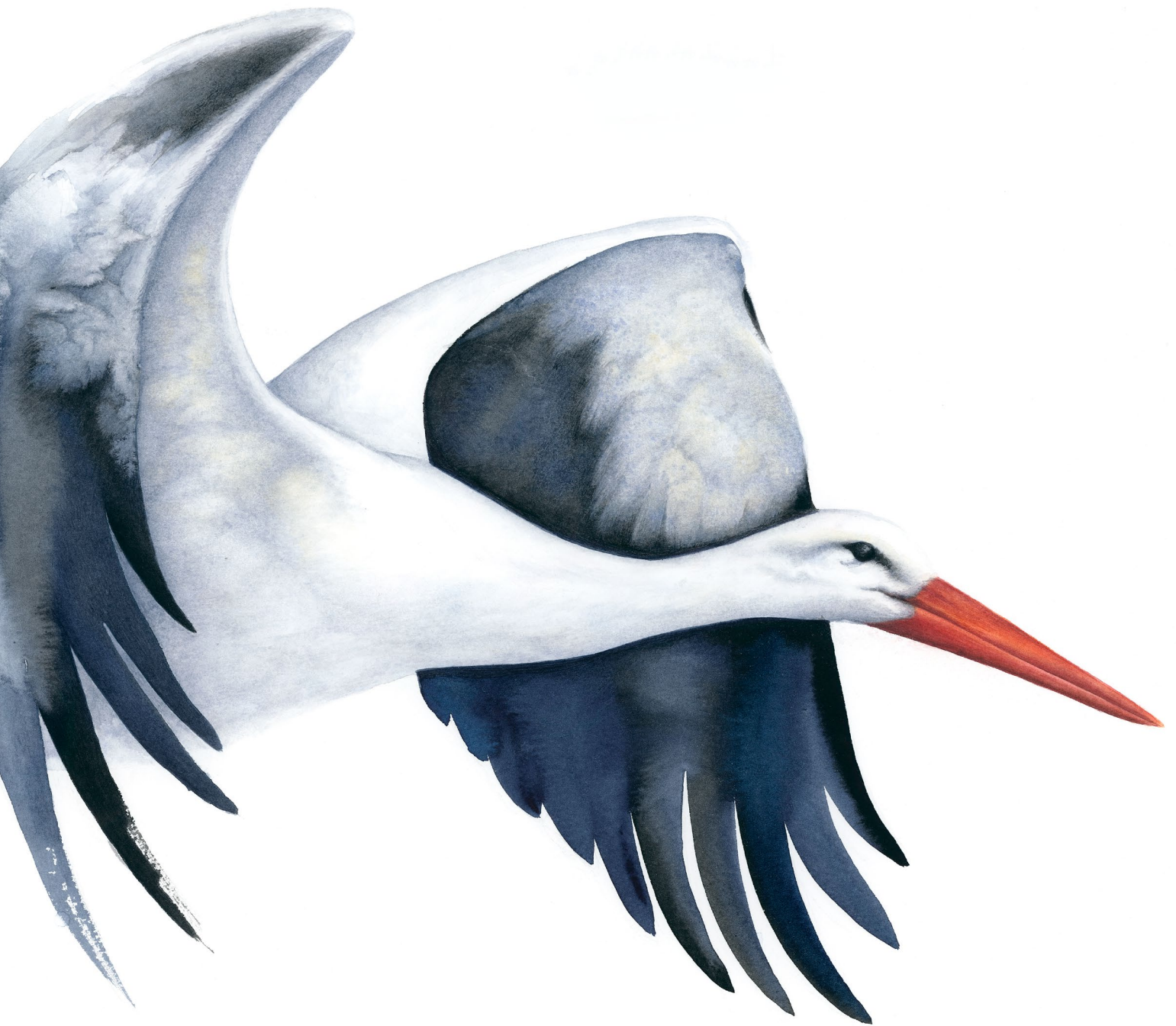


A Constitution

CREATED BY THE CITIZENS



Constitutional assembly in Belarus



Marcin Gerwin



A Constitution

CREATED BY THE CITIZENS



Constitutional assembly in Belarus

Introduction

A constitution is at the basis of the functioning of the state. It is where the civil liberties are defined, it describes the way the government works, how the courts are organized, and many other important issues. All the bills that are created afterwards, all their individual provisions, must comply with the constitution. Creating a constitution correctly provides a framework for how the state is to function, for its effectiveness, and it has an influence on the quality of life of the citizens.

