

Presidentialism vs constitutionalism in Central Asia: election time-management

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Abstract: *Presidenzialismo contro costituzionalismo in Asia centrale: la tempistica elettorale* - This article uses examples of recent constitutional developments in Central Asian countries to illustrate how the design of presidentialism in Central Asia is not conducive for democratic constitutionalism. Specifically, it is shown that presidential powers with respect to calling elections are designed with the idea that the president controls the timing of elections and remains in the driving seat. I argue that such constitutional designs are a priori incompatible with constitutionalism.

Keywords: Constitutionalism; Constitutional design; Central Asia; Constitutional reset; Elections; Presidentialism.

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1. Introduction

Constitutional developments in Central Asian countries have often been approached from a historical perspective, describing the hardships of transition from communism to constitutionalism and specific challenges faced by Central Asian countries in this process.¹ More recently, constitutional scholars have focused also on the contemporary results of such transition and different aspects of constitutional development in the region.² These results do not, evidently, demonstrate adherence of the Central Asian states to democratic constitutionalism, prompting analysis of Central Asian constitutional developments in light of the «constitutionalism with adjectives», such as abusive constitutionalism,³ authoritarian and illiberal constitutionalism.⁴

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¹ See e.g. J. Anderson, *Constitutional Development in Central Asia*, in 16(3) *Cent. Asian Surv.* 301 (1997); E. Akerman, *Democratisation in Central Asia: Communism to Clanism*, in 2(1) *Conflict, Security & Development* 133 (2002); E.A. Allworth, *Central Asia, 130 Years of Russian Dominance: A Historical Overview*, Durham (N.C.), 1994.

² See e.g. S. Newton, *The Constitutional Systems of the Independent Central Asian States. A Contextual Analysis*, Oxford, 2017.

³ D. Landau, *Abusive Constitutionalism*, in 47 *UC Davis L. Rev.* 189 (2013).

⁴ M. Tushnet, *Authoritarian Constitutionalism*, in 100 *Cornell L. Rev.* 391 (2014); M. Tushnet, *The Possibility of Illiberal Constitutionalism*, in 69 *Fla. L. Rev.* 1367 (2017); M. Tushnet, *Varieties of Constitutionalism, Editorial*, in 14(1) *Int'l J. Const. L.* 5 (2016); G.

Central Asia can indeed be presented as an example of the use of constitutional instruments as tools to detract from the democratic track and enable «smart authoritarianism to defend itself».⁵ In this analysis, Central Asian constitutionalism has rightfully acquired numerous adjectives, including abusive, illiberal, non-democratic, sham, etc. In other words, pretty much all qualifiers that symbolize one or another form of constitutional façade (but not content) can be applicable to Central Asia, as well as some other ex-soviet countries have indeed been supplying numerous case-studies to support and develop these hypotheses. Among the most frequently cited ones is the use of constitutional referenda, extensions of presidential term limits through a variety of (quasi) constitutional tools, alterations of electoral systems and other electoral tricks and more general evidence of constitutional courts or councils subserving the authoritarian leadership.⁶ These moves readily provide tickets to the constitutionalism with adjectives club. Moreover, recent constitutional maneuvering in Central Asia but also in other ex-Soviet states beginning with Russia further strengthened presidential powers contributing to the backsliding of post-Soviet presidentialism in the States parties to the Commonwealth of Independent States.⁷

An essential feature of all five Central Asian states is a strong inclination towards protection of the presidential status quo as the ‘driving seat’, which suggests that the exploration of the presidential powers in the constitutions, including recent amendments, could shed further light on the features of Central Asian constitutionalism.⁸ Indeed, Central Asian states are presidential republics.⁹ Although there are views suggesting that presidentialism is less likely to sustain democratic governance, it is not per se incompatible with constitutionalism, as long as the powers of the

Walker, *The Idea of Non-liberal Constitutionalism*, in I. Shapiro, W. Kimlicka (Eds.), *Ethnicity and Group Rights*, New York, 1997, 154; T. Ginsburg, A. Simpser (Eds.), *Constitutions in Authoritarian Regimes*, Cambridge, 2014.

