes balance between a desire to secure their political legitimacy and, at the same time, to maintain control of power, preferably holding the presidential office for life. An authoritarian leader's efforts to balance these two main priorities dictate how to form the administrative system upon which he relies to achieve his tasks. The challenge for him is that this system should meet both of these priorities. That means that, on the one hand, the administrative system should ensure loyalty to the supreme ruler of the entire state apparatus, and, on the other, be capable of professionally designing and running policies that would guarantee the necessary minimum of his political legitimacy. Such a two-fold agenda prompts the authoritarian leader to combine the principles of loyalty and meritocracy in selecting and appointing candidates to key positions in the government. In practice, this combination of principles often results in a part of top officials being selected mainly on the merit of their loyalty and membership in their patronage network, while another part is chosen thanks chiefly to their professional skills, expertise and managerial talents. It has been an established rule, that In

Uzbekistan's administrative hierarchy, the first ones (members of his network) occupy the key, while the second (technocrats) lower level positions in the government. .

In this state of affairs, if the authoritarian leader's political legitimacy declines, then to restore the balance between the two upper priorities he is forced to make a choice – either invites a few more technocrats to the government, to improve the government performance, or to resort to repressions and restrictions on civil liberties and reinforce propaganda. The latter may drag the ruling regime into the funnel of a further decline in its legitimacy in the eyes of those governed. That is why the authoritarian ruler would prefer to continue combining these two options - co-opt more technocrats and intensify repressions. This we are already observing in the current situation in Uzbekistan.

A reverse process is also possible, currently being observed too when an authoritarian ruler preemptively strengthens his control of power by acquiring more privileges in decision making, and, at the same time, reducing the negative effect of these measures on its reputation, especially international ones, resorts to certain concessions in the field of human rights. In particular, Shavkat Mirziyoyev seems to be afraid of the international isolation that Islam Karimov once fell into because of his excessive repressive policies.¹⁴ It was this kind of consideration, as well as the intention to create a favorable background for the upcoming vote in the referendum, that led the authorities to have made lately some concessions in the field of human rights. At the beginning of April, a law was adopted in Uzbekistan to combat domestic violence against women and children, which even drew praise from Amnesty International.¹⁵

However, it remains to be seen how sustainable this trend towards making concessions on human rights issues is going to be, and whether the government is prepared for reforms to establish the rule of law in the country. Theoretically, an authoritarian rule alone is not an insurmountable obstacle to progress towards the rule of law. There are some historical precedents of such a combination, autocracy and the independence of the judiciary. For instance, in Germany, the independence of the judiciary is historically older than democracy. Even in the monarchic Russia of the XIX century, a certain degree of the independence of judiciary was achieved, when the country was ruled by the Tsar Alexander II. As a result of the reform undertaken in 1864, a jury trial was introduced in the Russian Empire.¹⁶ As a result, one of such jury trials dared to acquit the revolutionary Vera Zasulich, who was tried in March, 1878 for an attempt on the life of the St. Petersburg mayor, General Fyodor Trepov.¹⁷

It is quite possible that in order to preserve his image as a reformer, or at least not to get isolated internationally, President Mirziyoyev will make some small concessions in the field of human rights under the condition that this would not affect the foundations of his authoritarian rule. But it is difficult to imagine that he will take really serious steps to achieve the independence of the judiciary in the country, simply because, having been already mired in corruption scandals, he would risk finding himself in the dock for the abuse of power he has already committed a number of times. .

Based on the foregoing, we should expect further attempts by the Mirziyoyev regime to balance its two aforementioned strategic priorities and corresponding principles of managing the administrative system. However, due to the very likely accumulation of further political crises and corruption processes, which will inevitably destabilize the situation in the country, it will be increasingly difficult for him to sit on the two chairs at the same time, that is, to maintain control of power and, at the same time, ensure a sufficient level of his political legitimacy. In light of these coming challenges, we should expect a gradual shift of this regime towards tightening the screws in the country, a process that has already begun to gain momentum over the last two years.

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