



Office for Democratic Institutions and Human Rights

ASSESSMENT OF DRAFT ELECTORAL CODE OF THE REPUBLIC OF BELARUS AND DRAFT LAW ON THE ELECTIONS OF DEPUTIES OF THE SUPREME COUNCIL OF THE REPUBLIC OF BELARUS Warsaw, 20 January 2000

1. INTRODUCTION

- 1.1. This assessment reviews and comments on two draft laws: (1) the draft Electoral Code of the Republic of Belarus ("the draft Code"), and (2) the draft Law on Elections of Deputies of the Supreme Council of the Republic of Belarus ("the draft Law on Elections of Deputies of the Supreme Council").
- 1.2. This assessment is based on review of unofficial English translations of the drafts provided by the Advisory and Monitoring Group (AMG) in Belarus of the Organisation for Security and Co-operation in Europe (OSCE)
- 1.3. The draft Code reviewed was dated of 20 October 1999 and was passed by the National Assembly of the Republic of Belarus on the first reading. The draft Code consists of 126 pages.
- 1.4. The draft Law on Elections of Deputies of the Supreme Council, consisting of 37 pages, has been represented to be an alternative proposal sponsored by members of the 13th Supreme Soviet.
- 1.5. This assessment does not address the issue of the legitimacy of either the 13th Supreme Soviet or the National Assembly of the Republic of Belarus.
- 1.6. It should be noted that, under the 1996 Constitution of the Republic of Belarus, the Supreme Council of the Republic of Belarus no longer is the national legislative institution for which elections are to be conducted. Under the 1996 Constitution, the national legislative institution is the National Assembly, consisting of the Chamber of Representatives and the Council of the Republic. Deputies of the Chamber of Representatives are directly elected. Members of the Council of the Republic are indirectly elected.
- 1.7. The draft Code, as a whole, is so poorly written that it is not possible, within the limited time frame given for this assessment, to comment on all of the deficiencies in

the draft. Thus, this assessment will provide comments on a sampling of deficiencies. Failure to comment on a particular article or phrase should not be interpreted as approval.

- 1.8. This assessment focuses on the draft Code as it is the document that will be debated by the National Assembly and others interested in elections in the Republic of Belarus. Due to time constraints, and the fact that the draft Law on Elections of Deputies of the Supreme Council will not be the focal point of discussion and debate, fewer comments and no recommendations are provided for this draft law. Additionally, this draft law suffers from the deficiency of addressing only one elected institution, an institution substantially altered by the 1996 Constitution. However, as comparison can be helpful, limited comments are provided on the draft Law so that the reader can make comparisons between the draft Law and the draft Code.
- 1.9. This assessment was prepared by an international expert, Mr. Jessie Pilgrim, for the OSCE Office for Democratic Institutions and Human Rights (ODIHR).
- 1.10. Section 2 of this Assessment contains an Executive Summary. Section 3 Comments and Recommendations on the Draft Code. Section 4 a General Overview of the Draft Code. Section 5 a General Overview of the Draft Law on Elections of Deputies of the Supreme Council.

2. EXECUTIVE SUMMARY

- 2.1. **Overall, the draft Code is poorly written. It is organized in a manner that makes it difficult to locate subjects and can require review of numerous articles, scattered throughout the draft, when examining only one subject. Additionally, the draft Code contains several inconsistencies, both internally and with the 1996 Constitution.**
- 2.2. **The draft Code fails to provide for multi-party or pluralistic representation on the Central Commission and other election commissions. The draft Code grants to the ruling party in the executive branch a monopolistic hold on all election commissions.**
- 2.3. **The draft Code does not provide clear and specific provisions ensuring transparency in the work of election commissions. Nor does the draft Code provide a uniform appeal process for review of decisions of election commissions.**
- 2.4. **The draft Code excessively regulates campaign activities to such a degree that it stifles robust and vigorous campaigning and limits the right of free speech and expression. This excessive campaign regulation is contrary to democratic principles and the freedom of expression article of the European Convention for the Protection of Human Rights and Fundamental Freedoms.**

- 2.5. Provisions in the draft Code governing candidate registration and verification of signatures in support of candidates are not realistic and will prevent legitimate candidates from participating in the elections.
- 2.6. Provisions in the draft Code governing referendum elections are contrary to the 1996 Constitution of the Republic of Belarus.
- 2.7. Provisions in the draft Code permitting recall elections for the Chamber of Representatives, Council of the Republic, and local Councils of Deputies are contrary to the 1996 Constitution of the Republic of Belarus.
- 2.8. The draft Law on the Elections of Deputies of the Supreme Council, although outdated and incomplete, provides a better method for the appointment of members to election commissions.
- 2.9. The draft Code falls short of OSCE commitments, in particular those contained in the 1990 Copenhagen Document.

3. COMMENTS/RECOMMENDATIONS ON THE DRAFT CODE

The Central Commission on Elections and National Referenda

- 3.1. Article 72 of the 1996 Constitution of the Republic of Belarus establishes that elections shall be conducted by election commissions. The primary election commission is the Central Commission of the Republic of Belarus on Elections and Holding of Republican Referendums (“the Central Commission”). Article 84 of the Constitution grants the President of the Republic of Belarus the right to appoint six members of the Central Commission. Article 98 of the Constitution grants the Council of the Republic the right to appoint six members. Article 3 of the current Law on the Central Commission of the Republic of Belarus on Elections and Holding of Republican Referendums (“the Law on the Central Commission”) provides that the President, with the consent of the Council of the Republic, shall appoint the Chairman of the Central Commission.¹ The term of office of the Central Commission is five years. Article 1 of the Law on the Central Commission establishes that the commission is a permanent operating body in the Republic of Belarus.
- 3.2. Article 33 of the draft Code grants substantial powers to the Central Commission.² The draft Code addresses composition and appointment of the Central Commission, in Article 32, by referencing the Law on the Central Commission.
- 3.3. Unfortunately, both the draft Code and the Law on the Central Commission fail to establish either multi-party or pluralistic representation on the Central Commission. Indeed, the legal framework is deceptive as it creates two illusions. The Law on the Central Commission creates the illusion of a non-partisan commission as Article 3

¹ The Law on the Central Commission was signed by President Lukashenko on 30 April 1998.

