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Constitutional Transformations in Post-Soviet Region: Results of Previous Studies*

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The article examines political effect of constitutional changes in post-Soviet states during the last 25 years. All constitutional amendments adopted in post-Soviet states are analyzed and systematized to ensure the balance of constitutional powers under changing social conditions. The article introduces the classification of all amendments on the basis of formal juridical criteria and on the set of criteria proposed by political scientists. It reveals the real and potential conflicts between branches of power which could be provoked by the applied forms and methods of constitutional revision. The article makes a detailed analysis of institutes involved in the process of discussion and adoption of amendments as well as formal and informal procedures of the amendment process. To this end the author uses the methods of comparative-legal studies and cognitive constitutionalism. The revelation of real motives of constitutional revision, legal and political forms and technologies provides the possibility of reliable explanation of ambiguous constitutional reform trends, achievements, failures and pitfalls of political transformation. It opens the way for the full-fledged constitutional engineering, independent constitutional monitoring and provides the possibility to forecast the prospective political trends of "new democracies" in post-Soviet space.

Keywords

Constitutional amendments, post-Soviet states, cognitive constitutionalism.

The contribution of literature to the formulation of the problems of post-Soviet constitutional reforms can be reduced to seven main conclusions.

The first methodological conclusion modern science is guided by in studying constitutional amendments is the “uprising against legal

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formalism”, i.e. overcoming a purely normative approach to their interpretation and recognizing the importance of political analysis in understanding the logic of constitutional amendments. This approach, outlined in the works on the theory of constitutional amendments, has now become the subject of legal sociology¹. In modern Russian literature, it is represented both by lawyers and political scientists².

The second conclusion is the statement on the relationship between constitutional amendments and the economic and political processes³. Under the theory of democratic transition, the representatives of this trend studied the process of democratic consolidation, focusing on the adoption of democratic constitutions, the choice of the form of government, the functioning of the electoral system and the evolution of regime characteristics. Political literature traditionally focuses on the definition of real institutions and actors of the political process, seeking to understand the role of political parties, social movements, elite groups in power and the functioning of political regimes. However, the contribution of this line of research was limited to the lack of special attention to the role of constitutional reforms in general and amendments - in particular. The latter were usually viewed as a relatively minor adjustment of established models constituting a subject area of traditional lawyers. It is only now that the problem is addressed by researchers⁴. This, in our opinion, largely explains the limited possibilities of the theory of democratic transition, which proved incapable of convincingly explaining the transformation of new democratic regimes towards the authoritarianism without the formal abolition of democratic constitutions,

¹ **Sartori G.**, Comparative Constitutional Engineering. An Inquire into Structures, Incentives and Outcomes, 2nd ed, London, Palgrave, 2002.

² Konstitutsionnoe razvitiye Rossii: zadachi institutsional'nogo proektirovaniya, M., 2007; Grazhdanskoe obshchestvo i pravovoe gosudarstvo kak faktory modernizatsii rossiskoy pravovoy sistemy, Asterion, 2009, 1-2; Osnovy konstitutsionnogo stroya Rossii: dvadtsat' let razvitiya, M., Institute of law and Public Policy, 2013 (in Russian).

³ Verkhovenstvo prava kak faktor ekonomiki, M., Liberal'naya missiya, 2013 (in Russian).

⁴ **Torosyan T.**, The Role of Constitutional Process in Transformation of Post-communist States, *Armenian Journal of Political Science*, 2015, 1, 5-18.

as well as the emergence of original hybrid regimes of “alleged constitutionalism” or “deformed democracy”⁵.

The third conclusion is the statement of the relationship between the legal form (or “constitutional design”) and the nature of political regime. The case was to find out the advantages of some forms of government over the others. This determined the researchers' primary attention to “institutional design”⁶. However, a heated debate on this issue did not lead to a definite conclusion: a strict association of parliamentary form of government with democratic regimes, and the presidential one with authoritarian regimes is recognized as too schematic. The critics of this thesis repeatedly pointed to the difficulty of implementing the Westminster model of parliamentarism in multipartite (multinational) societies, underlining the positive sides of presidential (or mixed) systems for societies in transition. In post-Soviet space, this problem should be formulated with regard to transitional forms that are far from classical models. On the whole, the specific character of post-Soviet constitutional systems, sometimes defined by the concept of “deferred constitutionalism”, opens up opportunities for elites to manipulate legal norms and their radical transformation through amendments or various extralegal (and anti-legal) methods. Thus, we talk about “hybrid regimes”, “guided”, “deformed democracy”, “paraconstitutionalism”, “surrogate parliamentarism”, etc.⁷. The decision by the elite to introduce an amendment in favor of one or another form of government does not necessarily indicate a strategic choice towards democratization or authoritarianism.

⁵ **Yasin E. G.**, *Prizhiviyotsya li demokratiya v Rossii?*, M., NLO, 2013 (in Russian).

⁶ **Linz J., Stepan A.**, *Problems of Democratic Transition and Consolidation: Southern Europe, South Africa, and Post-Communist Europe*, Baltimore, The Johns Hopkins University Press, 1996; **Elster J., Offe C., Preuss U.**, *Institutional Design in Post-communist Societies: Rebuilding the Ship at Sea*, Cambridge, University Press, 1998; *Democratic Consolidation in Eastern Europe*, Oxford University Press, 2001.

⁷ **Sakva R.**, *Sravnitel'ny analiz izmenenii politicheskikh rezhimov stran postsovetskoy Evrazii*, *Sravnitel'noe konstitutsionnoe obozrenie*, 2006, **4**, 57, 117-127; **Shulman E.**, *Surogaty parlamentarizma*, *Pro et Contra*, 2014, **62**, 1-2, 124-132; **Shablinskiy I. G.**, *Evloyutsiya politicheskogo rezhima v Rossii*. *Konstitutsionnye osnovy i neformal'nye praktiki*, M., TEIS, 2014 (in Russian).

The fourth conclusion refers to the specifics of the political and legal regimes in post-Soviet space in terms of the following parameters: *first*, the incompleteness of constitutional transformations, which most researchers associate with the non-completed democratic consolidation of the post-Soviet states or even a complete breakdown of democratic transition; *second*, the catch-up nature of modern post-Soviet constitutionalism, allowing to use the notion of “catch-up constitutional modernization”, the manifestations of which are constitutional amendments that formally reflect the borrowing of norms and institutions from more consolidated democracies. From this perspective, we can infer the role of borrowings in the literature on the post-Soviet constitutions, and in general the directions of these borrowings in the adoption and amendment of the constitutions of Russia and other countries of the region⁸; *third*, recognition of the ineffectiveness of implementing the most important constitutional principles. These principles are fixed constitutionally and undergo significant transformations at the level of legislative, judicial and administrative practices, not to mention informal ones⁹.

The fifth conclusion: all researchers recognize the instability of the constitutional achievements of the 1990s, the contradictory nature of the transformations, when subsequent amendments cancel or devalue the results of the previous ones. The crisis of the paradigm of "democratic transition" made the researchers address the question of various strategies of the transition period (revolutionary, reformation and conservative), the reasons for choosing one of them, as well as the failures and "traps" of the transition process, including contradictions in constitutional regulation.