⁵ C. Pistan, *Smart Authoritarianism: Nazarbayev’s resignation as a move to consolidate Kazakhstan’s 2017 constitutional reform*, in *DPCE Online*, 2, 2019, 1037. See also D. Collier, S. Levitsky, *Democracy with Adjectives: conceptual innovation in comparative research*, in 49(3) *World Pol.* 430 (1997); T. Ginsburg, A. Simpser (Eds.), *Constitutions in Authoritarian Regimes*, cit.; J.J. Linz, A. Stepan, *Problems of Democratic Transitions and Consolidation*, Baltimore (MD), 1996.

⁶ See *inter alia* C. Pistan, *Pseudo Constitutionalism in Central Asia: Curse or Cure?*, in *Federalismi.it*, 8, 2019; K. McKie, *Presidential Term Limit Contravention: Abolish, Extend, Fail, or Respect?*, in 52(10) *Compar. Pol. Stud.* 1500 (2019).

⁷ R. Tarchi, *Le democrazie illiberali in prospettiva comparata: verso una nuova forma di Stato? Alcune riflessioni di sintesi*, in *DPCE Online*, 3, 2020, 4169; W. Partlett, *Russia’s Unconstitutional Zeroing Amendment*, IACL-AIDC BLOG, Mar. 16, 2020 available at blog-iacl-aidc.org/2020-posts/2020/3/16/russias-unconstitutional-zeroing-amendment (last accessed 21 June 2024).

⁸ For details on the design of presidentialism in Kyrgyzstan and Kazakhstan, see e.g. R. Elgie, S. Moestrup (Eds.), *Semi-Presidentialism in the Caucasus and Central Asia*, London, 2016.

⁹ The 2010 Constitution which introduced a semi-presidential system in Kyrgyzstan was changed through a constitutional referendum in 2022.

president are checked with the opportunity (formal and practical) of other branches of power to provide constitutional constraints to their exercise.¹⁰

While recent events in Central Asia provide more examples to fit the pattern of constitutionalism with adjectives, one may wonder whether describing Central Asian systems through this prism is sufficient for our understanding of the dynamics of their constitutional development. Recently, three out of five Central Asian countries, namely Kazakhstan, Kyrgyzstan and Uzbekistan, underwent a round of constitutional 'resets'. Interestingly, some of the constitutional tools, 'adjectified' by academics and condemned by the international community, were 'corrected', but with no significant positive consequences for improving constitutionalism. For instance, the proportional electoral system for Kazakhstani elections, criticized by some, was changed back to the mixed electoral system.

This paper turns attention to elements of constitutional design of presidentialism in Central Asia to illustrate how it may not be conducive to constitutionalism. In doing so it adds another dimension to the literature on 'constitutionalism with adjectives'. Are presidential powers designed in constitutions in *bona fide*, with the intention to constrain presidents through constitutional mechanisms, and to ensure regular transition of power through elections? I intend to illustrate that the opposite may be the case: Central Asian constitutional designs aim to ensure that the president stays in the driving seat by possessing and exercising powers incompatible with constitutionalism.¹¹

In order to illustrate this point I turn to examples of three recent constitutional reforms in Central Asian countries, where constitutional provisions allow the presidents to stay in control of elections, presidential and parliamentary, including to mitigate the risks of power loss or of weakening presidential influence. Some of these provisions are actively in play. For example, the prerogative of the president to call early elections has been actively used by the leaders to alter the periodic nature of elections and ensure effective presidential control over not only their own but also parliamentary term limits. Other provisions may be rather dormant, less catching to the eyes of constitutionalists, but waiting for their moment to rise and shine. For instance, the presidential prerogative to challenge electoral outcomes that do not always need to be used but, nevertheless, are incorporated in the constitutional design.