² The powers granted in Article 33 of the draft Code are basically the same powers granted in Article 4 of the current Law of the Republic of Belarus on the Central Commission of the Republic of Belarus on Elections and Holding of Republican Referendums.

requires a member of political party to *suspend* his or her membership in the party and to refrain from party activities while on the commission. This provision, while creating the *appearance* that members are non-partisan, does not effectively ensure that members are non-partisan. Status of non-partisanship should be evidenced pre-appointment and post-appointment conversions should be seen with a wary eye.

- 3.4. The second illusion created is the illusion of pluralistic membership. This illusion is created by Article 3 of the Law on the Central Commission as it permits a variety of sources to *nominate* candidates for membership on the Central Commission. However, the power of *appointment* is a virtual monopoly of the President of Belarus. Under Article 3, the President appoints six of the twelve members of the Central Commission, including the Chairman. The remaining six members are appointed by the Council of the Republic of the National Assembly, which is heavily influenced by the President and executive authorities.³
- 3.5. It is apparent that the Central Commission is composed of functionaries of the existing political system, and that those functionaries are either directly controlled or heavily influenced by the executive branch of government.
- 3.6. Concerns over the membership of the Central Commission are compounded due to the substantial powers granted to the commission in Article 33 of the draft Code and Article 4 of the Law on the Central Commission.
- 3.7. Article 6 of the Law on the Central Commission provides that appeals against decisions of the Central Commission can be made to the Supreme Court of the Republic of Belarus “in cases stipulated by the legislation of the Republic of Belarus”. Various articles scattered throughout the draft Code do provide for appeal to the Supreme Court of certain decisions of the Central Commission. However, there is no uniform appeal procedure in either the draft Code or the Law on the Central Commission. This is problematic due to the manner in which the Central Commission is formed and its substantial powers.
- 3.8. The legal framework governing the Central Commission fails to ensure sufficient transparency. Although Article 2 of the Law on the Central Commission states that a basic principle of the activities of the Central Commission is “public openness”, there are no provisions ensuring that the work of the commission will in fact be open. The general pledge of openness found in Article 13 of the draft Code is insufficient to overcome this concern.
- 3.9. The legal framework governing the Central Commission fails to ensure that the commission is independent. Of particular concern is Article 3 of the Law on the Central Commission as it allows a member to be “dismissed” for “commitment of actions discrediting the Central Commission”. This article would permit a member, who makes public an act of misfeasance or malfeasance on the part of the

³ Under Article 91 of the 1996 Constitution, one-third of the members of the Council of the Republic is appointed by the President. Under Article 98 of the Constitution, the remaining members of the Council of the Republic are elected in indirect elections where the candidate nomination process is controlled by local institutions that are, in turn, heavily influenced by the executive branch of government. See Articles 97 through 110 of the draft Code.

commission, to be dismissed as the member would most certainly be committing an action “discrediting the Central Commission”.

Recommendations on the Central Commission

- 3.10. Changes are necessary in the draft Code to provide for pluralistic composition of the Central Commission. Membership of the Central Commission should be diversified to maximise independence and impartial administration of the election processes. Central Commission membership should be balanced with majority and minority party/bloc appointments, as well as some representation for independent candidates. It would also be appropriate to provide for some appointments by other public associations, labour collectives, initiative groups of citizens as their stake in the electoral process is recognised by the draft Code in the articles governing nomination procedures.
- 3.11. Article 3.9 of the Law on the Central Commission should be amended to delete the provision that permits dismissal of a commission member for “commitment of actions discrediting the Central Commission”. Additionally, consideration should be given to including language in the draft Code to affirmatively protect members of the commission from threats of removal.
- 3.12. Additional language should be included in the draft Code to state clearly that the work, documents, records, and proceedings of the Central Commission are public and open to everyone, including observers and citizens. The Code should clearly state complaint and appeal procedures for relief when the principle of transparency is violated by the Central Commission. These procedures must provide for quick and effective relief to ensure transparency in the electoral process.
- 3.13. The draft Code should include provisions establishing a uniform appeal process for review of all decisions and actions of the Central Commission by the Supreme Court of the Republic of Belarus. The reference in Article 6 of the Law on the Central Commission to appeals in cases stipulated by the legislation of the Republic of Belarus, and the various articles scattered throughout the draft Code providing for appeal to the Supreme Court of certain decisions of the commission, are not sufficient.

Lower Election Commissions

- 3.14. Articles 25 through 31 of the draft Code establish lower election commissions, down to the level of precinct election commission, to assist the Central Commission in the preparation and holding of elections.
- 3.15. Articles 11 and 34 of the draft Code provide that these commissions shall be formed from representatives of political parties, other public associations, labour collectives, as well as representatives of citizens *nominated* by way of submission of an application. However, *appointment* of commission members is controlled by local presidiums and executive committees.

- 3.16. Thus, membership on these commissions is not multi-party or pluralistic. Similar to membership on the Central Commission, the illusion is created of pluralistic membership. This illusion is created as the draft Code permits a variety of sources to *nominate* candidates for membership on the lower election commissions.
- 3.17. The transparency concern related to the Central Commission, described in paragraph 3.8 above, applies to lower election commissions as well.

Recommendations on Lower Election Commissions

- 3.18. The recommendation as to appointment of members of the Central Commission stated in paragraph 3.10 above, to provide for pluralistic or multi-party membership, is also applicable to appointment of members of lower election commissions.
- 3.19. The recommendation as to transparency of the Central Commission, stated in paragraph 3.12 above, is also applicable to lower election commissions.