However, the explanation of the failures of legal modernization does not seem to be unambiguous. Some researchers believe that they are due to historical reasons - the traditions of nominal Soviet constitutionalism. Some link this phenomenon to the inadequacy of

⁸ **Nakashidze M.**, The Role of Constitutional Borrowing for the Constitutional Drafting in Post-Soviet Space, World Congress of the International Association of Constitutional Law, Oslo, 2014.

⁹ Problemy realizatsii Konstitutsii. Mezhdunarodnoe issledovanie, M., 2008; Konstitutsionnye printsipy i puti ikh realizatsii, Analiticheskii doklad, M., IPPP, 2014 (in Russian).

democratic institutions in the social setting of transitional societies, while the others - to malfunctions, related to the structure of political regimes or to external factors. Part of this discussion is the debate about the geographic scope of the region (Central, Eastern Europe or Eurasia); continuity of the concept of the transition period (whether it is over or not); the content of the concept of "post-Soviet constitutionalism" (whether it expresses a particular model or generalizes the features of the transition to constitutional democracy). In general, the discussion continues on the question of whether post-Soviet constitutionalism should be recognized as a special model or simply a deformed version of classical constitutional models, which analysis of the prospects for its development depends on¹⁰.

The sixth conclusion is the recognition of the significance of the "constitutional policy" of post-Soviet regimes as an independent factor of their transformation. The modern literature presents systematic review of the constitutional policy of the post-Soviet states, raises the question of the place of constitutional amendments in this policy (even addresses the "policy of constitutional amendments"¹¹), shows the influence of constitutional models of separation of powers (parliamentary and mixed) on the configuration of the elites of post-Soviet states¹². The study highlights the importance of comparing various drafts of constitutional reforms, including the reconstruction of the "erroneous ways" of constitutional design (observations about the ambivalent role of constitutional amendments and the methods for their adoption). However, this study is in its infancy and has not yielded definite results to date.

The seventh conclusion is that there is general agreement on the need for a comparative study of the constitutional practice of post-Soviet states through the immanent logic of constitutional changes. This conclusion is substantiated in the reports of the Venice Commission of the Council of Europe. The Commission sees one of its tasks in monitoring the constitutional state in the post-Soviet space and

¹⁰ Constitutional Politics in Central and Eastern Europe, Fruhstorfer A., Hein M. (eds.), Springer, 2016.

¹¹ **Roberts A.**, The Politics of Constitutional Amendment in Eastern Europe, *Constitutional Political Economy*, 2009, **20**, 99-117.

¹² **Semenova E., Edinger M., Best H.**, Parliamentary Elites in Central and Eastern Europe: Recruitment and Representation, L., N-Y., Routledge, 2013.

summarizing the recommendations to national governments in the form of expert reports. The most important of these for the purposes of this study is the compilation report of the Venice Commission on Constitutional Amendments in the Post-Soviet States of 2010 (CDL-AD (2010) and a series of reports on individual states (Ukraine, Kyrgyzstan, Georgia, Armenia). The means for obtaining relevant materials is the organization of independent constitutional monitoring and, in particular, a detailed analysis of constitutional amendments of various states as a tool for adjusting the constitutional and political systems¹³.

In general, the modern literature, with its considerable number of works, is far from a systematic scientific analysis on the post-Soviet amendments. Outside of legal approaches, there is no clear concept and criteria for the comparability of amendments. Prevailing are the works on individual states or amendments, often having emotional and political coloring. Conclusions are mainly reduced to policy recommendations, but not evidence.

Constitutional design and political regime: the role of amendments in their interaction

The attempt to bring together the legal (normative) and political approaches has found its expression in the use of the methods of neo-institutionalism. This approach allowed to formulate "comparative constitutional engineering" (the term used by J. Sartori), to contrast "viable constitutionalism" with unviable one, bearing in mind the possibility of selection of constitutional norms and institutional design¹⁴. From this perspective, it is important to identify the relationship between constitutional and institutional design, as well as to outline the ways of systematizing constitutional changes on legal and political parameters.

The contribution of constitutional changes to the development of post-Soviet political regimes is regarded in diametrically opposite ways. Some researchers agree on a certain influence of constitutional design on the structure of political regime and in particular – on the configuration

¹³ Konstitutsionnye printsipy..., Op. cit.

¹⁴ Designs for Democratic Stability. Studies in Viable Constitutionalism. New York, Sharpe, 1997.

of the separation of powers¹⁵. Others, on the contrary, believe that the amendments in the post-Soviet region are entirely determined by the political regime and its elite for the sake of its reproduction in power. In other words, the political regime is the basis of constitutional changes, and the amendments are only a "dependent variable"¹⁶. A schematic general conclusion has been drawn which, in our opinion, needs to be adjusted or at least confirmed: for the implementation of constitutional reforms in Eastern European states, the formal parameters of the constitutional reform are of key importance, while for the countries of the post-Soviet region - the political parameters and interests of power groups. The issues on initiating and promoting constitutional amendments, the reasons for their adoption or rejection in the constitutional process, and in general the mechanisms for making decisions on the reform of constitutions by ruling elites and leaders, are addressed in different ways¹⁷. There is no single answer to the question of the role of the constitutional amendments in the institutional design of the post-Soviet regimes.

Contrary to the prevailing view that constitutional amendments have a subordinate and even technical role in comparison with the fundamental provisions of the current constitutions, the practice of modern political regimes shows that this is far from reality. In the history of world constitutionalism, we can trace situations when amendments radically change the content of current constitution (eg, the XIVth Amendment to the US Constitution), introduce a new interpretation of its norms (the 2008 amendments to the French Constitution of 1958), or contradict them (the concept of "unconstitutional constitutional amendment" in the jurisprudence of the Federal Republic of Germany), and sometimes serve as an instrument for the introduction of a new

¹⁵ **Krasnov M.**, Postsovetskie gosudarstva: yest' li zavisimost' politicheskogo rezhima ot konstitutsionnogo dizayna? *Sravnitel'noe konstitutsionnoe obozrenie*, 2014, 2, 99, 29-45 (in Russian).

¹⁶ **Giniyatov F. M.**, Konstitutsionnye izmeneniya v gosudarstvakh postsovetskogo prostranstva i Vostochnoy Evropy, *Vestnik ekonomiki, prava i sotsiologii*, 2011, 3, 112-116 (in Russian); **Sidorov V. V.**, Constitutional Changes in Post-Soviet States and Eastern Europe, *The Social Sciences*, 2015, 10, 2, 67-70.

¹⁷ **Tuori K.**, Constitutional Design and the Choice of the Political Regime, *Armenian Journal of Political Science*, 2015, 2, 5-14, **Roberts A.**, Op. cit.

constitution (Japan's current constitution is introduced as an amendment to the old Meiji constitution). Such amendments, leading to a radical constitutional revision, can significantly change the interpretation of human rights, political system, system of separation of powers, and create a legal basis for fundamental changes in the existing regime or its key institutions. Hence, we get diametrically opposed judgments on the need of constitutional fixation of the prerogatives of the constituent power, as well as on the extremely cautious attitude towards empowering parliaments with constituent functions and the role of constitutional referendums in adopting amendments¹⁸.