Such competences or tools of Central Asian presidentialism go beyond the classic bold extension of term limits through referendums or constitutional resets that guarantee longevity of the leaders. Powers over elections, including control over their timing and challenges to the results, represent a different and quite sophisticated danger, as they ensure that the authoritarian leaders preserve the status quo are able to defend from the emergence of political opposition and even popular dissatisfaction, both in parliaments and in the streets.

¹⁰ See *inter alia* J.J. Linz, *The Perils of Presidentialism*, in 1(1) *J. Democracy* 51 (1990); M. Rosenfeld, A. Sajó (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, online ed., 2012.

¹¹ A. Sajó, R. Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, Oxford, 2017, 128.

A reservation should be made that the need to maintain control over elections is relevant in the countries with at least a minimal potential for a pluralistic environment. Therefore, in their current environment, Tajikistan and Turkmenistan do not fit in this analysis due to the complete suppression of political pluralism. I will use in this paper the examples of three Central Asian countries, namely Kazakhstan, Kyrgyzstan and Uzbekistan, due to these countries' overtures with democratization, as well as my field experience and direct observation of the recent constitutional developments there.

In the following sections, I look into the presidential status and the powers in light of the checks on the incumbents' control over elections. I provide recent examples of how the disbalance of powers and the lack of checks on the presidential functions built into the Central Asian presidential systems enables the presidents to have control over elections, including through the proclaimed necessity of constitutional changes. I will demonstrate that the lack of checks on presidential powers is not conducive to constitutionalism in the first place. This provides a useful additional dimension to the literature which explores the application of the doctrine of constitutionalism with adjectives to the Central Asian context. I suggest that for the benefit of improvement in practice, the abuse of constitutional instruments in Central Asia should be examined also from the perspective of the key constitutional principles of the presidential form of government.

2. Power to get re-elected: presidential 'self-dissolution' and controlled electoral timing

The constitutions of Central Asian republics were designed to provide the presidents with significant powers. The correlation between 'the extent of constitutional presidential power and the success of democratization in a country' in post-Soviet states has been observed a while ago, with scholars arguing that granting extraordinary power to presidents leads to democratic decline.¹²

While describing presidential powers as extraordinary, the attention is traditionally paid to the amount of powers given to the president by the constitution, using different methods to measure them in order to draw further conclusions on the correlation of powers with the strength of presidentialism.¹³ This approach provides a solid normative overview of the sizable formal powers of the presidents but doesn't necessarily capture the actual exercise of the presidential powers, when, for example, the exercise of one power can speak more about the strength of the presidentialism than many enumerated constitutional powers that have never been used.

In this regard, two other points deserve to be emphasized before unpacking the application of the presidential powers to manage electoral

¹² S.M. Fish, *Post-communist Subversion: Social Science and Democratization in East Europe and Eurasia*, in 58(4) *Slavic Rev.* 794 (1999).

¹³ M.S. Shugart, J.M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge, 1992; C. Lucky, *Table of Presidential Powers in Eastern Europe*, in 2(4) *E. Eur. Const. Rev.* 81 (1994); T. Frye, *A Politics of Institutional Choice: Post Communist Presidencies*, in 30(5) *Compar. Pol. Stud.* 523 (1997).

timing. Firstly, while tackling presidential powers, scholars traditionally frame them through mechanisms of checks and balances, and, therefore, it could be expected that before tackling specific electoral powers of the presidents, they should be framed within their constitutional and normative perspective. However, diligently framing presidential powers by assessing checks and balances can be misleading for researchers as it poses a risk of seeing checks on presidential powers without an understanding how such checks do (not) work in practice. In the absence of access of political opposition to the branches of power, parliamentary or judicial checks on presidential powers cannot be effective. Secondly, the presidential powers that are ‘missing’, either can be added to the constitutions (as it will be shown below on the example of Uzbekistan) or exercised informally through other branches of power.¹⁴

