
POST-SOVIET TRANSFORMATION

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The Impact of Constitutional Processes on the Democratisation of Post-Soviet Transformation Countries***TIGRAN TOROSYAN***Brusov State University of Languages and Social Sciences, Armenia
Center of Perspective Researches and Initiatives*

The article discusses the democratisation problems of the countries in the third stage of post-Soviet transformation, i.e., intensification of geopolitical influences. It may seem that for the third group of post-Soviet transformation countries the further course becomes unambiguous as a consequence of geopolitical orientation resulting from the intensification of that influence. However, the article demonstrates that due to several circumstances the possibility of the “democracy vs. authoritarianism” alternative will remain for this group of countries for a long time. The final choice will depend on transition success from constitution to constitutionalism. A key role in that process is assigned to multi-party system consolidation, the most essential factor of which is the formation of a professional unbiased environment devoid of any political influence.

Keywords

Post-Soviet transformation, democratisation, constitutionalism, values, political parties.

Introduction

The basis of early understanding on the nature of an unprecedented phenomenon which started after the collapse of the USSR,

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and included nearly three dozen countries, i.e., post-Communist transformation, relied on S. Huntington's assessment. He considered it to be a continuation of the "third wave" of democratisation, which would lead to the establishment of democratic regimes in those countries¹. Such assessments as well were probably among the reasons for attaching particular importance to economic factors (privatisation, market liberalisation, etc.) in the initial stage of the transformation process. Indeed, the fact that such an approach was greatly encouraged by the World Bank and the International Monetary Fund, that provided huge loans at low interest rate to countries in deep financial crisis, should not be disregarded, either. Still, the crisis was much deeper; it had a systemic nature. Within only a few years it became obvious that not only does that transformation differ from the "third wave" in at least five essential factors², but also regardless of a positive connection between the economic development level and democratic establishment, still it is not a decisive factor³. In the 1980s and 1990s the democratisation process in many countries was accompanied by deep economic crisis. However a series of countries succeeded on that path. In the second half of the 1990s, a new key concept – neo-institutionalism⁴ – was brought into the spotlight. In its framework an attempt was made to ensure the efficiency of the democratisation process. The aim was to determine which model was more compatible with the development of various countries or regions and how "to build democracy" better⁵. Among institutional factors the following were of particular importance:

- electoral system selection: majoritarian, proportional or mixed system;
- structure of representative institutions;

¹ **Huntington S.**, *The Third Wave: Democratization in the Late Twentieth Century*. Norman and London, University of Oklahoma Press, 1991.

² **Terry S.**, Thinking about Post-Communist Transitions: How Are They? *Slavic Review*, 1999, 2, 333-339.

³ **Lipset S. M.**, The Social Requisites of Democracy Revisited, *American Sociological Review*, 1994, 59, 1, 1-22.

⁴ **North D.**, *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press, 1990.

⁵ **Koelbe T. A.**, The New Institutionalism in Political Science and Sociology, *Comparative Politics*, 1995, January, 1, 231-243.

- development of parties and party systems⁶;
- political system selection: presidential, parliamentary, semi-presidential etc⁷.

It is apparent that the above-listed are basic political constitutional institutions. Moreover, the main issue, that of political system selection, regularly becomes the subject of heated debates, and in the last two decades – that of scientific and particularly quantitative detailed studies⁸. However, even the most general assessment attempts fail to give definite answers. It is noteworthy that though the overwhelming majority of experts argue that the parliamentary system is preferable in promoting democratic developments, the early attempts of transition to a parliamentary system in post-Soviet societies may have provoked anti-democratic atmosphere, as was the case of Belarus⁹. The issue is also complicated from another aspect as well. Countries in the post-Soviet transformation process normally either adopted new constitutions or radically changed the old ones; the constitutions adopted

⁶ Stabilizing Fragile Democracies: Comparing New Party Systems in Southern and Eastern Europe (Ed. By G. Pridham, P. Lewis). London; New York: Routledge, 1996; Ware A. Political Parties and Party Systems. Oxford: Oxford University Press, 1996.