Transparency

- 3.20. Although the draft Code contains general statements pledging transparency in Article 13, it does not contain clear and specific mechanisms for ensuring transparency.
- 3.21. Although Article 13 of the draft Code provides for domestic and international observers, it does not clearly state the rights of observers or set forth remedies for observers in the event election commissions or administrators deny the rights of observers.

Recommendations on Transparency

- 3.22. The draft Code should clearly and specifically state that all electoral documents be made available for public examination and inspection at all levels of election administration, and the procedures for such examination and inspection should be clearly stated. The Code should require that important electoral documents be publicly posted without any request for examination or inspection. This would include documents such as the voters list, election protocols, tabulation and tally sheets, and decisions determining or affecting election results. Such electoral documents should be publicly posted at all levels of election administration, including precinct, district, and central election commission levels. Additionally, all electoral documents should be maintained for a sufficient period of time to allow for public inspection and examination of such documents.
- 3.23. The Code should require that results of counting and all protocols be publicly posted at the polling station level as soon as possible. Additionally, results at the next level should be publicly posted as soon as the results are aggregated or tallied for the precincts within that level.

- 3.24. The Code should clearly state the rights of observers and provide a procedure for obtaining corrective relief should an election commission or administrator deny the rights of an observer.

Excessive Campaign Regulations

- 3.25. Article 47 prohibits campaign materials from containing “insults or slander in relation to official persons of the Republic of Belarus and other candidates”. Under Article 49, a person who violates Article 47 can be prosecuted. A candidate who violates Article 47 can have his or her registration cancelled. These chilling limitations on free expression and speech prevent a robust and vigorous campaign, which is critical to election campaigning in a democracy. Additionally, these prohibitions are written so *broadly* that they are contrary to the spirit of the freedom of expression article of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁴
- 3.26. Article 49 allows a person to be prosecuted for spreading false data defaming a candidate. There is no definition of “false data”. This prohibition is vague and broad and, as a result, may also be contrary to the freedom of expression article of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 3.27. Article 49 imposes vicarious liability on candidates for violations committed by supporters. Article 49 permits cancellation of the candidate’s registration based on the act of a supporter. Vicarious liability should not be placed on a candidate without proof that the candidate participated in or instigated the supporter’s actions. Otherwise, a candidate could have his or her candidacy cancelled due to the actions of “mole” supporters. Additionally, cancellation of candidate registration based on the actions of a supporter is a harsh and extreme punishment.
- 3.28. Another example of excessive campaign regulation is Article 48 that provides that the electoral campaign is financed exclusively from the state budget. Additional contributions shall not be made to a party or candidate. Additional contributions can be made only to the state budget. Contrary to the draft Code, it would be appropriate to allow for contributions directly to parties and candidates with accompanying disclosure of sources of financial support.

⁴ Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms recognizes the right of a government to limit freedom of expression “in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” However, in the context of a political campaign and the exercise of the right to express political opinions in the campaign, *Articles 47 and 49 of the draft Code are written in such a broad and vague fashion that they cannot rest in the safe harbor of Article 10(2)*. Thus, Articles 47 and 49 are contrary to the freedom of expression guarantee of Article 10(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Recommendations on Excessive Campaign Regulations

- 3.29. All of the offending provisions identified in paragraphs 3.25 through 3.27 above should be deleted from the draft Code.
- 3.30. The Code should allow for contributions directly to parties and candidates and require disclosure of the sources of such financial support

Validation of Candidate and Referendum Signatures

- 3.31. Article 61, governing signature requirements for Presidential candidates, permits a small number of invalid signatures to invalidate the attempt at registration. Under Article 61, if one percent (1%) or more of the verified lists are recognised as invalid, then all submitted signature lists and signatures in them, shall not be taken into account when determining the result of the collection of signatures of electors in the region, town or town district. Instead of voiding the candidacy due to one percent (1%) of the signatures being invalid, the invalid signatures should be deducted from the total number of signatures, but should not invalidate other signatures. Candidates should not be required to submit a fixed percentage of valid signatures (99%), but should be required to submit a fixed number of valid signatures (100,000). Of course, the prudent candidate will submit a number of signatures in excess of the fixed number to compensate for signatures later found to be invalid.
- 3.32. Article 61, as written, states that false or invalid signatures on a list shall invalidate the entire signature list. Although a false or invalid signature should not be counted, it should not invalidate all signatures on the list, including those signatures that are otherwise valid.
- 3.33. Article 116, governing referendum signatures, is inconsistent with Article 61. Article 116 utilises a percentage for invalidation of signature lists of five percent (5%), while Article 61 utilises a percentage of one percent (1%).

Recommendations on Validation of Candidate/Referendum Signatures

- 3.34. An invalid signature should be merely what it is – an invalid signature. An invalid signature should not invalidate other signatures or the signature list.
- 3.35. Instead of being required to submit a fixed percentage of valid signatures (99%), candidates should be required to submit a fixed number of valid signatures (100,000). A recognised and accepted method of statistical sampling should be used to determine the number of valid signatures of the total number of signatures submitted.
- 3.36. The percentages used in Articles 61 and 116 should be consistent.

National Referendum

- 3.37. Article 113 of the draft Code is contrary to the 1996 Constitution of Belarus as it establishes additional signature requirements beyond the signature requirements of Article 74 of the Constitution.

- 3.38. This issue of validation of signatures for a national referendum is addressed in paragraphs 3.33 and 3.36 above.
- 3.39. Articles 117 and 124 of the draft Code are contrary to the 1996 Constitution of Belarus as they grant the authority to the President of the Republic of Belarus to determine “the legal force of the decision adopted by the referendum”. Articles 73 through 78 of the Constitution, governing referendum, do not grant this authority to the President.
- 3.40. The requirements for citizens attempting a referendum are stated in Articles 113 through 117 of the draft Code. These requirements are burdensome, time consuming, intimidating, and quite likely assure that the only national referendum will be one initiated by the President.