One needs to take a close look at the presidential powers, especially in action, in order to avoid a superficial (façade) analysis of constitutional design or ascribe to its features that are out of character. One illustration in this regard is the use of constitutional amendments to extend presidential term limits without presidents facing elections. The strategy of delaying presidential elections typical for some countries is not the one that we have recently seen in Central Asia.¹⁵ Indeed, given the way recent elections have been conducted in most Central Asian states, it would seem naïve to think that the leaders took any risk of defeat by their competitors. In fact, the elections, especially presidential elections, have been rather conducted more often than necessary since they are in many cases called early. Central Asian elections exist but they are not contested, giving evidence to the «elections without democracy» trend.¹⁶ In this context, unchecked and unconstrained constitutional power of the president to control electoral timing, and against the periodic nature of democratic elections, embodied in the prerogative of the president to call elections anytime without any particular reason, provides for the sustainability of authoritarianism.

Kazakhstan offers an example of the exercise of such unconditional presidential powers. In the 2022 Final Report on the Early Presidential election, election observers of the OSCE Office for Democratic Institutions and Human Rights highlighted the following:

«The Constitution grants an unconditional prerogative to the president to call an early presidential election, not in line with international standards and a previous ODIHR recommendation. Decrees of the president

¹⁴ One of the recent and curious examples of the latter within CIS is a request of the parliament of Azerbaijan to the President de-facto seeking permission for dissolution, in order to conduct elections within a convenient time frame (2 months earlier than constitutionally stipulated due to the timing of the upcoming 29th U.N. climate change conference (COP29). See the news in English available at <https://interfax.com/newsroom/top-stories/103593/> (last accessed 30 July 2024).

¹⁵ See M. Versteeg, *The Law and Politics of Presidential Term Limit Evasion*, in 120(1) *Colum. L. Rev.* 245 (2020).

¹⁶ S. Levitsky, L.A. Way, *Elections Without Democracy: the Rise of Competitive Authoritarianism*, in 13(2) *J. Democracy* 51 (2002).

are exempt from judicial review, resulting in all legal challenges of a presidential decree on calling an early election being inadmissible».¹⁷

Indeed, since 2011, when the power of the president to call early elections was included in the constitution, all presidential elections have been called early by the incumbent presidents.¹⁸ In addition, most of the parliamentary elections were also called early.¹⁹ All attempts of the opposition to challenge presidential decrees appointing elections have been dismissed on the basis of the 1999 ruling of the Constitutional Council, which stated that ‘the acts and actions of the president cannot become the matter of judicial review’.²⁰

At least two observations can be made from this. The first one is that incumbent presidents in Central Asia frequently do not avoid elections. Rather, they are eager to face them at the time convenient for them (e.g. after conducting ‘democratic’ reforms) and having the results under their control. This presidential desire is reflected in the constitutional design. Therefore, the second important observation is that an unconditional presidential power to call early elections is not an instrument of democratic constitutionalism but an authoritarian tool to ensure a timely re-election, as we look at the “self-dissolution” of the presidents and their re-appearance with renewed mandates. The Venice Commission, in one of its opinions on Azerbaijan (one of the first countries of the Council of Europe region that introduced such a prerogative of the president), made a detailed comment which is worth reproducing in full:

«The idea of an “extraordinary”, i.e. anticipated, election of the President of the Republic is unacceptable. In all political systems the head of State symbolises and guarantees stability and continuity of State action and has a fixed term of office. By providing that the right to hold an “extraordinary” election falls under the exclusive and discretionary power of the President – with no guarantees whatsoever as to how and when that right will be exercised – the Constitution gives an additional prerogative to the outgoing chief of State by enabling him/her to choose the most beneficial moment for the next elections and thus to promote a successor or to renew his/her own term, and this in a country where an incumbent President has never lost an election. This provision is therefore incompatible with democratic standards – it would allow the President to seek a new and strengthened mandate directly from the electorate, which may turn elections

¹⁷ See OSCE ODIHR, Kazakhstan, Early Presidential Election, 20 November 2022: Final Report, available at <https://www.osce.org/odihr/elections/kazakhstan/548593> (last accessed 30 July 2024).