Until now, the drafts of constitutions were primarily created by lawyers and politicians. Their proposals were often submitted to a referendum, which is good practice because the public has an opportunity to approve them. The citizen participation, so far, consisted primarily in this final vote. What if, however, society was involved in the creation of the constitution already at the stage of writing down individual regulations and only then would the ready text be submitted to a referendum?

Political changes in Belarus are taking place at a particular moment. A new form of democracy – deliberative democracy – is gaining popularity in the world. Its primary element is the citizens' assembly, a randomly selected group of citizens whose composition reflects the demographic structure of a given country or city. In other words, it is a city or state in miniature. The demographic criteria taken into account at the state level are, for example: age, gender, level of education, breakdown between urban and rural areas, as well as individual regions of the country. Ethnicity or language can be also included, depending on a country.

What does it mean that the demographic criteria are reflected in the composition of the citizens' assembly? If, for example, an age group 18-24 years old constitutes 12 percent of the population, then 12 percent of people in the assembly would be from that age. In the same manner, if women make up 53 percent of the population, women will make up 53 percent of the assembly. This is how the state in a miniature is created.

Citizens' assemblies have recently been organized in countries such as the United Kingdom, Ireland, France, Belgium, Poland, Germany, Canada, Denmark and Australia. The list keeps growing longer and longer. This popularity of citizens' assemblies is related to the fact that they bring well-thought-out decisions that have

the common good of the entire community in mind. The meetings of a citizens' assembly begin with a learning phase, during which the assembly members learn about a given topic, they listen to the presentations of experts who present various positions and solutions, and they listen to speeches by representatives of NGOs, public offices or institutions (depending on the topic). The aim is to become as familiar with the topic as possible. Therefore, they can ask experts questions, request analyses, and additional materials - basically everything they need to understand the essence of the matter and the possible solutions.

The key part of the citizens' assembly is also deliberation, which includes discussing for example the advantages and disadvantages of particular solutions, and learning what other assembly participants think about given proposals, whether by talking in smaller groups or in a plenary. Due to the fact that the citizens' assembly is a very diverse group - it includes people of different ages, from different professional groups, with different life experience - assembly members have a chance to learn how a given issue is perceived from other perspectives. The aim of this is to deepen one's understanding of the topic as well as what impact that proposed solutions can have on the lives of others, not just ourselves.

NGOs, institutions or public offices related to the topic of a given assembly may present their position directly to assembly members by attending an assembly meeting (as is the case in Poland) without having to conduct a campaign, as it happens, for example, before a referendum. This, in turn, means that it does not matter who has what financial resources, since the chances are equal when it comes to the possibility of presenting one's arguments and proposals. A campaign is simply not needed.

Citizens' assembly meetings are conducted by facilitators. These are people whose task is to help participants conduct discussions and develop recommendations. Their role is also to give the floor to the speakers, as meeting moderators do, but facilitation is much more than just that. It also involves creating a friendly and safe environment where people feel they can speak freely, and preparing exercises to help participants gain clarity on what they would like their final recommendations to be.

It is also a crucial point that the participants of citizens' assemblies are selected at random - this allows them to be independent in making their decisions. There is no party leader to give them a place on the electoral list and thus be able to have an influence on who votes how. There is no party discipline that makes assembly members vote as a party leader or board expects them to. There is also no thinking

in terms of what can be done to get reelected to the assembly. There is no competition for the votes, there is no attacking people from other political groups, there is no rivalry in order to win seats in the assembly. All of this is possible simply due to the fact that there are no elections to the assembly. As an independent assembly member, one can honestly consider what is the best solution in a given matter and cast votes accordingly. This is what the lottery ensures.

A citizens' assembly may also be organized to draw up a new constitution. This opens the way to a constitution that is written so that the functioning of the state is beneficial to the citizens, with both the individual and the common good at its centre.



