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The “Year of Historical Memory” and Mnemonic Constitutionalism in Belarus

VB verfassungsblog.de/mnemonic-constit-belarus/



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08 September 2022

Introduction: a “lesson of history” on 1st of September 2022 amidst the war

On 1st of September 2022, the academic year in all Belarusian schools started with an atypical lesson, on “historic memory” – led in Minsk by none other than the country’s “President” himself, Aliaksandr Łukašenka, who has been in power for a quarter of a century. Earlier, by a decree, Łukašenka’s government proclaimed 2022 to be the “Year of Historical Memory” (*hod historyčnaj pamiaci*). The decree follows Łukašenka’s demagogic compulsion over the interpretation of certain historical events, symbols and personalities, in particular, those regarding World War II, the “genocide of the Belarusian people” and, consequently, the regime’s epiphanies about symbolic and historical affiliations of the democratic opposition to “Nazi collaborationism”. Apparently, any alternative interpretation of history in Łukašenka’s Belarus, including probably this analysis – had it been written by a historian inside the country – risks leading up to eight years of imprisonment, in line with recent domestic criminal legislation.

This 1st-of-September pedagogic extravagancy took place amidst the Russian military aggression in Ukraine, where Łukašenka sacrificed Belarusian independence to allow Putin’s “de-Nazifying” army to attack Ukraine from the territory of Belarus, despite (unlike in Russia) barely existent support for this invasion amongst Belarusians, their close ethno-linguistic ties with Ukrainians and a history of splendid relationships between the two nations, whose cultural elites have been traditionally consolidated against Russian imperialism.

Unsurprisingly, Belarusians also form the largest foreign military unit fighting on the Ukrainian side and – despite all the terror inside Belarus – continue a strong partisan movement inside their country in support of Ukraine. The terror inside Belarus culminated after mass protests by citizens against Łukašenka’s impudently falsified election results (in 2020), leading to thousands of political prisoners, tortures and murders of the democratic opponents of the regime. In the meantime, the President-Elect (since 2020), Ms. Sviatlana Cichanoŭskaja (also transliterated as Tsikhankouskaya in anglophone sources), representing the country in exile at the moment, has been speaking explicitly – along with all other major Belarusian opposition leaders – in support of Ukraine and against Russia’s war. She also speaks

against the *de facto* “double occupation” of Belarus by both, the vassal Łukashenka’s regime (who lost the 2020 elections) and the unlawful Russian military presence (with its effective decision-making control) in Belarus.

Yet there is also a legal – even more so, *constitutional* – dimension to these developments on historical memory in Belarus, which are better grasped through the looking glass of mnemonic constitutionalism, a term I first introduced on this *Verfassungsblog* ([here](#)), in several academic publications (e.g., [here](#) and [here](#)), and which has been gaining momentum in memory studies recently. Through mnemonic constitutionalism, I address the advance of the legal governance of historical memory to the constitutional level. Mnemonic constitutionalism often encompasses, yet transcends, another legal phenomenon; that is memory laws. The heading “constitutionalism” replicates the notion that limitations can, and should, be placed on governmental powers. Mnemonic constitutionalism positions the authority and legitimacy of a state into the boundaries of a certain historical paradigm, whereas current and future attitudes and behaviours of state actors derive from and are limited by moral lessons of the past. Within mnemonic constitutionalism, the historical past becomes the foundation underlying the collective identity prescribed by either the national constitution itself, by legal provisions which traditionally shape the substructure of national constitutional law (such as citizenship laws), or statutes shaping collective identities by virtue of imposing specific understandings of the historical past. As I have demonstrated [elsewhere](#), without consciously or explicitly identifying this area of law-making, and without necessarily changing the constitutional text itself, new populist regimes in Central and Eastern Europe clearly perceive this invisible mnemonic constitution as an ontological foundation for their “illiberal democracies”, as a basis for an entire governance of historical memory and as justification for their current political choices. I will further unpack these choices made by Belarusian memory politics and apparent in the constitutional referendum of 27 February 2022, along with the rise of Belarusian memory laws and coercive mnemonic constitutionalism prior to, and after, Putin’s invasion of Ukraine on 24 February 2022.

Belarusian memory politics before and after the constitutional referendum of February 2022

Four demarcated time spans are indispensable for grasping memory politics and related legal aspects in Belarus, after the country gained its independence in 1991.