This observation is particularly true for the so-called "new democracies" that have emerged from totalitarian or authoritarian regimes, gained national sovereignty, adopted democratic constitutions, but so far failed to complete the construction of fully functioning democratic systems and are at a crossroads regarding the vector of future political development. This is true for the post-Soviet states over the past 25 years. They are united, firstly, by the initial state of the beginning of transformation (the general Soviet legacy of nominal constitutionalism); secondly, the revolutionary (fundamentally non-legal) adoption of democratic constitutions and institutions of constitutional justice based on the adoption of various Western models of separation of powers (usually a dualistic or mixed presidential-parliamentary form of the French model of government, maintaining a stable authoritarian trend); thirdly, the changing strategy of constitutional development, related to the peculiarities of political regimes and the logic of their constitutional transformation, the vector of which may produce the opposite effect (from democracy to the restoration of authoritarianism)¹⁹.

Constitutional design is essential in determining the vector of political and legal development. However, the influence of this factor is

¹⁸ Responding to Imperfection. The Theory and Practice of Constitutional Amendment, Stanford Levinson (ed.) Princeton University Press, 1995; **Roznai Y.**, Unconstitutional Constitutional Amendments. A Study of the Nature and Limits of Constitutional Amendment Powers, London, HSE, 2014; Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2015. John R. Vile (ed.). 4-th ed. Santa Barbara, *ABC-Clio, LLC*, 2015. Vol. 1-2.

¹⁹ Constitutional Politics in Central and Eastern Europe. Fruhstorfer A., Hein M. (eds.). Springer, 2016.

indirect, as it is realized at the intersection of developers' ideas about the past (the attempt to avoid previous mistakes) and the future (vision of an ideal model). Like any purposeful adjustment, the constitutional amendment, by the very fact of its appearance testifies to the imperfection of the existing system. It is important to determine what this dysfunction is, what are the alternative ways of eliminating it (whether there is necessity to intervene in the text of the basic law), and most importantly - who, how and why insists on this decision. The study of the developers' motivation when deciding on the appropriateness of reviewing the "constitutional design" is presented in a limited way. The discussion on the causes of constitutional dysfunctions did not lead to an unambiguous answer to the question regarding the extent to which they are determined by the political culture of the society, and to which - by contradictions of the constitutional regulation or mistakes of law enforcement practice. The reasons for determining relevant situations as "contradictions" or "lacunae" in the constitution do not become the subject of a special analysis. In a number of countries, observations on the significance of individual constitutional innovations for changes in national political regimes are primarily express-analysis of changes²⁰. Meanwhile, the value of experiments on the transformation of the constitutional system in some countries (for example, in Ukraine) is recognized as controversial for the other countries of the region²¹. Equally important are the selected procedures for adopting amendments, which, if nullified by the constitutional courts, return the situation back to the beginning of the entire cycle of constitutional changes.

The author's study of the constitutional amendments in the states of Eastern Europe and the CIS states in the last decade, which he conducted as an expert of the Institute of Law and Public Policy during his visits to the relevant countries of the region, made him believe that the interaction of constitutional design and political regime is most clearly revealed in the debates about constitutional amendments. This

²⁰ **Borisov N.**, Konstitutsionnye al'ternativy Ukrainy: nazad v budushchee?, *Vlast'*, 2011, 2, 64-69; **Khaitov M.**, Konstitutsionnye reformy v Turkmenistane, *Gosudarstvo i pravo*, 2011, 1, 88-93; **Torosyan T.**, Perspektivy i vyzovy perekhoda Armenii k sisteme parlamentskogo pravleniya, *Sravnitel'noe konstitutsionnoe obozrenie*, 2016, 4, 113, 29-40 (in Russian).

²¹ **Klyamkin I.**, 2014: god Ukrainy, M., Liberal'naya missiya, 2015, 159-160.

enables to disclose the cognitive motivation of developers and the political tendencies of the regimes²². In situations of unstable equilibrium, the constitutional amendment can be no less significant than the constitution itself, since it determines the functioning and interpretation (up to revision) of its norms for a long period. From the standpoint of this approach, the appeal to the problems of constitutional changes, the special study of significant constitutional amendments and, especially, the procedures for their adoption, is quite relevant. These procedures, according to the Secretary of the Venice Commission of the Council of Europe T. Markert, are now throwing "a challenge to new democracies"²³. The constitutional amendment, therefore, is an instrument for "fine-tuning" of the entire balance of power and determination of the vector of the political system.

Method of cognitive jurisprudence in the study of constitutional amendments

The research is based on the method of cognitive jurisprudence developed by the author. Its novelty in comparison to traditional legal and political approaches is the systematic reconstruction of the meaning of constitutional principles and the transformation of this meaning in the course of the changing correlation of three parameters - values, norms and jurisprudence. This method allows to overcome the contradictions of the three main traditional approaches in the theory of law (jusnaturalism, positivism and realism), which reduce the essence of rights exclusively to ethical standards, the current legal norm or the historically formed tradition of judicial practice. As to meta-legal understanding of law, all three aspects are interrelated in the legal construction of the meaning of the basic constitutional principles, the corresponding institutions and practices. The essence of the cognitive approach is to elucidate the motivation of constitutional decisions: what are their ideological

²² **Medushevsky A. N.**, Ot revolyutsii k Restavratsii: oligarkhicheskie tendentsii postsovetskikh politicheskikh rezhimov, *Sravnitel'noe konstitutsionnoe obozrenie*, 2010, 4, 155-178.

²³ **Markert T.**, Constitutional Amendment Procedures as a Challenge to New Democracies. *The Impact of Constitutional Processes on Post-Communist Transformation*, 2014.

(informational) determinants; what models became the subject of developers; what was accepted and rejected; which model of the legal institution was adopted and why; how the relevant constitutional principles were transformed under the influence of implementation practice²⁴.

Representatives of neo-institutionalism repeatedly noted the importance of cognitive approach, meanwhile stating that it was not developed in the field of institutional analysis. One of our tasks is to specify the methodology of such research for the purposes of legal design. In the center of attention are: the correlation of the informative picture of the world; legal norms, administrative institutions, communications (information exchange) and forms of social mobilization within the framework of the system of constitutionalism. The cognitive method allows to generalize such parameters of the legal construction of reality as the psychological attitudes of developers, the normative constructions they use and their projection in institutions and social practices²⁵. The constitutional amendment acts as a special case of such a design, a realized choice of the vector of political and legal development.

The method of cognitive jurisprudence has already been applied by the author in the course of a comparative analysis of legal, administrative and judicial reforms, in the reconstruction of the Soviet model of nominal constitutionalism, as well as in studying the transformation of modern Russian constitutionalism²⁶. It enabled to obtain significant scientific results and served as the basis for the collective project of constitutional monitoring carried out by the Institute of Law and Public Policy in recent years²⁷. Obtaining evidentiary results

²⁴ **Medushevsky A. N.**, Politicheskie sochineniya: pravo i vlast' v usloviyakh sotsial'nykh transformatsii, M., Tsentri Gumanitarnykh Initsiativ, 2015 (in Russian).

²⁵ **Medushevsky A. N.**, Kognitivno-informatsionnaya teoriya kak novaya paradigma gumanitarnogo poznaniya, *Voprosy filosofii*, 2009, 10; **Medushevsky A. N.**, Kognitivnaya teoriya prava i yuridicheskoe konstruirovaniye real'nosti, *Sravnitel'noye konstitutsionnoye obozreniye*, 2011, 84, 5, 30-42.