⁷ Parliamentary versus Presidential Government (Ed. By A. Lijphart). Oxford, Oxford University Press, 1992.

⁸ **Krouwel A.**, Measuring Presidentialism of Central and East European Countries. Working Papers: Political Science, No. 02, Amsterdam. 2003; **Shugart M. S., Carey J. M.**, Presidents and Assemblies. Constitutional Design and Electoral Dynamics. Cambridge. 1992; **Frye T.**, A Politics of Institutional Choice: Post-Communist Presidencies. *Comparative Political Studies*, 1997, **30**, 5; **Siaroff A.**, Comparative Presidencies: The Inadequacy of the Presidential, Semi-Presidential and Parliamentary Distinction, *European Journal of Political Research*, 2003, 42; **McGregor J.**, The Presidency in East Central Europe.- RFR/RL Research Report, 1994, vol. 3, 2; **Johannsen L.**, The Springboard Model. Presidential Authority, Democracy, Development and Economic Freedom. Paper prepared for the 43rd Annual ISA Convention. New Orleans. 2002.

Зазнаев О. И., Индексный анализ государств Европы и постсоветского пространства, *Полис*, 2007, 2, 146-164; **Johannsen L., Norgaard O.**, IPA: The Index of Presidential Authority. Explorations into the Measurement an Impact of a Political Institution. Paper prepared for the ECPR Joint Sessions of Workshops. Edinburg. 2003.

⁹ **Мазманиян А.**, Выбор оптимальных институтов: всгляд на строительство демократии в постсоветских странах, *Сравнительное конституционное обозрение*, 2 (59), 2007, 122-128

for Soviet states just like political, economic, social and other Soviet systems were no longer applicable to the post-Soviet period. The efficiency of constitutional processes in such situations naturally depends on the synchronisation level of two factors: borrowings of popular constitutional schemes and their compatibility with the implementing country's specificities¹⁰. However, since constitutions promote nation-building to various extent enabling each nation to perceive itself as a political unit, sometimes scepticism arises over the use of comparative constitutional materials¹¹. Meanwhile, the "four walls" concept should be perceived not as a ban on the use of comparative constitutional materials but as a norm guaranteeing non-applicability of foreign legal principles in case their proper compatibility with local constitutional and legal documents is not reached¹². However, when it comes to universal principles, in particular, to human rights and democracy, the comparative method enables countries to find the solutions that promote not only specific problem-solving but support the improvement of national legislation.

In the early 2000s, it was becoming clear that the initial optimism regarding the establishment of democratic regimes in all the countries within post-Communist transformation was not materialising. The anticipated inevitability of democratisation did not take into account national differences of political cultures, or geopolitical factors and dependencies¹³. Already in the late 1990s it was obvious that the gap between democratic establishment processes in different countries (on the one hand, in Baltic countries, and on the other, in Armenia, Georgia, Ukraine, Russia etc.) was growing, and some countries (countries of Central Asia, Belarus, Azerbaijan) were clearly moving in another

¹⁰ **Torosyan T.**, Constitutional Borrowing is Inevitable, at the Same Time Quite Difficult and Sometimes Even Impossible.- *Tuori K., Walker N. (ed.). Constitutional Design, CDL-UD(2013)001-bil*, Venice, 2013, pp. 6-13. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-UD\(2013\)001-bil](http://www.venice.coe.int/webforms/documents/?pdf=CDL-UD(2013)001-bil)

¹¹ **Tushnet M.**, The Possibilities of Comparative Constitutional Law, *Yael Law Journal*, 1999, **108**, 6, 125-1228.

¹² **Tsen-Ta Lee J.**, Interpreting Bills of Rights: The Value of a Comparative Approach, *International Journal of Constitutional law*, 2007, **5**, 1, 122-152.