Recommendations on National Referendum

- 3.41. The Article 113 requirement of 30,000 signatures from each Oblast and the City of Minsk should be deleted as it is contrary to the 1996 Constitution.
- 3.42. The language in Articles 117 and 124 that grants authority to the President to determine “the legal force of the decision adopted by the referendum” should be deleted as contrary to the 1996 Constitution.
- 3.43. The procedures for referendum attempts by citizens should be redrafted. The procedures should be redrafted so that the constitutional right of citizens to seek referendum is respected rather than abolished by legislative fiat.

Recall Elections

- 3.44. Articles 129 through 152 provide for recall elections for a deputy of the Chamber of Representatives, a deputy of a local Council of Deputies, and a member of the Council of the Republic. There is no apparent constitutional authority for such recall elections. Article 93 of the Constitution establishes that the mandate of the National Assembly is four years. Article 93 provides for an *extension* of this mandate by law in the event of a war. Although the Constitution allows for premature termination of this mandate where there is a non-confidence vote or failure to give consent to the appointment of the Prime Minister under Article 94, *there is no constitutional basis for a recall election to prematurely terminate the individual mandate of a member of the National Assembly*. As Article 93 expressly establishes a four year mandate, and as Article 94 expressly states when the Article 93 mandate can be prematurely terminated, the constitutionality of recall elections is highly suspect. Similarly, there is no constitutional basis for a recall election to prematurely terminate the individual mandate of a member of a local Council of Deputies. Under Article 118 of the Constitution, a deputy of a local Council of Deputies has a four year mandate. Article 123 of the Constitution provides for premature dissolution of the entire local council by the Council of the Republic for reasons stated in Article 123. However, no other constitutional basis exists for premature termination of the four year mandate granted

by Article 118 of the Constitution. Thus, it is properly concluded that a recall election for a deputy of the Chamber of Representatives, a deputy of a local Council of Deputies, or a member of the Council of the Republic is contrary to the 1996 Constitution of Belarus.

Recommendations on Recall Elections

- 3.45. Articles 129 through 152, and all provisions related to recall elections, should be deleted from the draft Code.

4. GENERAL OVERVIEW OF THE DRAFT CODE

Elections Regulated by the Draft Code

- 4.1. Article 1 of the draft Code establishes that the Code regulates preparation and holding of elections for:
- President of the Republic of Belarus;
 - Deputies of the Chamber of Representatives of the National Assembly of the Republic of Belarus, including recall of such deputies;
 - Members of the Council of the Republic of the National Assembly of the Republic of Belarus, including recall of such members;
 - Deputies of local Councils of Deputies of the Republic of Belarus, including recall of such deputies;
 - Referendums.

Suffrage

- 4.2. Articles 3 and 7 establish that elections for the President, deputies of the Chamber of Representatives, and deputies of local Councils of Deputies shall be held on the basis of universal, equal, and direct suffrage by secret ballot.
- 4.3. Articles 3 and 7 establish that referendum elections shall be held by way of universal, free, equal and secret ballot, by citizens on the basis of direct expression of will.
- 4.4. Articles 3 and 8 establish that elections for members of the Council of the Republic shall be held on the basis of equal and indirect suffrage by secret ballot. Article 8 provides that members of the Council of the Republic shall be elected at the sittings of deputies of local Councils of Deputies of the base level of each Oblast and deputies of the Minsk City Council of Deputies.
- 4.5. Article 4 grants the right to vote in elections for the President, deputies of the Chamber of Representatives, deputies of local Councils of Deputies, and referendum elections to citizens of the Republic of Belarus who have reached the age of 18 years.
- 4.6. Citizens adjudicated by a court of law as incompetent are denied the right to vote under Article 4.

- 4.7. Citizens kept in places of deprivation of freedom by sentence of a court of law are denied the right to vote.
- 4.8. Citizens who are in custody as a measure of suppression according to penal law are denied the right to vote.
- 4.9. Under Article 5 voting is not compulsory.

Voters Lists

- 4.10. Article 19 provides that voters lists shall be compiled for each polling station and signed by the chairman and secretary of the precinct commission.
- 4.11. Town, settlement and rural executive committees and, in towns divided into districts, district administrations, district executive committees in towns and urbanised settlements where no town or settlement executive committees have been formed shall provide for the account of electors and hand over to the precinct commissions the list of citizens living in the territory of the respective polling station that have the right to vote.
- 4.12. Lists of voters, who are in the military, including their family members if living in the region of location of the military unit, shall be prepared on the basis of information provided by military unit commanders. Military personnel living outside military units shall be included in the list of voters at their place of residence.
- 4.13. Lists of voters who are in sanatoria, preventoria, rest homes, hospitals and other stationary medical treatment and prevention institutions shall be compiled on the basis of data provided by the heads of such institutions.
- 4.14. Lists of voters abroad shall be compiled on the basis of data provided by the heads of consular institutions abroad.
- 4.15. Under Article 20, every citizen who will be 18 years of age by the day of the election shall be included in the list of voters based on the territory where the voter lives. The voter shall be included in the voters list only at one polling station.
- 4.16. Article 21 requires that voters lists be subject to inspection fifteen days before the election in the room of the precinct commission.
- 4.17. A voter omitted from the voters list shall be added by the precinct commission upon presentation of documents certifying the voter's identity and residence in the territory of the given polling station.
- 4.18. Procedures for complaining about inaccuracies in the voters lists, and appealing decisions on such complaints, are set forth in Article 21.
- 4.19. Lists of voters shall be updated on the eve of each round of voting.