¹⁸ The sequence of the elections in Kazakhstan can be seen here <https://www.osce.org/odihr/elections/kazakhstan> (last accessed 24 June 2024).

¹⁹ *Ibid.*

²⁰ Paragraph 6 of the decision of the Constitutional Council stated: ‘Due to a special constitutional status of the President of the Republic of Kazakhstan – the head of state, [...] the Constitution of the Republic of Kazakhstan does not contain norms on the repeal of their acts, as was the case with respect to acts of the Government, ministries, other central and executive bodies of the Republic, as well as local representative bodies (subparagraph 3) of Article 44, subparagraph 7) of Article 66, paragraphs 3 and 4 of Article 88)’. Text of the Constitution is available at <https://adilet.zan.kz/rus/docs/S990000007> (last accessed 12 June 2024).

into plebiscites on the leadership of the country and provide legitimacy to authoritarian tendencies».²¹

Therefore, an in-depth analysis of the tools examined also through the prism of constitutionalism with adjectives (in this case, the exercise of the powers given to the president by the constitution) reveals that the exercise of such tools may be a direct consequence of excessive and unchecked presidential powers.

Another evidence of the same issue comes from the recent developments in Uzbekistan. In April 2023, following the success of Kazakhstan's model of a constitutional reset, a constitutional referendum was conducted in Uzbekistan. In addition to increasing the term of office of the president, one of the newest presidential powers given to the incumbent by amendments to electoral legislation was the prerogative to call early elections, the feature that previously did not exist in the Constitution of Uzbekistan but which proved to work well for the neighboring countries.²² Although, unlike in Kazakhstan, the possibility to challenge the constitutionality of presidential decrees, including a decree on calling elections, exists in the Uzbekistani legal system, this instrument has never been tried in practice. A few days after the referendum, the incumbent president 'self-dissolved' and called an early presidential election that he successfully won in July 2023.

The power of incumbent presidents to call early elections, either presidential or parliamentary, may not raise suspicions automatically. However, in most of the cases where the discretion over this issue is wide, it gives the incumbent the control over electoral timing significantly impacting (and, in combination with other powers, presetting) a desirable electoral outcome. It was previously mentioned in the literature that careful electoral timing may increase the likelihood of retaining the post, which is used to 'shape the electoral success' also for incumbent's successors. Such 'opportunistically timed elections' can fundamentally affect democratic accountability since 'political leaders can affect how voters vote by controlling when they vote'.²³ Moreover, in the Central Asian practice as it is described above, it is presented as a power of self-dissolution and re-emergence, and distorts the design of the presidential form of governance due to the lack of proper constitutional checks.

2.1 Electoral time management, part one: early presidential elections in Kazakhstan and Uzbekistan

²¹ European Commission for Democracy through Law (Venice Commission), Azerbaijan: Preliminary Opinion on the draft modifications to the Constitution submitted to the referendum of 26 September 2016, paragraph 55, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2016\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2016)010-e) (last accessed 30 July 2024).

²² According to Article 128 of the 2023 Constitution of Uzbekistan, the President of the Republic of Uzbekistan shall have the right to call early elections of the President of the Republic of Uzbekistan. The previous constitution did not contain such presidential prerogative.

²³ P. Schleiter, M. Tavits, *The Electoral Benefits of Opportunistic Election Timing*, in 78(3) *J. Pol.* 848 (2016).

As it was already pointed out above, constitutional changes increasing presidential term limits are often perceived as one of the abusive forms of constitutional maneuvering, and they have previously been described through the doctrine of unconstitutional constitutional amendments.²⁴ In Central Asia such constitutional amendments have also been interpreted as substitutes for elections, given that they supposedly allow presidents to stay in power without facing elections.²⁵ The fact that the Central Asian leaders do not avoid and even like elections does not render the extensions of term limits less dangerous, but Central Asian leaders' interest in amending term limits is also guided by different motives, such as increasing control over electoral timing.