²⁶ **Medushevsky A. N.**, Rosiiskie reformy s pozitsii teorii kognitivnoy istorii, *Voprosy ekonomiki*, 2016, 3, 131-160; **Medushevsky A. N.**, Konstitutsionnyye komissii v SSSR: struktura, sostav, mekhanizmy deyatel'nosti, *Grazhdanskoe obshchestvo v Rossii i za rubezhom*, 2016, 1-2 (in Russian).

²⁷ Konstitutsionnyi monitoring: kontseptsiya, metodika i itogi ekspertnogo oprosa, M., Institut prava i publichnoy politiki, 2014 (in Russian).

is regarded in the disclosure of the mechanisms for constructing/reconstructing the relevant principles, norms and institutions under the influence of both legal and socio-psychological factors. These are reflected in alternative drafts of the revision of the Basic Law and are fixed by the corresponding constitutional amendments.

Thus, we put forward the following definition of constitutional amendment: a change in constitutional norms, which is the result of purposeful cognitive activity of developers and is fixed in the text of the Basic Law. The constitutional amendment is, therefore, a fixed informative product of purposeful activity in the construction of legal reality - a unit of constitutional and legal regulation and at the same time an indicator of its development. This definition has several advantages over previous legal or sociological definitions of the amendment. It takes into account the cognitive side of the decision on revision of the constitution, reveals the decision-making process (selection of alternative proposals for amendments), reflects the interaction of formal and informal procedures for the transformation of the constitution, and implies their legal fixation (ie, mandatory legal fixation of new "rules of the game" in the constitution and/or the constitutional law). Thus, all social and political changes are eliminated from the sphere of analysis if they do not lead to the fixation of new norms in the basic law and at the same time include all political initiatives, since they result in a fixed modification of the text of the constitution, constitutional laws or judicial decisions. *The technique of the analysis* is constitutional monitoring of amendments in all states of the post-Soviet region for the past 25 years, and a qualitative generalization of its results based on key parameters of the study. The study of theoretical and completely pragmatic problems of the constitutional transformation of post-Soviet states goes hand in hand. The need to adjust the constitutions of the post-Soviet regimes to internationally recognized standards of democracy requires attention to the results of reforms and procedures of constitutional review, as well as the organization of independent monitoring of their implementation. The analysis of all the tools of post-Soviet constitutional amendments is

undoubtedly important for determining the prospects for Russian constitutionalism and the possibilities for its improvement²⁸.

Subject of the study: amendment as an instrument for the legal construction of political reality

The thesis of the independent contribution of constitutional amendments as an instrument for the transformation of political regimes requires further clarification. The author proceeds from the neo-institutionalist view holding that institutions are rules of the game, forms of interaction, social conventions, defined both by formal (legally fixed) rules and informal norms of behavior. Institutions include "the means by which rules and norms receive their practical implementation"²⁹. Thus, the adoption of a constitutional amendment that changes the constitutionally established "rules of the game" is a definite cognitive, sometimes fateful, choice of the developers. It determines the functioning of a set of norms, institutions and practices of their application in the context of certain social orders, the duration of their existence, as well as a set of rules established by the elites to achieve certain goals of social development.

If this hypothesis is correct, then it is necessary to find out which factors the decision on the constitutional amendment depends on - the information environment, the rigidity of the constitution, the social environment, cultural stereotypes, the solution of the problem of preserving power and its legitimacy, practical management issues, etc. Unlike the previous literature on the issue, the author sees the task in reconstructing the process of the appearance of the amendment - from the emergence of the idea of its development to its adoption as an acting constitutional norm.

²⁸ **Medushevskiy A. N.**, Law and Justice in Post-Soviet Region: Strategies of Constitutional Modernization, *Journal of Eurasian Studies*, 2012, 3; **Medushevskiy A. N.**, Konstitutsionnye printsipy 1993 goda: formirovanie, itogi i perspektivy realizatsii, *Sravnitel'noe konstitutsionnoe obozrenie*, 2013, **92**, 1, 30-34; **Medushevskiy A. N.**, Problems of Modernizing the Constitutional Order: Is it Necessary to Revise Russia's Basic Law, *Russian Politics and Law*, 2014, **52**, 2, March-April, 44-59.

²⁹ **North D., Wollis J., Weingast B.**, Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History, M., 2011, p. 429.

The study is focused on the whole set of constitutional amendments affecting the form of government, the balance of separation of powers and the interpretation of their functioning in the states of the post-Soviet region in the past 25 years. All the states of the region were covered by a process defined as a "constitutional fever", the expression of which was the amendment of constitutions and constitutional law in the field of separation of powers, the number of which exceeded 50. The most important of them are the amendments that determined the institutional configuration and vector of the relevant regimes. This approach determines the subject of analysis (a block of constitutional amendments affecting the adjustment of the form of government); regional framework (12 states of the post-Soviet region, including Russia), a chronological framework (25 years since the collapse of the USSR and the formation of independent states - a sufficient period for summing up the preliminary comparative results of constitutional modernization). The systematization, cataloging and mapping of the amendments create a compact and solid empirical basis for their classification and proof-reading from the standpoint of comparative law, cognitive jurisprudence and political science. Meanwhile, it opens the door for typologizing, classifying and contributing to the functioning of post-Soviet political regimes.

The heuristic significance of the study is determined by the absence of fundamental works on post-Soviet amendments. There are considerable works on the empirical analysis of constitutional amendments in classical and newly-developing democracies. However, this literature includes a number of important limitations. Firstly, it is generally limited to a purely normative analysis of the adopted amendments that turned to the norm of the constitution, and practically does not pay attention to rejected amendments that are not less informative for the purposes of this study. The very fact of their existence is implicitly reflected in the adopted amendment, and in the future may lead to its replacement by counter-amendment. Secondly, it does not pay special attention to cognitive aspects of initiation and promotion of amendments, including non-constitutional institutions, and ignores the informal parameters of their discussion outside the constitutional institutions. Thirdly, it very rarely singles out amendments as an

independent subject of research, preferring to talk about "constitutional design" (a concept meaning the peculiarities of the form of government in its institutional expression); "constitutional process" (as a change in the stages of constitutional and legal regulation), or about the "constitutional policy" of the ruling regimes - the political goals pursued in making amendments (this removes the issue of the independent meaning of amendments, subordinating them to the tactical goals of the elites). Fourthly, it contains very little empirical research and observations on the effect of constitutional amendments on the transformation of political regimes in post-Soviet states. This is due in part to low evaluation of their legal significance, and in part to a lack of awareness of Western lawyers about the situation in the region).

In general, the problem remains to which extent the theory of amendments and the questions formulated in it (applied to classical constitutional democracies) are valid with respect to post-Soviet political regimes, especially to those characterized by guided democracy and nominal constitutionalism³⁰. In this context, the author investigates the trends of political regimes in Central Asia³¹. The practical and consultative significance of the issue became clear to the author due to "integrative observation". He was an OSCE expert during the constitutional crises in Kyrgyzstan and prepared a number of recommendations that were positively evaluated by the international expert community and a number of statesmen of the country. The work was continued with regard to the constitutional reforms of Turkmenistan, Kazakhstan, Armenia, where there was a dialogue with leading politicians and judges on the issues of transitional legislation³². These

³⁰ **Lael K. Weis.**, Constitutional Amendment Rules and Interpretative Fidelity to Democracy, *Melbourne University Law Review*, **38**, 241-280; **Roberts A.**, The Politics of Constitutional Amendment in Eastern Europe, *Constitutional Political Economy*, 2009, 20, 99-117.