Transparency of Elections

- 4.20. Article 13 provides that the preparation and holding of all elections shall be executed openly and publicly.
- 4.21. All election commissions, local representatives and executive and administrative bodies shall inform citizens of the work on preparation and holding of elections, including information on the formation of electoral districts, on the composition, place of location and working time of the commissions, on the lists of citizens who have the right to take part in the elections, and on the results of the voting.
- 4.22. Deputies of the Chamber of Representatives, members of the Council of the Republic, deputies of local Councils of Deputies, proxies of candidates, representatives of the public (political parties, other public associations, labour collectives, citizens), mass media, observers from foreign states and international organisations shall the right to be present during the holding of elections according to the procedure established by the Central Commission. Interference with work of the commissions, however, shall not be allowed. Persons hindering the work of commissions shall, on the order of the Chairperson, be removed from meetings of commissions and from rooms for voting.
- 4.23. Mass media are required under Article 13 to inform the public about the preparation and holding of elections.

Electoral Districts

- 4.24. Article 14 provides that the President shall be elected for the single electoral district constituting the entire territory of the Republic of Belarus.
- 4.25. Article 15 establishes 110 electoral districts for the Chamber of Representatives to be formed on the territory of the Republic of Belarus.
- 4.26. Article 15 establishes that for the elections of deputies of local Councils of Deputies, electoral districts shall be formed as follows:
- Oblast Council of Deputies-from 40 to 60 electoral districts;
 - Minsk City Council of Deputies-from 40 to 60 electoral districts;
 - Regional Council of Deputies-from 25 to 40 electoral districts;
 - Town Council of Deputies in towns subordinated to Oblast-from 25 to 40 electoral districts;
 - Town Council of Deputies in towns subordinated to Region-from 25 to 40 electoral districts;
 - Settlement or rural Council of Deputies-from 11 to 15 electoral districts.
- 4.27. Article 15 provides that the average number of electors per electoral district for deputies of the Chamber of Representatives shall be established by the Central Commission no later than five months before expiration of the term of office of the current convocation of the Chamber of Representatives. Article 16 provides that the

electoral districts shall be formed by the Central Commission “on representation of the Oblast and Minsk Executive Committees”.

- 4.28. The number of electoral districts to be formed for elections to the local Council of Deputies, and the average number of electors (eligible voters) per electoral district, shall be established by the respective local Council of Deputies no later than five months before expiration of the term of office of the current convocation of the local Council of Deputies.
- 4.29. Article 16 provides that the electoral districts for the Oblast, Minsk City, regional, town (subordinated to Oblast or region), settlement and rural Councils of Deputies shall be formed by the territorial commissions for the respective local Council of Deputies “on representation of the Oblast, Minsk City, regional, town, settlement and rural executive committees”.
- 4.30. The number of electors in an electoral district shall be determined based on the number of citizens enjoying the right of suffrage and living in the territory included in the electoral district during the holding of the last elections.
- 4.31. Electoral districts shall be formed with an approximate equal number of electors. Deviation from the average number of electors, for the electoral districts for the House of Chambers and respective local Council of Deputies, may not, as a rule, exceed ten percent (10%).
- 4.32. An electoral district shall constitute a single territory. An electoral district shall not be formed from territories that do not border each other. One deputy shall be elected from each electoral district.
- 4.33. Lists of electoral districts, including the number of electors in the electoral district and places of location of electoral commissions, shall be published by the Central Commission no later than the fifth day after appointment of elections for the Chamber of Representatives.
- 4.34. Lists of electoral districts, including the number of electors in the electoral district and places of location of electoral commissions, shall be published by the territorial election commissions no later than 80 days before elections for the local Councils of Deputies.
- 4.35. In the event of dissolution of the Chamber of Representatives, electoral districts for the Chamber of Representatives shall be those formed during the elections of the former convocation of the Chamber of Representatives.

Appointment of Elections

- 4.36. Article 22 provides that appointment of elections for the Chamber of Representatives, Council of the Republic, local Councils of Deputies, and referendum shall be made by the President.

- 4.37. Article 23 provides that appointment of the election of the President shall be made by the Chamber of Representatives.

Election Commissions and Governmental Bodies with Roles in the Elections

- 4.38. Articles 25 through 31 of the draft Code establish lower election commissions, down to the level of precinct election commission, to assist the Central Commission in the preparation and holding of elections.
- 4.39. Elections for the recall of a deputy of the Chamber of Representatives are administered by the Central Commission and commissions on holding voting for recall of the deputy.

The Central Commission

- 4.40. Article 26 establishes the Central Commission. The Central Commission is a permanent body responsible for organising and holding elections for the President, Chamber of Representatives, Council of the Republic, local Councils of Deputies, and of other persons elected for state positions by the people, referendum elections and recall elections. The Central Commission is responsible for execution of electoral legislation in the entire territory of the Republic of Belarus.
- 4.41. Article 32 provides that formation and organisation of the Central Commission are defined by the Law of the Republic of Belarus “On the Central Commission of the Republic of Belarus and Holding of Republican Referendums”.
- 4.42. Article 33 sets forth broad powers for the Central Commission.

Commissions on Elections of the President, Chamber of Representatives, Local Councils of Deputies, Referendum, and Recall

- 4.43. Articles 11 and 34 provide that commissions on elections of the President, Chamber of Representatives, Local Councils of Deputies, referendum, and recall shall be formed from representatives of political parties, other public associations, labour collectives, as well as representatives of citizens nominated by way of submission of an application.
- 4.44. Article 11 provides that, during the preparation and holding of elections, commissions shall be independent from state bodies and bodies of territorial public self-government, within their powers established by law.
- 4.45. Decisions of commissions taken within their powers shall be mandatory for execution by all organisations, state bodies, political parties, other public associations, and citizens.