Constitutional assembly in Belarus

Who can take the initiative to organize a constitutional assembly in Belarus? If it is to be an official assembly, organized by the state, then the initiative may come from the president after conducting transparent and credible elections. Then she or he can appoint a coordinating team for the citizens' assembly that will design and prepare the entire process.

By its nature, the constitutional assembly will be a large one, as it will have to resolve many issues at once. In addition, its size should be trustworthy – after all, this is about the constitution. For Belarus, it may consist of 500-600 people, depending on the number of specific topics agreed upon (more on that in a moment).

In terms of its demographic structure, the composition of the assembly should be selected in such a way that, on the one hand, it allows reflecting what the society looks like and, on the other, taking into account all the criteria that are important to this society. Therefore, this may include such demographic criteria as:

- 1) gender,
- 2) age,
- 3) level of education,
- 4) place of residence - rural area, town, city (over 100 thousand inhabitants),
- 5) region,
- 6) ethnic group.

This list of criteria is only an example - ultimately the criteria should be established by the inhabitants of the country the assembly is held in (in this case, Belarus). This can be done in a special workshop.

A decision should also be made as to who can become an assembly member. Will they be only those who, for example, have the right to vote in a referendum, as in Ireland? Perhaps this group would be broader or narrower for some reason? Either way, this should be clearly defined.

Random selection for the assembly should have two stages. First, people who receive an invitation to participate in the assembly are selected and the invitation letter is sent to them. Then, the final group of assembly members is drawn from among those who expressed their willingness to participate. There are various ways to conduct the whole process of random selection, but sending out invitations in the form of a letter seems to be a good approach for Belarus. Other options include drawing phone numbers (random digit dialing) or households the surveyors will visit. People who receive an invitation to participate in the assembly will be able to apply for participation by phone or by registering on a special website.

In order to facilitate the conduct of the assembly, special provisions may be adopted in the law, for example allowing for the use of the voter register to send invitations to specific persons. Therefore, a short bill on the constitutional assembly may be created, which will include its basic elements – a legal framework.

The drawing of assembly members should be carried out in a completely transparent manner, which will not raise any doubts as to its correctness. For example, the method used in Poland involves throwing ordinary dice, which is broadcast live on the Internet. Moreover, members of the monitoring team (composed of representatives

of various interested parties) can observe it in the studio where the draw is being carried out. The drawing can also be done with numbered balls, like those used for bingo. The point is that it is best to use a physical method, rather than a computer algorithm, because it increases confidence of the public that it is done correctly.



First part of the assembly - drafting proposals

A constitution is a very broad topic. So how should one go about it, since most of the citizens invited to participate in the assembly may not have any experience with creation of a law, much less a constitution? The key is to break the whole topic down into small sections, so that the assembly members will have time to delve into these pieces and get to know them really well, understand the nuances and possible solutions. What might these smaller bits look like in the case of a constitutional assembly? They may include, for example, issues such as:

- 1) Citizen freedom and rights,
- 2) State governance model,
- 3) Centralization versus decentralization,
- 4) Public participation in decision making,
- 5) Judicial system,
- 6) Protection of civil liberties.

The premise here is that each detailed topic will be dealt with by a separate subgroup of assembly members, consisting of at least 50 people. These specific topics

should be small enough to be discussed over a period of 6-8 months, assuming that the assembly meets once a month on weekends. Online discussions could also take place between meetings, if that is deemed practical. Of course, the above list of topics is only an example and it should be defined precisely when preparing the assembly. It may therefore turn out that there will be more specific topics, and then the assembly itself could be larger than 500-600 people, because there should be at least 50 people per topic (also taking into account the basic demographic criteria that will ensure each subgroup's diversity).

The overall number of meetings should be such that the process will be accessible for potential assembly members, as the point is to make participation in the assembly available to as many people as possible. It is worth emphasizing that participation in the assembly is paid - assembly members receive an allowance and reimbursement of travel costs. If part of the meetings are held online, they are also provided with technical support and appropriate equipment, such as tablets.

The assembly could start with a discussion of the values that are to underlie the functioning of the state, determining the general direction and a vision of the state. After that, the individual subgroups can meet separately. The coordinating team should also check whether some cross-cutting issues that relate to more than one group arise during the assembly's meetings. A mechanism to resolve them should be created. It may also turn out that one of the topics is so broad and controversial that a given group finds itself unable to resolve it within the allocated time. Such a topic can then be "parked" and resolved by organizing a separate citizens' assembly devoted only to this specific issue at a later time.