¹³ **Саква Р.**, Сравнительный анализ изменений политических режимов стран постсоветской Евразии, *Сравнительное конституционное обозрение*, 2006, 4 (57), 117-127.

direction. The success of the democratisation process in post-Communist states largely depended on the pre-Soviet path of these states and the reminiscence of it¹⁴. Ph. Roeder stressed the importance of national transformation which implies the formation of nation-states together with the transformation of social consciousness¹⁵. Even S. Huntington, one of the chief authors of the notion of post-Soviet transformation linear development in the early 1990s, later claimed that the transition of Western values to other civilisational environments, and the Westernisation of these environments is not only impossible, but also immoral in its consequences since modernisation and economic development neither require cultural Westernisation nor necessarily lead to it. In general, the European (Western) path selection cannot be the single and even the correct selection¹⁶. Therefore, a substantial reconsideration of the theoretical grounds established in the first decade on post-Communist transformation's nature and its paradigm was required.

Democratisation as an Alternative to Post-Communist Transformation

By the early 2000s, pessimistic assessments regarding the nature of post-Soviet transformation were already prevalent. Some considered the existence of a paradigm for that phenomenon to be a myth¹⁷. T. Carothers believed that the paradigm had exhausted itself since – as it was assumed previously – elections could not play a key role during the democratisation process¹⁸. Nevertheless, further developments not only clarified the nature of post-Soviet transformation but also formalised

¹⁴ **Torosyan T.**, Post-Soviet Transformation of the Social System, Yerevan, Tigran Mets, 2006.

¹⁵ **Roeder Ph.**, People and States after 1989: The Political Costs of Incomplete National Revolutions. *Slavic Review*, 1999, **58**, 4, 854-882.

¹⁶ **Huntington S.**, The West: Unique, not Universal, *Political Affairs*, 1996, **75**, 6, 28-46.

¹⁷ **Gans-Morse J.**, Searching for Transitologists: Contemporary Theories of Post-Communist Transitions and the Myth of a Dominant Paradigm, *Post-Soviet Affairs*, 2004, **20**, 4, 320-349.

¹⁸ **Carothers T.**, The End of the Transition Paradigm. *Journal of Democracy*, 2002, **13**, 1, 6-21.

democratisation possibilities and prospects in the scope of that process. Several events in 2004 reinforced the view that transformation cannot be observed as a continuation of the third wave of democratisation. It is a unique process, which for different groups of countries, has different courses and directions with completely different outcomes. After the largest 2004 expansion of the European Union, as well as after “colour revolutions”¹⁹ in several countries, post-Soviet states broke into the following three groups according to their trajectories and emerging future:

- new EU member states that had established full-fledged democratic regimes,
- countries that had declared the establishment of democratic regimes a constitutional goal, had some achievements on that path, but still retained a number of essential features typical to authoritarianism,
- countries that were moving towards deepening authoritarianism, and some of them – towards the establishment of totalitarian regimes²⁰.

The first group can be called a group of consolidated democracy, the second one – a “waiting” group, and the third – a group of rigid authoritarianism or totalitarianism. Not only did the events following 2008 yet further confirm the veracity of the tripartite division, but also supported identification of a specific paradigm for each of those groups, and of three individual stages of the transformation process²¹. Those three stages had different durations, and were clearly differentiated from each other by a number of important features. In the longest – the first stage (up to 2000), in Eastern and Central European countries, that had been parts of the former “socialist camp”, as well as in the independent states created after the collapse of the USSR, completely new regimes were established. This stage can be considered as a statehood-forming stage. The second stage (2000 – 2007) can be called a stage of path diversion

¹⁹ **Torosyan T., Vardanyan A.**, Where Do the “Colour Revolutions” Lead to? *Public Administration*, 2005, 3, 90-101.

²⁰ **Torosyan T., Sukiasyan H.**, Three Stages of Post-Soviet Transformation, Three Groups and Paradigms, *Armenian Journal of Political Science*, 2014, 1, 20-34.

²¹ *Ibid.*

based on value system, the third stage (since 2008) – a dominance phase of geopolitical factor. While during the statehood-forming first stage, the courses of countries involved in the process did not differ significantly, in the second stage those countries broke into three groups according to the value system they adhered to. If in the first stage one could – with some reservations – speak about the existence of a common post-Soviet transformation paradigm and about the possible use of theories and tools previously applied for studying such phenomenon; in the second stage, three completely different paradigms were already to be observed. It can be considered that the post-Soviet transformation ended with the second stage for the first and third groups of countries, and that the third stage can be observed only regarding the “waiting” group of countries. Their further course will largely depend on the geopolitical factor having gradually gained dominant influence.