Commissions on Elections and Recall of Members of the Council of the Republic

- 4.46. Article 12 provides that elections for and recall of members of the Council of the Republic shall be provided by the presidiums of Oblast, Minsk City, regional, town (towns subordinated to Oblast) Councils of Deputies, the respective Oblast, Minsk City, regional and town executive committees, and the Central Commission.

Local Executive and Administrative Committees

- 4.47. Article 24 provides broad administrative powers to the local executive and administrative committees in proposing electoral districts, forming electoral precincts, and establishing precinct and election commissions.

Polling Stations

- 4.48. For elections of the President, Chamber of Representatives, Local Councils of Deputies, referendum, and recall, Article 17 provides that the territory of regions, towns, and town districts shall be divided into polling stations for voting and counting. Polling stations shall be formed to accommodate no less than 20 and not more than 3,000 voters.
- 4.49. Polling stations may be formed in sanatoria, preventoria, rest homes, hospitals and other stationary medical treatment and prevention institutions. Polling stations shall also be formed in military units.
- 4.50. Polling stations shall be formed in regions and towns by the regional or town (subordinated to Oblast) executive committees and in towns divided into districts by the administrations.
- 4.51. For elections for the President, Chamber of Representatives, and referenda, polling stations shall be established in consular offices outside of the country for citizens abroad.

Election of the President of the Republic of Belarus

- 4.52. Article 56 establishes that the election for the President shall be appointed by the Chamber of Representatives no later than five months before the expiration of term of office of the previous President, and shall be held on a Sunday no later than two months before the expiration of the term of the previous President.
- 4.53. In the event of a vacancy in the office of President, under Article 56, elections shall be held no earlier than 30 days and no later than 70 days after the vacancy appeared. In such an event, the Central Commission shall establish a shorter time period for the pre-election campaign.
- 4.54. Article 57 requires a candidate for President to be a born citizen of the Republic of Belarus, at least 35 years old, enjoying the right of suffrage, with permanent residence

in the Republic of Belarus for not less than ten years counted directly before the elections.

- 4.55. Article 60 requires that the nomination of a candidate for President must be supported by 100,000 signatures of electors (eligible voters).
- 4.56. Article 60 establishes that the nomination of candidates for President shall begin 75 days and end 35 days before the elections.
- 4.57. Under Article 61, a nomination for President is made by an initiative group of electors of at least 100 persons. The list of members of the initiative group, specifying its leader, must be submitted with an application for registration to the Central Commission no later than 80 days before the election. The person who has the intention to be a candidate for the President must be listed by providing the surname, name and patronymic name, date of birth, profession, position (occupation), places of work and residence, and party membership. The surname, name and patronymic name, date of birth, and place of residence must also be disclosed for each member of the initiative group and its leader.
- 4.58. Article 61 provides that the Central Commission has five days to consider the application for registration submitted by an initiative group. Registration of the initiative group shall be denied only when the requirements of the Code are violated. The denial of a registration for application can be appealed, within three days, in the Supreme Court of the Republic of Belarus. The Supreme Court shall consider the appeal within three days.
- 4.59. A signature list shall include only signatures of electors living in the same place of residence or same district where a town is divided into districts.
- 4.60. An elector has the right to sign in support of only person proposed for nomination as a candidate for President. The elector shall specify in the signature list, in the elector's hand, the elector's surname, name and patronymic name, date of birth, place of birth, series and number of passport or the requisites of the substitution identity card, date of signature, and sign. The signatures of electors shall be numbered.
- 4.61. Participation in administration of the collection of signatures by a candidate, force in the process of signature collection, and remuneration of electors for signatures is prohibited. Violation of these prohibitions may be a basis for denial of registration of a candidate for President.
- 4.62. Signature lists shall be submitted, no later than 50 days before the elections, to the regional, town or town district commission on elections of the President. These commissions shall have ten days to verify the authenticity of the electors' signatures submitted by an initiative group. At least fifteen per cent (15%) of the signature lists must be verified. A record shall be made about the number of electors signed lists for a candidate. This record shall be immediately submitted to the respective Oblast and Minsk City commission on elections of the President.

- 4.63. Authenticity of elector's signatures in the signature lists may be verified, if required, within a five-day period by the Oblast and the Minsk City commission on elections of the President.
- 4.64. If during verification of signatures, one percent (1%) or more of the verified lists are recognised as invalid, then all submitted signature lists and signatures in them, on decision of the respective commission, shall not be taken into account when determining the result of the collection of signatures of electors in the region, town or town district.
- 4.65. On the basis of the records of the regional, town and town district commissions on elections of the President, the number of electors who signed in support of nomination of a candidate, and the results of verification of the authenticity of the signatures, shall be made by the Oblast and the Minsk City commission on elections of the President, summarised, and a record made and immediately forwarded to the Central Commission.

Elections of Deputies of the Chamber of Representatives of the National Assembly

- 4.66. Articles 82 through 88 regulate elections to the Chamber of Representatives.
- 4.67. Article 3 provides that elections of deputies of the Chamber of Representatives and deputies of local Councils of Deputies shall be held in single-mandate electoral precincts.

Elections of Members of the Council of the Republic of the National Assembly

- 4.68. Members of the Council of the Republic are elected by indirect elections. Articles 97 through 110 set forth the procedures for these indirect elections.

Election Campaigning

- 4.69. Article 45 provides that citizens, political parties, other public associations, labour collectives, proxies of candidates for President, deputies, and initiative groups shall have the right for free and all-around discussion of election programs at meetings, rallies, and mass media. This provision also applies to recall elections and referendum elections. However, meetings, rallies, street marches, demonstrations, and picketing shall be conducted in conformity with the law.
- 4.70. At meetings of deputies of local Councils of Deputies, each deputy taking part in the work of the meeting shall have the right to discuss the personal quality of candidates.
- 4.71. Foreign citizens shall not have the right to participate in election campaigning.
- 4.72. Article 46 prohibits election campaigning on the day of voting.