1. The years 1991-1994

The first covers the period between 1991 and 1994, when Belarus existed as a parliamentary republic, with a strong and vocal democratic opposition in the parliament, promoting the ethos of sovereignty, the revival of the Belarusian language and culture, liberal economic reforms, the pursuit of human rights and the rule of law. This first period inevitably led to a renaissance of Belarusian national historiography, including attribution of the early Belarusian identity to the medieval statehood of the Grand Duchy of Lithuania and an

acclaimed tribute to the proclamation of the independent Belarusian People Republic in 1918; the return of poets, novelist, artists, linguists who were repressed during the Soviet period, along with Belarusian émigré thinkers into the central cultural realm; and cultivating a memory politics that is comparable to the flourishing of national myths and de-Sovietization along with de-Russification in all other neighboring states in the post-Soviet period. This period also witnessed the revival of minority cultures in Belarus, including the rise of cultural, religious and political representation of the Jewish, Lithuanian, Polish, and Ukrainian communities.

2. *The years 1994-1995 and the period until 2020*

The second short span, 1994-1995, is particularly important as this is when Lukašenka won the first (and so far, last transparent) presidential election in Belarus. Since then, he has built an authoritarian state with the full expulsion of democratic opposition from the parliament, suppression of the rule of law and media freedoms, mass repressions and violence, and embedded machinery of consistently falsifying all of its elections and referenda. The very first referendum he staged in 1995 made Russian *de jure* the second official language. *De facto*, Łukašenka made Russian the only fully protected state language. The referendum has also re-introduced the Soviet-Belarusian flag and coat of arms (instead of the historic “white-red-white” flag that was used in Belarus in 1991-1994) and has constitutionally imposed closer economic ties with the Russian Federation.

This time span proved crucial for the entire subsequent period up until 2020, which can be characterised by a peculiar competition of two sets of memory politics in the country. One of them built upon the existing national historiography, stressing the uniqueness of the Belarusian identity and its historical development. To a certain – albeit weak – degree, its soft promotion has become possible due to the courageous activism amongst history educators at schools and universities, who for many years resisted the Russification and re-Sovietization when teaching Belarusian history, as well as thanks to the mobilisation of cultural activists along with the bare necessities – on behalf of the formally independent state – of maintaining albeit minimum diversification from Russia (*inter alia*, by virtue of national toponymics, Belarusian spelling of the names as well as modest investment into restoration of historical monuments). Yet the second competing politics of memory, with its cult of World War II (or rather “Great Patriotic War”, the post-Soviet vocabulary and chronology transplanted from the Russian analogues) has been incomparably more powerful, due to its sustainment by Łukašenka’s state machinery (including financially). It has encompassed not only the explicit linguistic Russification of everything (from teaching at schools and universities to Russian becoming *de facto* the only language of court proceedings), but also showcased Belarusian historiography and cultural representation as derived from the Soviet hagiography of Belarusian statehood. Whilst imperial Russian concepts have also been given a green light for competing on this *non-free* market of historical ideas in Belarus, the state’s memory politics foremost favoured the Soviet elements of historical narratives (including pompous military parades glorifying victory in the “Great Patriotic War”, on 9 May),

rather than outright Russian imperialistic constructs (the latter deny Belarusians and Ukrainians any historical agency and independent identity). Civil society, with its mnemonic practices, has continued to function inside the country, though under quasi-dissident conditions.

3. The year of 2020

The unsuccessful mass protests of 2020 triggered the start of the third time span which is crucial for understanding the escalation of Łukašenka's politics of memory and the rise of mnemonic constitutionalism. This new period was marked by its unsuccessful though impressively massive and peaceful uprising against the dictatorship of Łukašenka after presidential elections in August 2020. Despite their fraudulent result, the elections have demonstrated the unequivocal victory of a democratic – albeit completely accidental – candidate, Ms. Sviatlana Cichanoŭskaja (Tsikhanouskaya), with all the major opponents of Łukašenka (including her husband) having already been imprisoned that summer. The peaceful uprising was brutally suppressed (with Russia backing Łukašenka's cruelty), alongside several people losing their lives (including those under circumstances that were not investigated), thousands of people being tortured and imprisoned, and hundreds of thousands leaving the country in the two years that followed (both as political refugees and even more so as economic migrants escaping the dictatorship). The widespread use of the red-white-red flag and other historical symbols during the protest constituted a trigger for the impulsive turn in Łukašenka's politics of memory, towards not only a *re-Sovietization* of the historical policies, but also – to a large degree – their substitution with Russian historiographic myths. Furthermore, support by Poland and Lithuania extended to the Belarusian democratic opposition has led to Łukašenka's notoriously aggressive stance towards not only activists of the Polish and Lithuanian minorities, but also towards the periods of the Belarusian historiography that are shared for Belarusians with Lithuanians (during the Grand Duchy of Lithuania) and with Poles (the Commonwealth of Poland and Lithuania, and the later period up until 1939), along with Łukašenka's staging of the refugees crisis on the Polish and Lithuanian borders. Putin's economic and political support of Łukašenka's suppression of the mass peaceful protest has led to daily arrests, as well as gigantic political and social repression on various levels.