³¹ **Medushevsky A. N.**, Politicheskie rezhimy Srednei Azii: konstitutsionnye reformy v ramkakh avtoritarnoy modernizatsii, *Sravnitel'noe konstitutsionnoe obozrenie*, 2012, **89**, 4, 45-60; **Medushevsky A. N.**, Political Regimes of Central Asia: Constitutional Reforms in a Framework of Authoritarian Modernization, *The Soviet Legacy and Nation-Building in Central Asia. APCR Proceedings Series*, Seoul, 2011, 4, 5-28.

³² **Medushevsky A. N.**, Revolyutsiya v Kirgizii: itogi i perspektivy konstitutsionnykh preobrazovaniy, *Sravnitel'noe konstitutsionnoe obozrenie*, 2011,

questions were in the center of the author's attention while studying the problems of Russian constitutionalism.

The sources of this study are 1) constitutions and laws on amendments; official and unofficial comments to them; 2) materials of editorial commissions and official reports on their activities; 3) materials for discussing amendments in the media and the Internet; the available literature of the question; 4) data from opinion polls showing the extent to which the amendments are supported in case of their public discussion or approval in an advisory or final referendum; 5) conclusions of constitutional courts in cases when they have been involved in assessing the constitutionality of the respective draft bills on amendments; 6) expert assessments of national and international independent institutions, primarily the analytical documents of the Venice Commission of the Council of Europe, and, in particular, reports on individual constitutional amendments in the regional countries); 7) personal interviews of the author with participants involved in the development of constitutional amendments or those involved in the process of their discussion and promotion - lawyers, judges, experts, politicians, journalists³³.

Since the major problem is to identify the role of constitutional amendments in determining the institutional structure and the vector of development of political regimes in post-Soviet states, it becomes necessary to verify the *following assumptions*:

1. the possibilities, boundaries and parameters of the autonomous (independent) contribution of constitutional amendments to the definition of political regime configuration in post-Soviet states;
2. identification of sustainable and repetitive development mechanisms and technologies of adopting amendments that are

80, 1, 13-32; **Medushevsky A. N.**, Konstitutsionnaya reforma v Turkmenistane: perekhod k demokratii ili modernizatsiya avtroitarizma, *Sravnitel'noe konstitutsionnoe obozrenie*, 2008, **67**, 6, 5-16; **Medushevsky A. N.**, Konstitutsionny kontrol' i politicheskii vybor v obshchestvakh perekhodnogo tipa: k probleme legitimnosti sudebnykh reshenii na postsovetском prostranstve, *Vestnik konstitutsionnogo soveta respubliki Kazakhstan*, Astana, 2011, 18, 49-64; **Medushevsky A. N.**, The Russian Constitution of 1993: What it Means Today? *Armenian Journal of Political Science*, 2015, 1, 2, 49-76.

³³ Osnovy konstitutsionnogo stroya Rossii: dvadtsat' let razvitiya, M., Institut prava i publichnoy politiki, 2013.

- formed at the intersection of basic constitutional norms, institutional solutions and sustainable formal and informal practices of interpretation;
3. the establishment of cognitive variables determining the motivation of developers, the similarities and differences in the results of the constitutional audit for the countries of the region - their relative success, failure or reproduction of political and legal instability;
 4. determination of the role of constitutional review initiatives for the consolidation and reconfiguration of party political forces, elite groups and their new identity in the sphere of public policy;
 5. the possibilities and limits of forecasting the results of the adoption of amendments and their impact on changing political practices.

In general, it is necessary to clarify the significance of this tool for explaining the final outcome of regime transformation - the consolidation of democracy, the restoration of authoritarianism or the reproduction of instability in the form of a cyclic change of some forms of government by the others.

Constitutional amendments as a realized choice of the elites in post-Soviet states

The scope of the study is determined by its purpose, i.e. the disclosure of the role of constitutional amendments in the revision of the established constitutional "rules of the game" and the determination of the "independent" value of this instrument in the transformation of the form of government and political regimes of post-Soviet states.

This explains the imposed restrictions. *Firstly*, we are not talking about the analysis of regimes as such. Their development is influenced by many factors - from the political culture of society to specific tasks being solved by the leadership of different states. *Secondly*, not all constitutional amendments, including those affecting fundamental human rights, are the subject of the study, but only those that directly affect the form of government or the functioning of the most important power institutions of the states concerned. *Thirdly*, the priority is given to the

mechanism for initiating, promoting and accepting amendments, i.e. the process of making political decisions on constitutional issues. Fourthly, special attention is paid to technology and the "tactics" for carrying out amendments in the political process. The transformation of constitutional principles and institutions is not necessarily carried out by one amendment - it can be a series of relatively minor changes of individual constitutional norms that in combination produce the desired effect, or the decision of the Constitutional Court on the constitutionality of the relevant draft laws or approval procedures). Fifth, in contrast to traditional legal studies dealing only with the adopted amendments (the norms of the basic law), this study is primarily focused on the interaction of adopted and rejected amendments, i.e. cognitive mechanism of selection of alternative constitutional norms reflecting the political choice of the elite of a given country.

Substantial research parameters

1) identification, description and systematization of the adopted constitutional amendments in the countries of the region for the last 25 years. We are talking about the amendments to the constitutions and constitutional laws adopted on the results of the revolutions and reforms of modern times in 12 post-Soviet states. Of this total number, at the center of the study are the amendments marking a radical or substantial change in the form of government and political regime. These have been accompanied by a high level of political conflict in Armenia (2005, 2016), Azerbaijan (2002, 2009, 2016), Belarus (1996, 2004), Georgia (2004, 2010, 2013), Kazakhstan (1996, 2007, 2009, 2010), Kyrgyzstan (1994-2003, 2005, 2007, 2010, 2016), Moldova (2000, 2010, 2016), Tajikistan (1996, 1999, 2016), Turkmenistan (1995 - 2005, 2008, 2014), Uzbekistan (1995, 2002, 2014), Ukraine (2000, 2004, 2007, 2010, 2014, 2015). In this comparative context particular attention is given to the amendments of the Russian Constitution (2008, 2014). Like a cardiogram, these corrections fix changes in the form of government, in a number of cases (as in Ukraine, Kyrgyzstan and Moldova) representing a consistent cyclical reproduction of similar models of political system.

2) conduction of their classification according to formal criteria - the rubric (to which sections of the Basic Law they relate); the scope of the review (which values, principles and norms of the constitution are affected by the changes); the method of revision (the ratio of constituent and constituted power, the role of key institutions involved in the development and adoption of amendments); the nature of proposed changes (territorial structure, form of government, bicameralism, the system of separation of powers, the procedure for the formation and prerogatives of individual branches of power and the most important institutions); form (one amendment or group of amendments pursuing a single goal), time of the conduction (one-off change or extended in time); preparation procedures (which institution acts as their formal or informal initiator, the developer and the driving force behind their conduction - parliament, government, president).