The Influence of Geopolitical Factor

An analysis of the last three centuries of developments in Central Eurasia, and particularly, in South Caucasus reveals three patterns: the beginning of each century registers balance disorder between influential countries, then over the next 25-30 years a new struggle is broken out for the redistribution of zones of influence, before finally, new balance is established²². There were two events symbolising a new phase of that struggle started after the collapse of the USSR – the beginning of the third stage of post-Soviet transformation, i.e., the strengthening of geopolitical influences. Firstly, the speech²³ of the President of Russia at the 2007 Munich Conference on Security Policy, by which President Putin expressed sharp disagreement with the United States policy directed toward unipolar world formation. Secondly, the Russian-Georgian Five-Day War (August, 2008) which heralded that the Russian-American rivalry in the post-Soviet area was entering a phase of heavy

²² **Torosyan T.**, The Return of Turkey, *Russia in Global Affairs*, 2009, 3, July-September, 120-129.

²³ Vladimir Putin, 'Speech at the 43rd Munich Conference on Security Policy, February 10, 2007, available at http://globalsecurity.org/...2007/putin-munich_070210.htm

confrontations²⁴. The Eastern Partnership Programme of the European Union transpired to be of key importance in subsequent developments. The situation was exacerbated dramatically after the Vilnius Summit in November, 2013. The European Union expected the summit to be a turning point in the relations between participatory countries and the European Union since with four of those countries – Ukraine, Armenia, Georgia, and Moldova – Association and Free Trade Agreements were planned to be signed during the summit. While it was possible to foresee that Georgia and Moldova would be among signatory countries; and by the beginning of September it was clear that Armenia would not join them, the developments in Ukraine, that held a special position in this quartet – created a completely new situation. Not only did the President of Ukraine V. Yanukovich, in becoming recklessly lost in the “bargaining” whirlpool of “European Union - United States - Russia” triangle, lose a realistic grasp of situation, as well as the possibility of its control, and subsequently his power, but also turned Ukraine into the main stage of rivalry in the process of establishing a new world order. The Vilnius Summit and the subsequent events demonstrated that the process of establishing a new world order had entered a decisive phase and had become the most influential factor in the post-Soviet transformation process. That is why the influence of this factor on the democratisation of post-Soviet transformation countries deserves special attention. Though the existing literature properly illustrates²⁵ the international aspect of democratisation, still, the intersection of the impact of internal reconstruction and the external set of factors has not been deeply explored yet²⁶.

Post-Soviet transformation will be complete with the final civilisational choice – Western, or Orthodox civilisation or integrated

²⁴ **Torosyan T.**, Nagorno-Karabakh and Kosovo: Conflicts, Negotiations, Geopolitics, Yerevan, Tigran Mets, 2012.

²⁵ Building Democracy: The International Dimension of Democratization in Eastern Europe (Ed. by G. Pridham, E. Herring, G. Sanford); **Badie B.**, The Imported State: The Westernization of Political Order. Cambridge: Cambridge University Press, 2000, Democratic Consolidation in Eastern Europe, vol. 2: International and Transitional Factors (Ed. by J. Zielonka, A. Pravda). Oxford: Oxford University Press, 2001.

²⁶ **Koelbe T. A.**, ...

environment – of the countries in the second group (Ukraine, Armenia, Georgia, Moldova, Kyrgyzstan). However, even in case of choosing an Orthodox civilisation, the “democratisation or authoritarianism” dilemma may continue. Therefore, it is interesting to observe the reasons behind the slow course of democratisation in those countries, and the possibilities for further developments and for the achievement of consolidated democracy.