Changes of term limits should, indeed, be analyzed as suggested by D. Landau, as a subtle form of constitutional change. In the context of Central Asia such analysis should also include the powers given to presidents over their own term limits, precisely the power to call early elections, as well as regional practices of "resetting" existing term limits. For instance, in October 2022 the Constitution of Kazakhstan was amended in order to limit the number of presidential terms from two to one.²⁶ However, the transitional provisions stipulated that this limit would only be applicable after a presidential election under the updated constitution, paving the way for the incumbent president Tokayev to be elected for the de facto second term. President Tokayev called an early presidential election right after these constitutional provisions entered into force, and was subsequently re-elected.

While the term-limit itself was increased from 5 to 7 years in Kazakhstan, the 'democratic' appeal of one single term was supplemented by the inclusion of this provision into the infinity clause, which cannot be amended unless a new constitution is adopted. It would have provided a certain degree of protection to the constitutional guarantee of term-limits, had Kazakhstan not already been not caught amending the "unamendable" constitutional provisions. Specifically, the 2022 amendments to the Constitution eliminated the mentioning of the First President from the Constitution, despite the provision of Article 91 of the Constitution that protected his status by the infinity clause. In this process, Article 91 itself was also amended.²⁷

Central Asian practice provides numerous examples when successful authoritarian leaders prefer not to exhaust the limits of their term. Indeed, it was already mentioned that all Kazakhstan's presidential elections were called early. In June 2023, Uzbekistan's president also opted for early

²⁴ See D. Landau, Y. Roznai, R. Dixon, *Term limits and the unconstitutional constitutional amendment doctrine*, in A. Baturo, R. Elgie (Eds.), *The Politics of Presidential Term Limits*, Oxford, 2018.

²⁵ See McKie, *Presidential Term Limit Contravention*, cit.

²⁶ Law of the Republic of Kazakhstan of 17 September 2022 No.142-VII On amending the Constitution of the Republic of Kazakhstan, available (in Russian) at https://online.zakon.kz/Document/?doc_id=35848390&pos=1;-8#pos=1;-8 (last accessed 23 June 2024).

²⁷ See the Constitution of Kazakhstan, available at https://www.akorda.kz/ru/official_documents/constitution (last accessed 25 June 2024).

elections, despite the extension of his mandate that would have allowed him to stay in power for 5 more years without facing new elections, and a possibility of further re-election for two seven-year terms.²⁸ Is it only the need to preserve the democratic façade that prompts the presidents not to exhaust their term limits? Unlikely so, since calling early elections with no reason does not win approval of the international community.²⁹ The use of term limits, and playing with the timing of elections as an extension of this mechanism, is a more sophisticated strategy than constantly avoiding elections through the extension of term limits in the constitutions.

In three countries, Kazakhstan, Uzbekistan and Kyrgyzstan, these mechanisms, combined with electoral timing, are the embodiments of the presidential powers that allow incumbents to maintain the status quo, including in the political environments that carry a risk of instability. The 2022 constitutional referendum in Kazakhstan was largely seen by commentators as a preparation for the upcoming parliamentary elections, which were supposed to bring more pluralism to the parliament, including via the re-introduction of the mixed electoral system. However, a few months after the successfully held referendum, the incumbent President announced a presidential election instead of the long-awaited parliamentary contest. At the time, the incumbent President Tokayev was elected for his first five-year term in 2019, which effectively meant two more years in power, with a possibility to be re-elected for another term. The election was preceded by another constitutional change – the change of the presidential term-limits that were, however, not put to the popular vote but voted by the compliant parliament.³⁰

Parliamentary elections were conducted a few months later, in October 2022, after the President was comfortably (re)installed in the driving seat. The same logic applies for Uzbekistan, where the regular parliamentary elections are currently scheduled to take place in 2024. Exhausting the increased constitutional term limits by the incumbents would effectively mean forming the parliaments in these countries before the presidents are secured in their seats for as long as possible, which carries risks of emergence of dissent, if not a vocal opposition, obviously not desired in authoritarian regimes.