3) the disclosure of the procedures for the adoption of amendments with clarification of their specificity by countries, determined by the difference in constitutional norms, legislation, and procedural factors in the countries of the region (flexibility of constitutions, the existence of unchanged constitutional norms, unicameral or bicameral structure of parliament, adopted by the current parliament, include convocation of new parliament, or suggest subsequent approval by referendum, allow participation of the Constitutional Court in their discussion).

4) comparative analysis of political crises in the regional countries related to the split in relation to the goals and objectives of the constitutional audit: clarifying the expectations of the society and political parties regarding constitutional amendments; a comparison of the projects of the ruling parties and the opposition; solution of the problem of qualified majority in the parliament, necessary for the promotion of amendments, preparation and conduct of constitutional referendum and wording of the issues brought to them; position of the Constitutional Courts; constitutional and non-constitutional factors of influence on decision-making, their consequences for overcoming the political (constitutional) crisis and providing conditions for sustainable development; the nature of this exit (through a contract or break of legal continuity).

5) reconstruction of the political mechanism of constitutional review: determining the correlation between formal and informal goals of reforms, technologies for developing and promoting amendments: which actor is their true initiator; what is the composition of the commission for their development (do they include representatives of the opposition); is it open or closed discussion; which institutions carry out the analysis of the project before it is submitted for discussion; how the procedural framework has changed during the discussion; whether there were attempts to informally influence developers from other institutions or political actors; how did the discussion and adoption of amendments take place. The independent part of the research is the identification and comparative analysis of political (including fully Machiavellian) technologies used by various political regimes for making amendments (similarities and differences, foreign borrowings, political control, use of the experience of other countries in the region). It is necessary to clarify whether there was a split in the ruling elite regarding the aims and objectives of the reforms; whether it found expression in the alternative drafts of constitutional revision and by what methods it was overcome.

6) the contribution of amendments to the stabilization of the constitutional (political) system: the answer to the question of why some amendments are adopted and others are not, or adopted in some countries but rejected in others; what foreign samples are used by developers and why; how the process of reforming the constitution looks in time; what political interests are represented in this process; how PR-support of promotion of amendments is organized, the reaction of society to them; whether it is possible to ensure the legitimacy of constitutional amendments. In general, this approach allows to reconstruct alternative strategies for constitutional modernization, model its dynamics, and compare the phases of constitutional reforms across countries.

7) obtaining evidentiary conclusions about the contribution of the relevant amendments for ensuring democratic consolidation, both primary and secondary - democratization of the political system, or, on the contrary, strengthening the authoritarian vector, or creating conditions for the reproduction of constitutional instability (pendulum fluctuations in constitutional models, when subsequent constitutional amendments simply reject the previous ones). It is important to test the hypothesis

about the role of constitutional revision in the consolidation and reconfiguration of party political forces, their identification in the public sphere.

Preliminary conclusions submitted for discussion

The cognitive method is the basis for understanding legal and institutional design in the form of constitutional amendments. The methodology of cognitive constitutionalism seems promising in studying such a form of institutional design as constitutional amendment. The latter is the result of the purposeful cognitive activity of the developers in changing the existing "rules of the game" (values, principles, norms, institutions, procedures for their activities), which was formalized as a constitutional norm.

This concept is, firstly, value-impartial covering both constitutional reforms and counter-reforms. Secondly, it reveals the cognitive framework of the relevant changes including the alternative projects and ways to achieve them. Thirdly, it limits the problem area of research to accepted and fixed amendments, positivized in the current law.

The presented definition of the constitutional amendment allows to combine cognitive, legal and political parameters of the analysis. Its application contributes to the accumulation and explanation of the original experience of the post-Soviet states in this field (questions of the correlation of ideology and law, constituent and constituted power, the boundaries of the revision of the basic law, the initiators of constitutional audit, the flexibility of interpreting the meaning of norms and their language, the impact of borrowings and the role of informal factors of decision-making).

The impact of constitutional design on the transformation of political regimes is indirect and is realized in case of adoption of constitutional amendments. The theory of democratic transition does not explain the contradictory experiments of constitutional reforms in the post-Soviet region - the breakdowns of constitutionalism, the cyclical nature of the reproduction of similar forms, and the multi-vector orientation of political regimes.

The impact of constitutional design and regime characteristics on the choice of the vector of political development is not mutually exclusive. The thesis of the influence of the form of government on the structure of the regime, just like the opposite thesis about the complete predominance of institutional and political interests over formal and legal ones, should be rejected as too *a priori*.

Constitutional design expresses the cognitive attitudes of the initiators of transformations in accordance with the world mainstream, as well as the goals of the changes (borrowings). The real mechanism of power almost universally tends to stability under different forms of government, determining the structure of political regime, the dominance of elite groups, the method of decision-making. The balance of the correlation of constitutional design and regime characteristics is determined by the practical implementation of constitutional engineering. This is a "bifurcation point" when legal forms receive political guarantees of implementation, and the latter finds acceptable expression in legal and institutional design.

The interaction of constitutional and regime characteristics is most clearly expressed during changes - the development and adoption of constitutional provisions expressed in amendments that modify the form of government and the model of separation of powers.

The systematization of conflicts, associated with the adoption of amendments, allows to build a typology of regimes in terms of the degree of constitutional stability and the strategies of constitutional changes. The systematization of problematic situations, arising under the conditions of the development, promotion and adoption of constitutional changes, reveals three main strategies in the post-Soviet region:

- revolutionary - during the "color revolutions" (complete replacement of the text of the constitution with a new one, using anti-legal or questionable methods from the legal point of view);

- reformational - in the modes of authoritarian modernization (changes in constitutions by introducing a series of radical amendments);

- conservative - in traditionalist authoritarian regimes (minor changes in the constitution by partial adjustment of certain norms aimed at legitimizing or replicating the current government or individual leaders).

Classification of post-Soviet constitutional systems by the criterion of the change strategies used allows to state the following: ineffectiveness of the amendments in the first case due to the irresistible split of government and opposition and the lack of consolidation of the elite; their strong effectiveness in the second case (an imposed compromise, i.e. the fate of the amendments is entirely in the hands of the dominant party with a certain engagement of the opposition) and their instrumental (imitative) character in the third case (for example, in de facto regimes with hereditary power succession).

The typology of political regimes in accordance with their use of constitutional amendments allows to classify them into the following types: constitutionally unstable (high dynamics of constitutional changes tend to be cyclical when the subsequent amendment rejects the meaning of the previous one and returns the situation back to the beginning of the transformation); developing (a stable linear dynamics of amendments directed to one goal) and stagnant (the amendments express tactical modifications of the authoritarian regime without qualitative advancement). This enables to build a gradation of transitional political systems from almost constitutional to paraconstitutional and right up to regimes of nominal constitutionalism. In fact, this classification should be even more fractional, taking into account both institutional and functional-procedural features).

The success of a meaningful constitutional audit depends on a combination of cognitive, constitutional and political factors. They determine the path from the formation of the idea of the amendment and the associated institutional expectations to its formal adoption. This allows to reveal the dysfunctions of post-Soviet regimes. The factors which the success or failure of constitutional amendments depends on is schematically divided into cognitive, constitutional and institutional-political type.