Post-Communist Democratisation: From Constitution to the Constitutionalism

Research on democratisation processes led J. Linz and A. Stepan to define three dimensions of consolidated democracy: behavioural, attitudinal and constitutional²⁷. The existence of the latter makes both the government and the opposition act throughout the whole country in accordance with the institutions, procedures and laws adopted through a democratic process; and to consider that the emerging problems should be solved in that framework. Interestingly, such definition reveals the interconnection between all three dimensions since in the absence of behavioural and attitudinal dimensions, formal norms will not translate into a code of conduct for political parties. Thus, the course to consolidated democracy implies not only the adoption of democratic values and principles enshrined in the constitution, but also their appropriation – as attitudinal and behavioural norms – by the vast majority of society, i.e., the existence of constitutionalism. Indeed, modern democracy, with all its constitutional components, is truly associated with Western culture or civilisation²⁸. They can be borrowed, but meanwhile stripped of meaning, as well as leading to a false protocol and loss of democratic content. This occurs in cases where a national society and culture does not possess the values and principles that democratic political culture is based on, since they are decisive in

²⁷ **Linz J. J., Stepan A.**, Problems of Democratic Transition and Consolidation: Southern Europe, South Africa, and Post-Communist Europe. Baltimore: The Johns Hopkins University Press, 1996, p. 16.

²⁸ **Мартышин О. В.**, Национальная политическая и правовая культура в контексте глобализации, *Государство и право*, 2005, 4, 9-17.

determining the direction a country follows and influences it is predicated to adopt. It is no coincidence that having studied constitutional design developments in post-Communist societies, Elster, Offe and Preuss noticed that “the most significant variable for the success of the transformation is the compatibility of the inherited world views, patterns of behaviour and basic social and political concepts with the functional necessities of a modern, partly industrial, partly already post-industrial society... the potential of society’s social and cultural capital for adjusting the legacies of the past to the requirements of the present”²⁹. They formulated the success of constitutional processes – the establishment of constitutionalism – in post-Communist societies as the “heritage, institutions, decisions”³⁰ trinity, in which the first describes the values citizens adhere to, their perceptions and traditions, the second the constitutional structure, and the third the content of institutions.

Constitutionalism: Values, Institutions, Decisions

Some researchers mention not only the impact of the values and principles, deeply ingrained in society, on institutions and their decisions (in case such principles and values have relevant content) but also, on the contrary, the impact of institutions and their decisions on the alteration of values and principles prevalent in society. According to Diamond, evolutionary dimensions of political culture are rather “plastic” and can be changed to a great extent as a reaction to an administration’s activities, historical experience, and political socialisation³¹. Elster’s and his colleagues’ above-mentioned study concluded that among others that the most important determinant of democracy consolidation is the formative effect of new institutions. In other words, these institutions have the power of shaping citizens’ perceptions, traditions, common experience, expectations (and even memories) thus rendering the inherited fears,

²⁹ **Elster J., Offe C., Preuss U.**, Institutional Design in Post-communist Societies: Rebuilding the Ship at Sea. Cambridge: Cambridge University Press, 1998, pp. 307-308.

³⁰ Ibid.

³¹ Political Culture and Democracy, *Political Culture and Democracy in Developing Countries* (Ed. By L. Diamond). Boulder, CO: Lynne Rienner Publishers, 1993, p. 9.

hostility and doubts as ungrounded³². This feedback indicates that, while the full efficacy of a constitution is displayed in the presence of constitutionalism, still, to achieve the latter, the quality of a constitution itself is equally important. The impact of institutions on the alteration of values and principles prevalent in society is due to the opportunities provided by the constitution. The direction of such alterations is dependent on decision-makers' vision of it. Since it is the political parties that fill in the political institutions, it is obvious that in post-Communist societies, in terms of democratic development, macro-political institutions and their relationship with the political party system are of utmost importance³³.

Political Parties as Key Actors in Democracy Consolidation

The consolidation of political parties in post-Communist societies is an extremely difficult task since the success of the democratisation process in such societies largely depends on those countries' pre-Soviet path and the reminiscence of it³⁴. The second group of transformation countries (the "waiting" group), unlike the first group (the group of consolidated democracy), did not have reasonably established political organisations in the pre-Soviet period. The flaws causing Russian multi-party system failure – super-presidential system, weak institutional structure, and dominance of informal structures on the level of political party activity – were more or less specific to the political party systems of all those countries, as well³⁵. In 1993-2004, Russia's electoral market was taken by regional political institutions and financial-industrial groups that quickly realised the necessity of acquiring political power as an important enabler of economic impact. Informal structures replacing political parties gained an important role. This was accompanied by the problems that are typical to political parties in other societies as well. According to

³² Elster J., Offe C., Preuss U., ..., p. 296.