Mass Media

- 4.73. Article 46 provides that citizens, political parties, other public associations, labour collectives, proxies of candidates for President, deputies, and initiative groups shall have equal right for use of state mass media from the time of registration of candidates.
- 4.74. A candidate for President shall have the right to publish in state owned press his election program, not exceeding five typewritten pages, by submitting the text no later than 20 days before the elections.
- 4.75. A candidate for the Chamber of Representatives shall have the right to publish in state owned press his election program, not exceeding two typewritten pages, by submitting the text no later than 20 days before the elections.
- 4.76. The text of election programs shall be published in the order in which they are received.
- 4.77. A candidate for President is entitled to make up to 200,000 election posters. A candidate for the Chamber of Representatives is entitled to make up to 10,000 posters.
- 4.78. Candidates for President and the Chamber of Representatives shall have the right for free appearance on state television and radio. The National State Television and Radio Company, within ten days after appointment of the elections, shall provide to the Central Commission the limit of time for appearance of candidates. Time must be allocated to candidates for the period when television and radio programs attract the largest audience. The procedure and number of appearances for candidates shall be established by the Central Commission. Appearances of candidates shall be on equal footing.

Voting

- 4.79. Article 50 provides that voting takes place between 0700 and 2200 hours. At polling stations in military units, sanatoria, preventoria, rest homes, hospitals and other stationary medical treatment and prevention institutions, the precinct commission may declare voting finished before 2200 hours if all electors on the voters list have voted.
- 4.80. Article 51 requires that voting booths and ballot boxes be installed and maintained to preserve the secrecy of the ballot.
- 4.81. Each elector shall vote in person. Article 52 prohibits voting for another person.
- 4.82. An elector must be listed on the voters list and present a passport or identity card in order to be issued a ballot.
- 4.83. A voter who is unable to fill the ballot paper by himself can be assisted by another person. The person assisting cannot be a member of the precinct or higher commission, candidate, or proxy of such persons.

4.84. Article 52 sets for the procedure for marking the ballot.

Advance Voting

4.85. Article 53 permits advance voting, for an elector who will not be present on the day of the elections, during the five days before the election. The procedure for advance voting is set forth in Article 53. The secrecy of the vote must be observed.

Mobile Voting

4.86. Article 54 permits a voter who is unable to appear at the polling station, due to health reasons or other valid cause, to request the precinct commission to bring the voter a ballot. The procedure for mobile voting is set forth in Article 54. The secrecy of the vote must be observed.

5. GENERAL OVERVIEW OF THE DRAFT LAW ON ELECTIONS OF DEPUTIES OF THE SUPREME COUNCIL

Elections Regulated by the Draft Law on Elections of the Supreme Council

- 5.1. Article 1 of the draft Law establishes that the law regulates preparation and holding of the election for the deputies of the Supreme Council of the Republic of Belarus.
- 5.2. The electoral system for this election is a mixed majority/proportional representation system. The Supreme Council shall consist of 260 deputies. Fifty percent (50%) of the deputies are elected in territorial multi-candidate electoral districts by party lists and fifty percent (50%) are elected in single-candidate electoral districts by a majority system. Deputies shall have a term of four years.
- 5.3. Article 15 provides that there shall be 130 single-candidate electoral districts where deputies shall be elected by majority vote. The Central Commission shall establish boundaries for these electoral districts and their centres, and make this information public no later than 90 days before the election. The difference between the number of voters in electoral districts may vary by twenty percent (20%).
- 5.4. Article 15 provides that there shall be seven territorial multi-candidate electoral districts, with one electoral district in each region and one electoral district in the City of Minsk. These districts shall elect 130 deputies from party lists. The Central Commission, depending on the number of voters residing in each territorial multi-candidate electoral district, shall determine the number of deputy seats, the boundaries and centres of the electoral district, and make this information public no later than 90 days before the election.
- 5.5. Article 67 establishes an electoral threshold of five percent (5%) for participation in the allocation of seats in the seven territorial multi-candidate electoral districts. The allocation formula used is a simple Hare quota with largest remainder.

- 5.6. Article 16 provides for the establishment of electoral precincts for the casting and counting of ballots in the election. Article 17 provides that electoral precincts shall have not less than 20 and not more than 3,000 voters.

Suffrage

- 5.7. Articles 1 through 6 establish that the election shall be held on the basis of universal, equal, and direct suffrage by secret ballot.
- 5.8. Article 3 grants the right to vote to citizens of the Republic of Belarus who have reached the age of 18 years.
- 5.9. Article 3 grants the right to be elected to citizens of the Republic of Belarus who have reached the age of 21 years.
- 5.10. Citizens adjudicated by a court of law as incompetent are denied the right to vote under Article 2.
- 5.11. Citizens kept in places of confinement by sentence of a court of law are denied the right to vote.
- 5.12. Under Article 3 voting is not compulsory.

Voters Lists

- 5.13. Article 30 provides that voters lists shall be compiled for each precinct and signed by the chairman and secretary of the precinct commission.
- 5.14. Article 32 provides that voters enlisted for military service shall be included in the voters list at the place of service.
- 5.15. Under Article 31, every citizen who will be 18 years of age by the day of the election shall be included in the list of voters based on the territory where the voter lives. The voter shall be included in the voters list in only one precinct.
- 5.16. Article 33 requires that voter lists be subject to inspection 30 days before the election.
- 5.17. Articles 31, 33, and 34 set forth the procedures for a voter to seek inclusion on the voters list if omitted, procedures for complaining about inaccuracies in the voters lists, and procedures for appealing decisions on such complaints.

Transparency of Elections

- 5.18. Articles 10 and 11 provide that the preparation and holding of the election shall be open and public. All sessions of election commissions shall be publicised and open to attendance by candidates, proxies, observers, and members of the media. All electoral activities, including voting and counting of ballots shall be subject to observation.
- 5.19. Article 11 provides for the accreditation of international observers.