4. The year of 2022: the war and the referendum

The final demarcated period, the current year of 2022, marks another evolution in the memory politics of the dictatorial regime in Belarus. Memory politics serves as a partial justification for the war in Ukraine, by absorbing to a large degree a Russian colonial outlook on Belarus and fighting national historiography as “nationalist” (that is, pregnant with “Nazi ideas”, and threatening the ontological security of the Union state of Russia and Belarus, in the words of Belarusian TV propaganda). Back in the winter of 2021, a law recognising the “genocide of Belarusian people” (supposedly committed by the German Nazis and their collaborators during “Great Patriotic War”) was introduced. At that moment, civil society on

the territory of Belarus de facto ceased to exist; even in the dissident conditions within which it survived in between 1994 and 2020. Members were either imprisoned (and often physically tortured), or tried to launch new channels of cultural communication in its ever-growing diaspora of political and economic émigrés, foremost in the neighboring Lithuania and Poland.

A fraudulent constitutional referendum in February 2022, taking place immediately after the Russian invasion of Ukraine (substantially from the Belarusian territory), has introduced to the Basic Law, amongst other provisions, the monstrosities of mnemonic constitutionalism as follows:

[Article 15] *The State shall be responsible for the preservation of the historical, cultural and spiritual heritage and the free development of the cultures of all ethnic communities living in the Republic of Belarus. The **state ensures the preservation of historical truth and memory of the heroic feat of the Belarusian people during the Great Patriotic War.***

[Article 54] *Everyone is obliged to protect the historical, cultural, spiritual heritage and other national values. The **manifestation of patriotism, the preservation of the historical memory of the heroic past of the Belarusian people are the duty of every citizen of the Republic of Belarus.***

For an overview of these and other 2020-amendments to the Belarusian constitution, see the Urgent Interim Opinion of the Venice Commission, published in advance of the referendum.

The rise of memory laws and its victims amidst the “year of historical memory”

Ironically, Putin had nothing better to justify the Russian invasion of Ukraine in February 2022 than reference to historical propaganda with his slogan about the “artificial” and erroneous existence of Ukraine – a country, he claimed, created by communists. This claim fits the narrative of the last decade of Putin’s presidency, continuously imposed on the Russian audience by his TV propagandists – of whom even Goebbels would have been jealous. They were successful in inciting hatred against Ukrainians along with nurturing the maniacal belief of many Russians in their superiority, explicit in Medvedev’s recent Tweets.

In contrast, until 2020, Lukašenka did not build his memory politics directly upon the Russian colonial myth. His propaganda neither resisted nor explicitly promoted Russian imperialist doctrines, despite the full dependency of his regime on the Kremlin and linguistic Russification of the country. Ukraine was not portrayed therein as an antagonist state, leading to – ironically – a notable popularity of Łukašenka amongst Ukrainians in the epoch. Yet, like Putin, Łukašenka was notoriously known in the post-Soviet space for his rhetoric of whitewashing and denying crimes of the Soviet regime, as well as for promoting various cultural policies that have effectively kept on reproducing the cult of the Soviet state and the hagiography of the Great Patriotic War (1941-1945). Nonetheless, the spectrum of Belarusian memory laws during his presidency remained rather modest in comparison to the

veritable boom of such legislation on historical memory in neighbouring Poland, Russia and Ukraine, where these laws have been to a large degree converted into swords and shields during so-called “memory wars”. The Belarusian legislation contained only rather standard – for this region – provisions in this regard, e.g., about criminal prosecution for denying the crimes of the Nazi (though of course, characteristically, not of the Soviet) regime. The failed peaceful uprising of 2020 has led to a neurotic political rhetoric that has accelerated the discussion and adoption of memory laws by the puppet that is Łukašenka’s parliament, including, by far the most scandalous, a criminal provision on the denial of the genocide against Belarusian people.