The analysis of the first reveals the motivation for the decision on constitutional amendments, their progress and the methods of adoption. There is the possibility of reconstructing the idea of constitutional transformation - from the initial draft of the reform, through its legal formulation (taking into account the overcoming of institutional obstacles and alternative projects) to the adoption of the amendment (positivization

of new principles, norms and institutions in the current constitutional law). Orientation of developers to parliamentary, mixed or presidential forms is the most visible external expression of these preferences.

The institutional limits of the adoption of amendments are determined by the expectations of the developers - the idea of the potential for forming a qualified majority in the parliament, forecasting the support of the initiative by other institutions (the upper house, the constitutional court or the president), the expectations from the adoption of the referendum approval procedure. In dependent modes, the support of corrections by external players has priority. In the event that the amendments do not have the institutional prerequisites for adoption, we deal with such "amendments" that are more a form of political PR and mobilization of extra-parliamentary supporters of their initiative.

The choice of institutional instruments is determined by the following political reasons: the consensus achieved by the elite with regard to the aims of the amendments (the contract within the framework of the theory of "rational choice"), the homogeneity (split) of the elite - the desire for a treaty or the desire of one part of it to impose its will on others (constitutional amendment as a way of establishing political domination) or the desire of the ruling group to prolong the situation of uncertainty over time (a situation when one political goal is achieved by various constitutional amendments, when the amendment was withdrawn by the other one or devalued by legislative, administrative or judicial interpretation of the norms).

The formal similarity of the contents of the amendments and the procedures for their adoption, demanded by developers in different countries, does not necessarily indicate a similarity of regimes and the logic of their functioning. Analysis of institutional factors, that determine the direction of constitutional review, allows to identify the functioning features of formal institutions and procedures. The choice of similar formal procedures for constitutional changes in the post-Soviet region does not necessarily indicate a similarity of the tasks to be solved. They may be similar, different or opposite. Thus, the task of establishing constitutional stability can be resolved by amendments expanding the prerogatives of the parliament and, on the contrary, limiting them in favor of the executive. It is possible to change this choice in connection with

the loss of the dominant position in the parliament by the ruling party - the transition from the parliamentary system to the mixed one and vice versa.

In a comparative context, this calls into question the thesis of the direct connection between "constitutional design" and the parameters of regime, but it makes one resort to building a typology of the mechanisms of their correlation - situations when the form of government really determines its content, does not correspond to it (the imitational type of legitimization), or corresponds to it only partly, inferring the adoption of political decisions from the sphere of constitutional control (various modifications of nominal constitutionalism).

Outwardly very democratic amendment (eg, the transition from the presidential system to the parliamentary one) or the appeal to the sovereign-people in the form of a referendum may (and often does) serve as an instrument for prolonging elites in power (for example, the practice of referendums in post-Soviet region, prolonging the stay of the current leader in power or turning the president into a prime minister while retaining the power functions of the former leader and his party).

The cognitive dissonance of post-Soviet elites determines the conflict of the constitutional modernization and the instability of its results. Instability of post-Soviet constitutionalism is expressed in the stability of the contribution of amendments and the degree of predictability of their influence on the transformation of political regime. The mechanism for adopting amendments reveals the cognitive attitudes of the elite, the correlation of formal legal, procedural and technological preferences. However, it is cognitive and not legal guidelines that determine the goal-setting - the mechanisms and technologies used, including the vector of constitutional policy and the borrowing strategy.

The dynamics of constitutional reforms, the transformation of constitutional legislation and judicial interpretation remains unstable and resembles a neurotic cycle expressing the change of various psychological conditions - the transition from apathy (the desire to change nothing in the established rules of the game) to a sharp rejection of them (the desire to drop all the figures from the chessboard and start the party with a "clean slate"), disappointment (from the lack of rapid changes for the better) and autism (attempts to give out desirable for

valid). A concentrated expression of these impulses is constitutional amendment as a compromise, fixed in the constitutional law, between public expectations and a politically conditioned form of their satisfaction. Their real functioning characterizes the reductionism of settings: the transition from the proclamation of "radical" reforms to a restrictive interpretation of the meaning of innovations, followed by a return to the usual management patterns.

The stability of the contribution of the amendments is higher in case the level of political consolidation is higher, while the number of concurrent alternative projects is lower. The development takes place in the mode of political consensus no matter whether real or artificially secured; compliance with formal procedures is not questioned in society; the adopted amendments represent the linear development of previous changes rather than the rejection of them; finally, it receives a consistent legitimization in the course of subsequent political development. Until recently, these criteria are more in line with the amendments in authoritarian regimes characterized by a higher level of constitutional stability.

The dynamics of post-Soviet constitutional changes do not confirm the hypotheses formulated on Western principles, testifying to the limited legitimacy of constitutional institutions. The analysis of the dynamics of post-Soviet constitutional changes does not support a number of general hypotheses formulated on the basis of the Western constitutions:

- First, the durability of post-Soviet constitutions and the volume of assigned prerogatives of the executive are not directly correlated with the level of frequency of amendments;

-Second, the high level of frequency of amendments does not indicate the durability of constitutions, and, conversely, the low level of frequency of amendments does not point to the short life of constitutions. All post-Soviet constitutions are subject to criticism and adjustment almost from the moment of their adoption. Their fate is not directly related to the amendments introduced or the absence of such amendments. In any case, there is no consistent correlation of these parameters.

-Third, the rigidity of constitutions is not an insurmountable obstacle to their revision. Greater flexibility does not guarantee an automatic increase in the number of amendments;

-Fourth, the low frequency of amendments does not necessarily indicate an increase in the significance of judicial interpretation as a way of constitutional revision.

-Fifth, the choice of alternative strategies and instruments for revision (constitutional, quasi-constitutional, and unconstitutional) is determined not so much by the rigidity of the constitution as by the degree of stability of the political regime and the ruling elite as well as by the expectations of the success of the action in the short or medium term rather than long-term perspective.

In general, these features testify to the incompleteness of the formation of the constitutional systems of post-Soviet states and the limited scope of the legitimacy of constitutional institutions.

Classification of amendments by formal legal and political criteria enables to reveal their contribution to the choice of the regime transformation vector and predictable political effect. The definition of the role of constitutional amendments in the revision of the "rules of the game" within political regimes allows to classify amendments according to

1) the degree of formal conformity of the constitution (ie, the rules on the adoption of amendments and legislative review procedures);

2) the degree of influence on the constitutional interpretation of the principle of separation of powers - its radical revision (the introduction of a new form of government), the adjustment of the existing model (in favor of one of the branches of power), less significant changes;

3) the extent of the impact on the political system (changing the structure, the order of formation or functioning of institutions of power);

4) the degree of influence on the future trends of the political regime (towards democratization, authoritarianism or the emergence of new hybrid forms).

The revision of constitutional norms without formal adoption of amendments (in the narrow legal sense of the term) is carried out in three ways - modifications of legislation both constitutional and customary,

judicial interpretation and changing priorities of administrative regulation.

The radicalism of the amendments determines their strong impact on the adjustment of the political system in the short term, but it is less significant in the long term, as its effect is reduced by subsequent counter-amendments, legislative changes or the use of informal methods of audit.

The negative trends in the use of these alternative instruments of constitutional revision are obvious: the legislation of the post-Soviet countries under the pretext of "clarifying" constitutional norms and bringing them closer to "life," capable to significantly limit the scope of their application; the decisions of constitutional courts are contradictory up to the adoption of mutually exclusive decisions on similar issues in different countries or at different stages of the constitutional crisis in one country; the legitimacy is limited.