- 5.20. Observers, proxies for candidates, and representatives of the media have the right to appeal against any action or inaction of an election commission or one of its members to a superior election commission or court, provided such appeal is made in accordance with established procedure.
- 5.21. The rights and obligations of public and international observers shall be governed by the legislative and regulatory acts of the Republic of Belarus.

Right to Nominate Candidates

- 5.22. Articles 12, 38, 39, and 68 provide that the right to nominate candidates is vested in political parties, election blocs and public associations, provided they have been founded in accordance with law and registered with the Ministry of Justice no later than six months before the election. Candidate nominations for single-candidate electoral districts must be submitted to the respective district election commission no later than 40 days before the election. Candidate nominations for the party list for the proportional representation must be submitted to the respective territorial election commission no later than 40 days before the election.
- 5.23. Additionally, under Article 37, a nomination for a candidate in a single-member electoral district can be made by an initiative group of electors of between 15 and 50 persons. The application of the initiative group, specifying its leader, must be submitted to the district election commission no later than 65 days before the election. A candidate who is supported by 600 valid signatures shall be registered by the respective election commission no later than 30 days before the election, provided the lists of signatures is submitted to the district election commission no later than 40 days before the election.
- 5.24. A voter has the right to sign signature lists in support of several candidates.

Announcement of Elections

- 5.25. Article 8 provides that the election shall be called by the Supreme Council not later than five months before expiration of the council's term of office. If the Supreme Council fails to announce a date for the election within four months before expiration of the council's term, then the election shall be held on the last Sunday one month before expiration of the council's term of office.

Election Commissions

- 5.26. Article 18 establishes that the election is administered by the Central Commission and the following commissions:
- Territorial commissions for multi-member electoral districts (regional and City of Minsk);
 - District commissions for single-candidate electoral districts;
 - Precinct election commissions.

- 5.27. Under Article 9, election commissions shall be composed of the representatives of political parties, public organisations, and the representatives of voters who have been nominated for participation by means of submission of applications.
- 5.28. Article 20 provides that the Central Commission is the primary election authority. However, a decision of the Central Commission can be altered by a court judgment in legal force. The powers of the Central Commission are stated in Article 20.
- 5.29. Article 21 provides that the Central Commission determines the number of members of the territorial election commission no later than 75 days before the elections. Each political party and election bloc shall have the right to delegate one representative to the territorial election commission with the right of deliberative vote.
- 5.30. Article 23 provides that the Central Commission, in agreement with the Regional Councils of Deputies and the Minsk City Council of Deputies, determines the number and appointment of members of the district election commission no later than 75 days before the elections.
- 5.31. Article 25 provides that the district election commission, in agreement with the respective local Council of Deputies, determines the number and appointment of members of the precinct election commission no later than 65 days before the elections. The number of members of precinct election commissions, representing political parties and public associations, shall not be less than one fourth and not more than one third of the commission composition. The number of members of a precinct election commission shall be from five to thirteen persons. The term of office of a precinct election commission expires after completion of the election.
- 5.32. Article 27 sets forth the procedure for nomination of representatives to election commissions.

Election Campaigning

- 5.33. Article 42 provides that citizens, political parties, election blocs, public associations, candidates, and their proxies shall have the right to conduct free and comprehensive discussion of the election programs and candidates. All political parties, election blocs, and candidates shall be guaranteed equal access to print and electronic mass media.
- 5.34. Members of election commissions, officials of state bodies, and officials of local government bodies shall not be involved in the election campaign. Officials of state bodies and officials of local government bodies may take part in the election campaign if they have been nominated as candidates, but only on equal footing with other candidates.
- 5.35. Article 44 prohibits election campaigning on the day of voting.

- 5.36. Article 44 prohibits, within ten days before the election and on election day, the publication of opinion poll results, forecast of election results, or other research data relating to the elections.
- 5.37. Electoral disputes shall be considered by the respective territorial and district election commissions. Decisions of election commissions may be appealed to a court of law in accordance with legally established procedure. The court's decision shall be final and not subject to appeal.
- 5.38. Articles 65 and 66 allow for the expenditure of state funds and private funds for the purpose of the election campaign.

Mass Media

- 5.39. Article 43 provides that candidates, political parties, and election blocs shall have equal right for free use of state television and radio on a national scale or within the territory of a respective electoral district.
- 5.40. State owned print mass media is also subject to the equal access provision of Article 43.
- 5.41. Political parties, election blocs, and candidates shall have the right to conclude contracts with state television and radio for chargeable airtime in addition to the airtime allocated free of charge. The payment rate shall be equal for all participants in the electoral process.
- 5.42. Anonymous campaign materials are prohibited.

Voting

- 5.43. Article 54 provides that voting takes place between 0700 and 2100 hours. At polling stations in military units, rest home and vacation homes, hospitals and other in-patient medical institutions, the election commission may declare voting finished before 2100 hours if all electors on the voters list have voted.
- 5.44. Article 55 requires that voting booths and ballot boxes be installed and maintained to preserve the secrecy of the ballot.
- 5.45. Each elector shall vote in person. Article 55 prohibits voting for another person.
- 5.46. An elector must be listed on the voters list and present a passport or identity card in order to be issued a ballot.
- 5.47. A voter who is unable to fill the ballot paper by himself can be assisted by another person. The person assisting cannot be a member of the precinct or higher commission, candidate, or proxy of such persons.
- 5.48. Article 55 sets forth the procedure for marking the ballot.

- 5.49. Article 56 establishes the procedure for mobile voting.
- 5.50. Article 57 establishes the procedure for voting by post.
- 5.51. Article 58 establishes the procedure for voting at a diplomatic mission outside of the country.
- 5.52. Article 59 establishes the procedure for voting in places of confinement.