2.2 Electoral time-management, part 2: postponement of parliamentary elections in Kyrgyzstan

²⁸ The previous presidential election was conducted in Uzbekistan in 2021, and the constitutional amendment increased the presidential term to seven years. This term was applicable to the already elected president.

²⁹ See, for instance, [the 2022 OSCE/ODIHR final report](#) on Kazakhstan (op. cit.) that recommends '[p]rovisions granting the institution of the president significant control over the electoral process, including unconditional prerogative to call early elections, should be reconsidered.'

³⁰ See the 17 September 2022 amendment to the Constitution, available (in Russian) available at: https://online.zakon.kz/Document/?doc_id=35848390&pos=1;-8#pos=1;-8 (last accessed 30 June 2024).

While such risk is mitigated even in the countries where the parliaments are weak and, *de-facto*, mono-partisan, such as Uzbekistan and Kazakhstan, the importance of regulation of the timing of parliamentary elections in order to ensure a rubber stamp parliament at least for the time-being can be seen as even more crucial in Kyrgyzstan. The latter is the only state in Central Asia which features electoral competition and important elements of real constitutionalism, such as hints of constitutional control over the other branches of power.³¹

The avoidance of fair competition through different electoral manipulations, primarily vote buying, led to challenges of the outcome of the regular October 2020 parliamentary elections in Kyrgyzstan not in the courtrooms, but in the streets. The October 2020 protest escalated into an uprising which ousted the incumbent President Jeenbekov and installed in power Mr. Japarov, who was freed from prison. The Central Election Commission cancelled the results of parliamentary elections.³² But new parliamentary elections were not held right away. Instead, a presidential election to formalize the power grab was called for January 2021, in parallel with a consultative referendum giving a preview of the forthcoming constitutional changes, namely a shift from a semi-presidential system to a presidential one. Ensuring the popular mandate, the next move was a further postponement of parliamentary elections that were already half a year overdue, ostensibly due to the need for constitutional reform proposed by the freshly elected President Japarov, e.g. the adoption of the new constitution and subsequent legislation.

The Constitutional Chamber of the Supreme Court was asked to assess this postponement from the constitutional perspective, and in its turn, referred to the Venice Commission to assess, in effect, the legitimacy of the parliament with an expired mandate to meddle with constitutional reform. In its urgent *amicus curiae* brief, the Venice Commission noted:

«Therefore, during the *prorogatio* that takes place after the legal term of the legislature has expired, the Parliament is only allowed to carry out some ordinary functions, whereas it is not allowed to approve extraordinary measures, including constitutional reforms [...].

A substantial respect of the democratic will and therefore of the basic democratic principles would suggest postponing all constitutional changes and deferring them to the new Parliament. In the meanwhile, the incumbent Parliament should refrain from approving any amendment to the constitution during the interval between the end of the legal mandate and the first session of the new Parliament»³³

³¹ See e.g. M. Fumagalli, *Semi-presidentialism in Kyrgyzstan*, in *Semi-presidentialism in the Caucasus and Central Asia* in R. Elgie, S. Moestrup (Eds.), *Semi-Presidentialism in the Caucasus and Central Asia*, cit., 173.

³² The Central Electoral Commission canceled the results of 4 October 2020 elections: <https://shailoo.gov.kg/ru/news/3702/> (last accessed 30 May 2024).

³³ Venice Commission, Kyrgyzstan: Urgent Amicus Curiae Brief relating to the postponement of elections motivated by constitutional reform, paragraphs 24 and 29, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)015-e) (last accessed 27 July 2024).