³³ Power T., J., Casiorowski M. J., Institutional Design and Democratic Consolidation in the Third World, *Comparative Political Studies*, 2007, **30**, 2, 121-136.

³⁴ Torosyan T., Post-Soviet ..., pp. 233-249.

³⁵ Hale H., Why Not Parties in Russia? Democracy, Federalism, and the State. Cambridge: Cambridge University Press, 2006.

Sakwa, “Establishment of stable political parties is impossible as long as the emerging civil society has not received a pattern, form, and content. The weakness of civil society impedes the formation and consolidation of political party systems and institutions, which constitute the bases of modern representative democracy”³⁶. However, an inverse relationship can be traced here. In case there is no established system of checks restricting the political parties (especially, the ruling party), the consolidation of civil society faces serious challenges, as according to A. Sajó, political parties are first of all interested in voters support and typically tend to proclaim populist rather than professional goals. Therefore, neutral structures – supposed to offer the society a neutral, professional opinion regarding the government’s plans and proposed solutions – restraining the government from the temptation of favouring sectional interests whilst restraining society from that of the populist announcements made by the opposition – are necessary³⁷. The formation of professional impartial environments – as centres of expertise free from political influence – is a key factor in the formation and consolidation of political party system. Moreover, it is extremely important that those environments are integrated within international professional environments. Constitutional courts – among other institutions – have an important deterrent mission to carry out in the establishment of constitutionalism. However, this institution, as well, must overcome major challenges to remain free from the influence of political system. Meanwhile, there is another risk with respect to those structures. According to R. Witz, extreme court activity carries a serious danger – the unlawful interference into other branches of power. These problems occur not only in cases when monitoring organs go beyond the procedural limits, but also in relation to spheres as significant as judicial interpretation of the constitution³⁸. Some illicit arguments – value judgments, logical argumentation, reference to history and traditions –

³⁶ **Саква Р.**,

³⁷ **Шайо А.**, Нейтральные институты и их роль в формировании доверия к власти в восточноевропейских демократиях, *Сравнительное конституционное обозрение*, 3 (48), 2004, 103-117.

³⁸ **Уитц Р.**, Об отсутствии в толковании конституции, *Конституционное право: восточноевропейское обозрение*, 1(38), 2002, 26-35.

have dubious character. They are associated with the court's excessive activity, and sometimes – with the legal norms “created” by the court³⁹.

Conclusion

The analysis of the post-Communist transformation course, the difficulties and challenges of democratisation processes in the countries in its third stage as well as the impact of constitutional developments on the transformation of these countries demonstrates that:

1. Post-Communist transformation is a unique, complex, three-stage and multi-vector process in which the establishment of democracy is not an absolute solution but one of the options,
2. The dominance stage of geopolitical factors heavily influences the further course of post-Communist transformation for countries in the second “waiting” group. However, regardless of their external orientation, these countries will still retain the “democracy vs. authoritarianism” potential alternative,
3. The guarantee of democratic developments for the countries in the transformation process lies not in the adoption of a constitution but in the establishment of constitutionality due to three dimensions of consolidated democracy.,
4. The post-Communist transformation course towards democracy largely depends on the values and principles the society adheres to which in their turn can be moderated under the influence of institutions,
5. A key role in the constitutional processes leading to the establishment of the constitutionality is assigned to political parties that are regarded as centres for decision-making and institution-building based on the appropriate values and principles,
6. The mechanism of deterring undesirable alterations of multi-party system comprises three components: procedural, legal and pluralistic. The bases for the first component are free and fair elections, for the second, unbiased constitutional control, and for the third, independent specialised organisations integrated into

³⁹ **Dorsen N.**, How American Interpret the Bill of Rights, *Constitutional Commentary*, 1994, **11**, 2, 372-386.

their international counterparts and their carrying a decisive role in the formation of public opinion.