By introducing this law, the Belarusian parliament has seemingly borrowed from both Polish and Russian samples, by elevating memory populism in constitutional law towards almost surrealistic demagoguery. The 2021 Belarusian “memory law” added Article 130 to the Criminal Code of Belarus, resulting in a penal measure of five-to-eight years imprisonment for the denial and trivialisation of the “genocide of the Belarusian people” during 1941-1945 and up until December 1951. Thus, it also covers the period of the anti-Soviet national Belarusian resistance after 1945, in the communist-occupied territory of Belarus. Similar to Putin’s version of mnemonic constitutionalism, this law frames World War II as the “Great Patriotic War” – transplanting post-Soviet Russian historiographic ideology and denialism of the joint Soviet-German aggression towards Poland in 1939. Unlike the 2018 Polish analogue of this law (often – erroneously, in my opinion – referred to in press as the “Polish Holocaust Law”), which it seems to almost mock in rhetoric, the Belarusian version does not even hint at the Holocaust or the Jews. It equates the latter to the political ethnonym of the “Belarusian people” (*беларускі народ*), although clearly most of the “Belarusian” victims of the *systemic* annihilation in Nazi-occupied Belarus were Jews. Unsurprisingly, the law has been criticised by the Israeli press (yet comparably less widely than the analogous Polish affair of 2018). By no means has the law been a sleeping monster – it has been weaponized to attack independent media, leaders of the Polish minority in Belarus, along with cultural figures, historians and even tour guides. The propaganda agencies explicitly link “genocide of the Belarusian nation” to the imagined “rehabilitation of the Nazi collaborationism” by the democratic opposition.

Since the year 2022 has been announced as the “year of historical memory” in Belarus, it raises further concern for the protection of minorities, the safety of historians as well as the broader freedom of academic research being conducted under this dictatorial regime. Most recently, the regime went as far as demolishing burial places of Polish soldiers, to give just one example on how this year has been unfolding for the “respect of historical memory”. There is not a single independent TV channel, radio station or a newspaper functioning in Belarus in 2022. Rather the state propaganda that fully controls the media and press has been emphasizing the binary ontology of “good Russia” versus “evil Poland and Ukraine” in interpreting the past and the present of Belarus. The truly barbaric acts over Polish graves has been just some of the myriad daily episodes in this memory war of the regime.

Epilogue: Łukašenka's Take on Mnemonic Constitutionalism

Łukašenka's constitutional novelties of 2022, approved during the completely staged and state-controlled referendum of February 2022, have in several respects mimicked the constitutional provisions contained in Putin's 2020 variant of the constitution, stressing the "heroism of the Belarusian people" and even a "constitutional duty" to protect the memory of such heroism. Seemingly, when compared to both Russian constitutional provisions in 2020 and an earlier Hungarian example (taking the 2010 Basic Law by Fidesz, with its powerful mnemonic constitutionalism), both of which were promulgated via referenda, the provisions on historical memory in this novelised constitutional text are clearly designed to mask other, broader, amendments that are arguably ruining the remains of liberal democracy and rule of law requisites. In many respects, the Belarusian memory laws of 2021-22 stand in stark contrast to the Ukrainian de-communization laws of 2015 and 2022. In my recent publications, I argue that mnemonic constitutionalism (that to a certain degree, exists perhaps in most if not all countries in the world, including those without a written constitution) is not necessarily a bad thing. Yet the mnemonic constitutionalism of Central and Eastern Europe, as seen in recent years, clearly indicates the instrumentalisation of militant memocracy (i.e. governance on the basis of memory) amidst the decline of liberal democracy and rule of law in the region. Belarus joined this stream of mnemonic constitutionalism, memory laws and memocratic governance prior to, and during, the war. The year 2022 that Łukašenka declared to be the "year of historical memory in Belarus" serves as an ideological shield justifying the undeniable complicity of the regime in Putin's attack on Ukraine. The peculiar mnemonic constitutionalism, along with a number of memory laws in the country, in contrast, serves as a Russifying and re-Sovietising ideological sword against pro-European democratic national-oriented Belarusian opposition in the country, where the absolute majority (unlike in Russia) is against this colonial war of the decaying Russian empire.

The despairing reality of recent months has exposed the monstrosity of Russifying and re-Sovietising memory politics. One can get arbitrarily arrested by the police in Belarus for the pure "crime" of speaking Belarusian on the street, for providing a small independent historical city tour (even free of charge), and even detained for several weeks for opening a book shop with Belarusian history books and literature, or for singing a Ukrainian song in public. One can receive a prison term for putting a "like" on social media or get detained (tortured, humiliated and video-taped for the state TV) for posting pictures with a historical "red-white-red" flag of Belarus. One can get five-to-eight years of imprisonment for stating that Soviet Russia and Germany illegally attacked Poland in 1939, or for expressing a doubt about the juridical sanity of the term "genocide of the Belarusian people", as applied towards the murder of every fourth dweller of Belarus in the 1940s (while most of those systemically assassinated were Jewish). Not to mention all the inhuman treatment (in cold tiny unhygienic cells, without walks or letters permitted) and huge prison terms (along with threats of capital punishment, still executed) for the Belarusian partisans damaging railways to prevent

movement of Russian military resources to Ukraine. All of these instances shape the gloomy reality for a country under *de facto* Russian military occupation, facilitated by an unelected dictator obsessed with the Soviet past and molesting the Constitution via fraudulent referendums. The dictator has been slowly but surely converting Belarus into North Korea.

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