Meetings of each group should start with a learning phase. For example, the task of the "State governance model" group would be to decide which model of government would be the best for Belarus - whether it would be a presidential model, such as the one in the United States, a parliamentary-cabinet model, as in Poland, a parliamentary-committee model, as in Switzerland, a semi-presidential model, as in France, a chancellor-parliamentary, as in Germany, or perhaps some other formula? For the first few months, people from this subgroup would only learn about various systems, their strengths and weaknesses. Only after the learning phase is complete would they move on to the deliberative part, when a specific solution would be developed for Belarus.

Likewise, the subgroup dealing with the specific topic of "Public participation in decision-making" would first learn about various forms of public involvement in decision-making, such as the legislative initiative, referendum, recall referendum, or citizens' assemblies, to eventually develop a list of recommendations. These thematic subgroups may be called "committees".

Importantly, initial proposals for solutions for specific topics would be collected as part of open workshops that should be organized throughout the country - in villages, large cities, and small towns, in all regions. This part provides wide access to the assembly for all who are interested in participating. The premise here is that any person can submit their proposal for any of the topics. These proposals would first be gathered and then presented to the assembly members as introductory material during the learning phase.

The aim of the first part of the assembly is to develop proposals for solutions for specific topics. While some proposals may be created in the form of laws in a legal language, this is not yet "writing up a constitution". This is the aim of the second part of the assembly.

The first part of the assembly is concluded with sending out the ready proposals in printed form (as a booklet) to all Belarusian citizens who have the right to participate in a referendum. Then there is, say, a month to collect their comments, remarks and suggestions on what the participants have prepared. All these comments are gathered and forwarded to the assembly members at the beginning of the second part.

Part two - drawing up the text of the constitution

Writing legal texts that are precise and clear is a skill that may take years to master. It requires experience and a lot of learning. Learning this skill goes beyond the time that is allocated for the assembly - these are expert skills. Therefore, it is best to invite experienced lawyers to write up the final text of the constitution. They would be chosen by the assembly members themselves. The role of the team of lawyers would be to best translate the assembly members' intentions into formal legal language, formulate their chosen solutions and give the text of the constitution an appropriate form. Any missing elements of the constitution can also be added at this stage to make it a complete text. At this stage, the role of the assembly members would be to ensure that their intention was accurately reflected in the constitution.

This part may also take several months. It can be assumed that these will be both in person meetings and meetings carried out online for convenience. The role of lawyers would also be to check whether all the individual parts fit together well into one text, and whether the whole is consistent. What is worth emphasizing here is that the assembly members would have control over the text at all times - it is up to them to approve the wording of particular items or sentences. The task of lawyers is to prepare the content for the assembly's approval.

The whole text of the new constitution can first be presented online in order to collect the final comments and remarks from the public within, say, a month. This part is important because it ensures participation in the creation of the constitution of everyone who is interested, rather than just the group that was randomly selected. Therefore, open public consultations would take place three times - first as part of the initial workshops, then as part of collecting comments on the proposals developed (after sending them out in paper form) and then again, at the very end.



Adopting the new constitution

When the new constitution is ready in its final form, it is worth printing it out and sending it to all those who have the right to participate in a referendum. Despite the fact that the constitution was developed by the democratic citizens' assembly and with the participation of the public, at the end of this process it would be best

to confirm its adoption through a nationwide referendum. Sending out the constitution in printed form is intended to enable citizens to vote consciously after reading it.

It can be assumed that after 4 or 5 years, the members of the constitutional assembly would meet again to see if everything is working as they have envisioned it. If not, then they could create a list of issues to be reviewed, which could be handled by randomly selected groups of people in thematic citizens' assemblies. Therefore, at this stage, the role of the assembly members who had created the first version of the constitution would only be to indicate the topics to be resolved, and others would take care of them. In this way more citizens could take part in this democratic process. Of course, a new learning phase would be prepared for them, as it is done at any citizens' assembly.