The contribution of informal political practices is rather significant. Their combined impact is not inferior to formal practices, and in some cases determines their selective application. Informal political practices related to the procedures of constitutional review can be divided into constitutional, extra-constitutional and anti-constitutional types, differing in the degree of destructive impact on the legal system. They cover all relevant procedures for the promotion of amendments in the political process and can be grouped as special technologies reproduced in countries of the region.

These include:

-the use of constitutional ambiguity (gaps and contradictions in the basic law) for the purposes of the current elite which is facilitated by a contradictory decision on who is the guarantor of the constitution - the parliament, the constitutional court, the president or the "people";

- restriction of public information or direct disinformation of the public about the purposes of the planned constitutional amendments, the use of euphemisms or concepts that distort the essence of the amendment, including unilateral formation of the political agenda;

- use of the institutions of direct democracy (referendums) as opposed to the constitutional institutions of representative democracy;

-tendentious (politicized) interpretation of norms by the institutions of constitutional justice, which take the side of one of the branches of power;

- involvement of quasi-constitutional institutions ("public" organizations) for the introduction and development of amendments (especially if the procedure for the formation and operation of quasi-public organizations is not clearly fixed in legislation);

- isolation of the opposition within the framework of the legislative institutes;

- behind-the-scenes conspiracy (decision on the amendment in a closed, intra-elite regime - behind not only formal institutions, but also of its own political parties);

- coerced promotion of amendments using various means to influence lawmakers - corruption, manipulation and threats.

The structure of informal practices reflects the changing nature of unconstitutional practices in adopting amendments.

The use of informal practices is presented in all spheres, levels and periods of constitutional regulation. It covers the spheres of legislative, judicial and administrative practices, constitutional and customary legislation, and it is highly important in situations of political instability.

While some of the informal practices do not conflict with the constitution (expressing the general features of any transitional political process and the difficulties of inter-party dialogue) or they are on the verge of constitutionality (exploiting the low political culture of society and the weakness of constitutional justice), others are openly unconstitutional, undermining the legitimacy of the relevant amendments. Examples are "unscrupulous" agreements of political parties (or their parliamentary factions and leadership); the imposed coordination of the actions of the ruling party and the opposition under the auspices of an outwardly "impartial" arbitrator; changes of procedures for discussion and adoption of amendments in course of their conduction; direct or indirect pressure of the authorities on the opposition or the courts; falsification of electoral process, information manipulation.

The volume of unconstitutional practices is less pronounced at the level of legislative regulation. Meanwhile, it increases at the level of

regulation of parliamentary procedures (changing the rules for their implementation), administrative powers and the adoption of judicial decisions on constitutional issues.

The cataloging of the application of informal technologies for the promotion of amendments across countries allows to identify the difficult-to-recognize alignment of power within the ruling regimes with respect to the vector of constitutional changes - from the supporters of "legalism" to the adherents of political expediency. A formal constitutional amendment may result from these gradual and inconspicuous constitutional changes, precede them, or articulate their cumulative impact on the transformation of the political regime.

Recognition of amendments or procedures for their adoption as unconstitutional does not mean their automatic legal abolition. However, it leads to a political conflict: in the event of a split in the elite, it becomes the basis for calls for actions of civil disobedience, and sometimes leads to the overthrow of relevant regimes.

The legalization of politics and the politicization of law in the adoption of amendments are the two sides of the instability of the constitutional policy typical to post-Soviet regimes. Legalization of politics is a general trend of regimes that have adopted constitutionalism as the legitimating basis of their existence. However, the attempt for strict formalization of procedures makes the relevant norms (usually borrowed from more advanced foreign models) incompetent. This, in its turn, motivates the struggle for their abolition. The politicization of amendments - the way they are actualized in the political struggle - is determined by the following reasons: they do not stem from a single legitimizing doctrine; the interpretation of the amendments is not neutral; administrative practices in the application of norms (especially taking into account the previous two components) tend to adopt a doctrine of discretion that involves a broad interpretation of the delegated powers of the executive especially in matters of security and struggle against separatism and terrorism).

The peculiarity of post-Soviet states is that these methods of constitutional review (more precisely, changes in the meaning of fundamental constitutional principles and norms) are poorly understood by society and legislators, but are in high demand by the current political

regimes. The political effect of constitutional amendments is different in the context of general trends of the policy of law (or the so-called "constitutional policy") of the post-Soviet regimes.

Some amendments actually mean a veiled coup d'état carried out with the continuation of the formal constitutional succession of the government when it actually changes (eg, amendments fixing a lifetime presidency or introducing an indefinite procedure for the re-election of one leader for the presidency).

"Childhood diseases" of post-Soviet constitutionalism is an expression of the conflict of goals and means of transformation. Rational choice in constitutional design is confronted with the lack of a full-fledged doctrine of constitutional modernization, bringing legal solutions to the victim of political expediency. The dysfunction is expressed in the following ways:

- conflict of overstated expectations of society from constitutional reform and the desire of elites to maintain political stability;

- contradiction in the priorities of constitutional regulation - gaining national sovereignty, building a legal state (formal equality of individuals) and protecting the rights of minorities (the first priority often contradicts the second one, both contradict the third one);

- non-compliance of goals and means of legal regulation (conflict of democracy and maintenance of stability in transitional societies);

- impulsive nature of conduction - a limited period of time for transformations related to the logic of geopolitical changes (orientation to external actors), the duration of the electoral cycle, and the desire of elites (national and ethnic clans) to maintain their own dominance.

The permanent "constitutional fever" is expressed in the ephemeral nature of constitutional changes, the comparative ease of which is combined with a multi-vector orientation, recurrent movements and the instability of realization.

This phenomenon reflects the childhood diseases of post-Soviet regimes: a limited amount of their democratic legitimacy, a general distrust of law as a form of social regulation, cognitive dissonance with regard to the priorities of constitutional policy.

Rethinking the doctrine of amendments and eliminating dysfunctions in their adoption is the way to sustainable political and legal development in the region.

Sustainable constitutional development presupposes overcoming the contradictions of constitutional regulation:

- the doctrinal rethinking of the priorities of the constitutional policy ("policy of amendments") by the ruling class of the countries of the region;

- the agreement between the main actors of the political process on long-term goals of constitutional modernization, with the possibility of legal fixation of the priorities of its strategy, goals and promotion tools;

- professionalism and continuity of the elite, capable of carrying out these goals in the long term under the conditions of democratic political competition, i.e. despite the change in the configuration of political forces in the parliament (the importance of public and legal ethics and the entrenchment of its values in the public consciousness and the practice of elites);

- independence of constitutional justice and development of a stable doctrine of political legitimization of judicial decisions in society (including anti-majority decisions, which are in conflict with the mood of society and elites);

- comparative study and generalization of the experience of constitutional amendments of the post-Soviet states to identify the causes of dysfunctions in their conduct (an official comment on this);

- description and fixation of informal practices for the promotion of amendments with the aim of elucidating their unconstitutional substratum and the possibilities for its elimination through directed legislative regulation (generalization of practices and the "roadmap" of their binding revision);

- independent monitoring of constitutional amendments as an important tool for adjusting political and legal regimes in post-Soviet states.