However, the Constitutional Chamber did not dare to declare unconstitutionality of these moves, noting only that the postponement of parliamentary elections was made for an excessive and unjustified time. Although the constitutionality of the law postponing the repeat parliamentary elections was confirmed by the Constitutional Chamber, its judgment stated:

«9. However, the postponement of elections for June 2021 empowers the parliament to extend its competence for 8 months, which is a long period of time that exceeds usually several weeks necessary for the conduct of the electoral process. [...] the conduct of elections is postponed to 8 months which, in the opinion of the Constitutional Chamber, is excessive and unjustifiable by objective circumstances»³⁴

The fact that the Constitutional Chamber did not align with the Venice Commission in confirmation of the non-constitutionality of the postponement of the parliamentary elections does not amount to constitutionality of keeping in power a parliament with an expired mandate. Nevertheless, this parliament legislated for over a year after its expiration until August 2021, when President Japarov called parliamentary elections for 28 November 2021.³⁵ Curiously, the 28 November parliamentary elections were referred to as ‘early’ parliamentary elections, which is probably just as well since ‘belated’ elections is a less known concept.

3. Conclusion

Constitutional abuses assisting authoritarian consolidation are quite evident in all the examples examined in this article, which are very recent. The tools used for such consolidation can be seen as something borrowed from democratic constitutionalism and turned into abusive instruments. In the wrong hands, constitutional reforms can clearly be used for the purposes that undermine democracy. However, room for such maneuvers is evidently enshrined in the design of the presidential model in Central Asian states. The example of Kyrgyzstan, where scheduled elections were postponed in order to adopt a new Constitution that changed the semi-presidential system back to a presidential one, clearly suggests the authoritarian consolidation does happen through un-constraining presidential powers by designing a ‘special’ form of presidentialism.

A closer look at the examples provided above, especially from the electoral domain, reveals that abuses are facilitated by structural constitutional defects, i.e. that fundamentals of constitutionalism are often lacking in these systems, as they do not provide for constraints on the presidential powers. Abusive constitutionalism describes the use of constitutional instruments in order to strengthen the regimes; however, the regimes are also strengthened through presidential actions (such as calls for extraordinary elections) and powers that are in no way constrained.

³⁴ Full text of the judgment (in Russian) is available at <http://cbd.minjust.gov.kg/act/view/ru-ru/9789> (last accessed 24 July 2024).

³⁵ Decree of the President of the Kyrgyz Republic of 29 August 2021 on calling parliamentary elections, available at <http://cbd.minjust.gov.kg/act/view/ru-ru/430617?cl=ru-ru> (last accessed 23 July 2024).

While this article focused on the examples linking the electoral field to the constitutional designs, there are more examples of presidential powers making the abusive actions of presidents 'constitutional' according to the constitutions of the countries, even as they are highly questionable from the theoretical perspective; if the design of the system is evidently made for abuses, rather than constitutionality, describing it through the prism of constitutionalism, even with any adjective, may well be lending too much credit to such systems. Other examples not examined here that are worth exploring include the powers of presidents related to nomination and dismissal of judges, the intrusion of presidents into regional developments, and others. In all these cases the design of the action and the constitutional design of the system should be looked at critically, otherwise researchers and even the international community risk being misguided, by missing out on the larger constitutional perspective.

On a general note, studies of the presidential powers in other regions like Latin America and Africa, sometimes lead to conclusions that presidentialism as a form of government as such may be incompatible with constitutionalism.³⁶ In theory, it should not be so: if the imitational goal of the constitutional design is constitutionalism, then the presidential powers will have checks in the presidential republics. However, when such checks are lifted or not put in place during the drafting, when the central idea of the constitutional drafting exercise is consolidation of a power grab (as it was illustrated in the recent example of Kyrgyzstan's new constitution), such designs shroud their non-democratic credentials in 'constitutionalism' that accommodates 'specific', 'national', 'cultural', 'traditional', and other 'unique' features of modern autocracies.

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³⁶ See e.g. C.S. Nino, *Transition to Democracy, Corporatism, and Presidentialism with Special Reference to Latin America*, in D. Greenberg, S.N. Katz, S.C. Wheatley, M.B. Oliviero (Eds.), *Constitutionalism and Democracy: Transition in the Contemporary World*, Oxford, 1993.