Team preparing the constitutional assembly

Who actually designs and runs citizens' assemblies? A special coordinating team is appointed for this purpose. A basic principle is that the team that deals with this is independent of the body that has initiated the assembly. In practice, this means that if the citizens' assembly is called for by the president or parliament, the coordinating team will not include anyone who works in the state administration. Moreover, the coordinating team should be neutral in relation to the topic of the assembly (they should not be activists or members of NGOs dealing with the issue at hand). This team should also be independent in deciding how the assembly is designed at each stage.

Why is that important? Because the president, individual ministries or parliament are stakeholders in the assembly process - they can present their position on a given issue, propose solutions or comment on other proposals. Therefore, they are not neutral. And neutrality here is important because it serves to ensure that all stakeholders are genuinely treated equally and that the course of the assembly is credible in the eyes of the public. Like in a football match - when the teams of two countries play, then the referee is from another country, so that no one would accuse them of favouring their country's team.

The general standards for the organization of the assembly, its rules, detailed procedures and organizational structure can be developed by a design team, which is separate from the coordinating team. This solution is particularly useful in countries where the assembly is being organized for the first time or where there is still little experience with deliberative democracy. Such a design team may then include

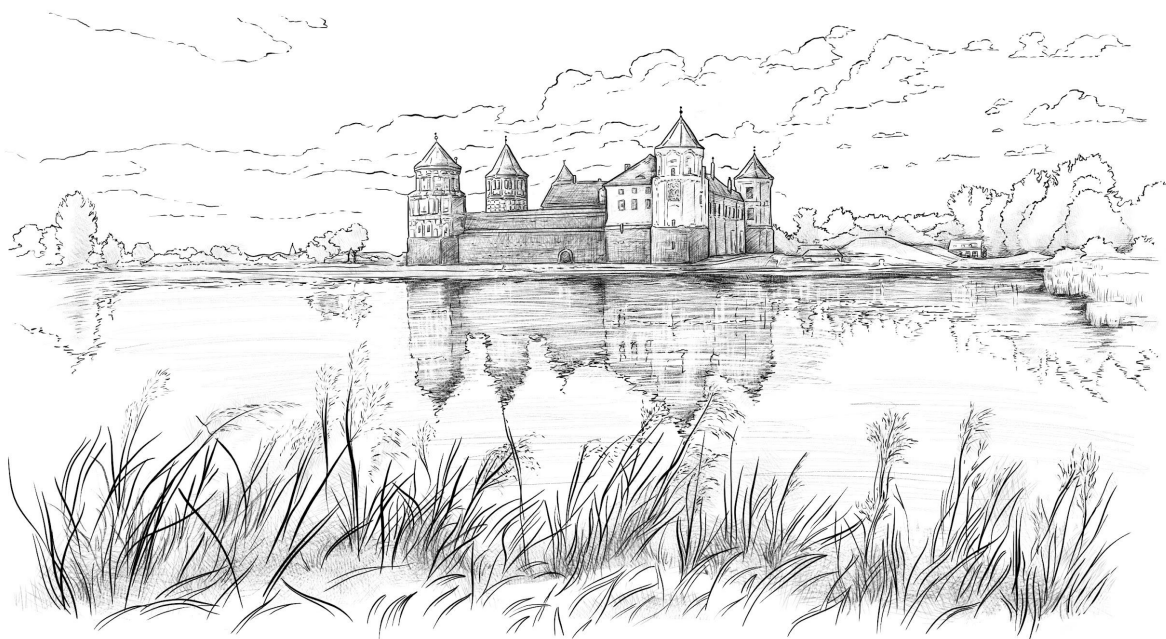
an international group of experts in deliberative democracy. On the other hand, the implementation of the assembly - organizing meetings, inviting parties, creating the agenda - all this should be on the side of the coordinating team, which is made up of people from a given country. An example of a set of rules and procedures for organizing a citizens' assembly is described in the "Rivendell Model" which is available in English.

It is a good practice that a monitoring team is appointed to supervise the proper course of the citizens' assembly and compliance with standards relating to its quality. This is a "security" measure. Members of the monitoring team should include a wide range of people who are associated with a given topic: from politicians, through representatives of universities, to people from NGOs. In the case of a constitutional panel, this group may be very large - it may include representatives of the president, ministries, parliament, city offices, universities, trade unions and NGOs. The general rule is that all relevant social groups related to a given topic should have their own representative there.

The main task of the monitoring team is to react to possible reports of violations of standards that may arise during the organization of the assembly. For instance, if an NGO has been refused to participate in the assembly by the coordinating team, then that NGO may appeal to the monitoring team. Then the monitoring team will make the final decision on this matter. It may also happen that someone thinks that the learning phase of the assembly will involve too many experts supporting some specific solutions. Such an issue can also be put forward to the monitoring team, which may find a violation of the standard with regards to presenting various options at the assembly. The monitoring team then invites the coordinating team members to a meeting and calls them to restore compliance with the standards.

But what if the coordinating team is not willing to agree with what the monitoring team is pointing out? In such a situation, an arbitration procedure may be initiated and the final decision on the issue - whether, for example, changes should be made in the assembly's agenda - will be taken by a group of arbitrators specializing in the given field. A detailed description of how the arbitration procedure is organized should be included in the assembly rulebook (you can see what it looks like in the "Rivendell Model"). The assumption here is that the final decisions on a given matter are made by those who understand the topic well. Therefore, the arbitrators are drawn from a group of experts.

As part of the preparation for the citizens' assembly, special software is created to support the selection of assembly members. The number of invitations to be sent to individual parts of the country and the number of assembly members per region of the country is calculated. So there is quite a lot of math at play here. Not everything can be counted, though. Designing a citizens' assembly right could be considered to be an art. To do this, it is useful to understand how democracy works, as well as the psychology of decision making. Clear intuition is important, as well as knowing what to do to create a friendly atmosphere of the assembly. It is crucial that the coordinating team trusts that people can make wise decisions, that they can see what is best in people.



Why organize a constitutional assembly in the first place?

Is it really worth all the trouble? Do all these meetings, random selection procedures, deliberations and public consultations bring any tangible benefits? In other words - is it worth the effort? Wouldn't it be easier to order an entire new constitution from experts? Of course, it would be easier. The question is, however, what would be included in it and whose interests would be represented and considered a priority? To what extent would the public be able to change its course, if there is something it deems unwanted? And what mechanism would ensure such a correction, if needed?

First and foremost, the organization of the citizens' assembly means the possibility for the society to say what sort of country it wants to live in. How is it

to be designed? What rights and freedoms will be considered fundamental? The answers to these questions would not be imposed on people. Instead, they will be determined by the sovereign, who in a democratic state are ordinary people making decisions with regards to their lives.

Since society itself will review and consider various options, it is very likely that the options chosen will be beneficial to that society. This is linked with the learning phase - participation of experts, as well as the stakeholders: NGOs, institutions, universities, which will be able to explain every detail and show the pros and cons of individual solutions. And above all, it is linked with the fact that people themselves will consider these options.

It is also very likely that the society will ensure that it remains in control of the actions of politicians, that specific mechanisms will be developed to do it effectively. Why can it be assumed? Again, because it is ordinary people sitting in the room - a society in a nutshell - wondering what would be beneficial to them.

Organizing the citizens' assembly also ensures a greater sense of ownership of the constitution, which was developed in such a manner - the notion being that "This is our constitution, created by the people of this country. We have had the opportunity to be randomly selected to participate in the assembly, and people like us took part in it. We have had the opportunity to submit our proposals, comment on what had been proposed, and in the end, it was us who adopted this constitution in a referendum."

In practice, the assembly's formula also means that a wide range of different options is taken into account and that many possible solutions can be pondered. This is ensured by the principle of including various options in the learning phase, as well as by inviting all stakeholders without the coordinating team choosing just some of them. This, in turn, means that solutions that have not been heard before, and which, in the course of discussions, were considered the most favourable, can be adopted.

And finally, organizing a constitutional assembly would mean a new story at the basis of a resurgent country. After many years of autocratic rule, the people themselves defined how the state should look and operate and put it in the constitution. They created a constitution that they consider as their own and set out the rules for the functioning of the state that they also consider as their own.

That is why it is worth it.

Illustrations on cover and title page: Ewa Hapek

Black and white illustrations: Eszter Csordás

Graphic design: Ewelina Rivillo

Sopot, September 2021

citizensassemblies.org