



Office for Democratic Institutions and Human Rights

**OSCE/ODIHR ASSESSMENT
OF THE ELECTORAL CODE OF THE REPUBLIC OF BELARUS
AND
OF THE POSITION OF THE GOVERNMENT OF BELARUS ON THE ELECTORAL
CODE AS STATED BY THE CENTRAL ELECTION COMMISSION OF BELARUS**

Warsaw, 25 July 2000

1. INTRODUCTION

- 1.1. This assessment comments on the Electoral Code of the Republic of Belarus (“the Electoral Code”), including the position of the Government of Belarus, as stated by the Central Election Commission in written comments dated 22 June 2000.
- 1.2. This assessment is based on unofficial English translations of the following provided by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (“OSCE/ODIHR”): (1) 20 October 1999 draft of the Electoral Code, (2) second draft of the Electoral Code¹, (3) further amendments to the Electoral Code adopted in June 2000², (4) 1996 Constitution of the Republic of Belarus, (5) Law on the Central Election Commission of the Republic of Belarus on Elections and Holding of Republican Referendums (“the Law on the Central Election Commission”)³, (6) Guidelines regarding the Adopted Electoral Code of Belarus agreed by the international community and contained in a 21 May Position Paper of the Technical Conference held under OSCE Chairmanship on April 7 2000, consisting of four pages (“Technical Conference Position Paper”)⁴, (7) written comments of the Central Election Commission of Belarus dated 22 June 2000, responding to the Technical Conference Position Paper and consisting of seven pages, and (8) written comments of the Central Election Commission of Belarus sent to ODIHR on 14 July 2000, providing an assessment of the Electoral Code of the Republic of Belarus and consisting of seven pages.

¹ The adoption date of the second draft is not clear, but it appears to have been adopted in either January or February 2000.

² There appear to be twenty-five (25) amendments, amending articles 13, 24, 45, 49, 52, 54, 55, 61, 62, 65, 66, 68, 70, 71, 72, 100, 101, 104, 105, 106, 115, 118, 136, 139, and 155.

³ The Law on the Central Election Commission became effective in April 1998.

⁴ The following international organisations and institutions took part in the April 7, 2000 Technical Conference – OSCE Chairman in Office, OSCE Secretary General, OSCE Advisory and Monitoring Group in Belarus, OSCE Office for Democratic Institutions and Human Rights, OSCE Parliamentary Assembly, Belarus ad hoc Working Group of the OSCE Parliamentary Assembly, European Parliament, European Commission, Council of Europe, International Foundation for Election Systems. The Council of Europe Venice Commission also agreed to the guidelines.

- 1.3. This assessment does not warrant the accuracy of the translations provided. Occasionally, mistakes do occur in translations. Obviously, a mistake in translation results in erroneous assessment of text.

2. BACKGROUND OF THE ASSESSMENT PROCESS

- 2.1. An initial assessment of the Electoral Code was prepared for OSCE/ODIHR by Jessie V. Pilgrim, dated 20 January 2000 and consisting of twenty-five pages.
- 2.2. A second assessment of the Electoral Code, considering amendments to the Electoral Code, was prepared for OSCE/ODIHR by Jessie V. Pilgrim, dated 6 March 2000 and consisting of nine pages.
- 2.3. Discussions between the Government of Belarus and the international community have taken place in an effort to positively address issues raised by the two assessments.
- 2.4. A Technical Conference Position Paper was prepared on outstanding issues not resolved by amendments to the Electoral Code. The Technical Conference Position Paper is dated 21 May 2000.
- 2.5. The Government of Belarus responded to the issues raised by the Technical Conference Position Paper with written comments, prepared by the Central Election Commission, dated 22 June 2000.
- 2.6. Additional amendments were made to the Electoral Code in June 2000.
- 2.7. This assessment summarizes the issues raised regarding the Electoral Code and the responses thereto by the Government of Belarus⁵, and provides final comments on the current language of the Electoral Code.⁶

3. EXECUTIVE SUMMARY

- 3.1. The Electoral Code fails to provide for multi-party or pluralistic representation on the Central Election Commission and other election commissions. The Electoral Code grants to the ruling party in the executive branch a monopolistic hold on all election commissions.**
- 3.2. The Electoral Code does not provide sufficient provisions ensuring transparency in the work of election commissions.**

⁵ As the responses of the Government of Belarus are directed to the Technical Conference Position Paper, a summary of the Technical Conference Position Paper on each issue is included to assist the reader in understanding the responses of the Government.

⁶ This assessment is a summary. The reader who desires a more detailed discussion of specific language in specific articles should consult the assessments of 17 January and 21 February.

- 3.3. The Electoral Code does not provide a uniform appeal process for review of decisions of election commissions.**
- 3.4. The Electoral 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, OSCE commitments, and the Universal Declaration of Human Rights.**
- 3.5. Provisions in the Electoral 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.**
- 3.6. Provisions in the Electoral Code governing referendum elections appear to be contrary to the 1996 Constitution of the Republic of Belarus.**
- 3.7. Provisions in the Electoral Code permitting recall elections for the Chamber of Representatives, Council of the Republic, and local Councils of Deputies appear to be contrary to the 1996 Constitution of the Republic of Belarus.**
- 3.8. Problems with the Electoral Code, raised by the international community during discussions with the Government of Belarus, have not adequately been addressed by recent amendments to the Electoral Code. The Electoral Code fails to ensure democratic elections in Belarus.**

4. THE ISSUES, GOVERNMENT RESPONSE, AND CURRENT LANGUAGE OF THE ELECTORAL CODE

MEMBERSHIP OF ELECTION COMMISSIONS

Summary of the Initial Assessment

- 4.1. The initial assessment criticised the manner of appointment of members to election commissions, including the Central Election Commission. As noted in the initial assessment, the President of the Republic of Belarus has the right to appoint six of the twelve members of the Central Election Commission. The Council of the Republic of the National Assembly, which is substantially influenced by the President and executive authorities, appoints the remaining six members.⁷ Additionally, the President, with the consent of the Council of the Republic, appoints the Chairman of the Central Election Commission.

⁷ Under Article 91 of the 1996 Constitution, the President appoints one-third of the members of the Council of the Republic. 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 Electoral Code.

- 4.2. As noted in the initial assessment, the legal framework in Belarus fails to establish either multi-party or pluralistic representation on the Central Election Commission. Indeed, the legal framework is deceptive as it creates the illusion of pluralistic membership.
- 4.3. The illusion of pluralistic membership is created by Article 3 of the Law on the Central Election Commission as it permits a variety of sources to *nominate* candidates for membership on the Central Election Commission. However, the power of *appointment* is a virtual monopoly of the President of Belarus. The President appoints six of the twelve members of the Central Election 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.⁸
- 4.4. The initial assessment observed that the manner of appointing members to lower election commissions was also deficient. Members of these commissions are to be formed from representatives of political parties, other public associations, and 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. Thus, membership on these commissions is not multi-party or pluralistic. Similar to membership on the Central Election Commission, the illusion is created of pluralistic membership. This illusion is created as the Electoral Code permits a variety of sources to *nominate* candidates for membership on the lower election commissions.
- 4.5. The initial assessment recommended changes in the Electoral Code to provide for pluralistic composition of the Central Election Commission and lower election commissions. Membership of these commissions should be diversified to maximise independence and impartial administration of the election processes. 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, and initiative groups of citizens as their stake in the electoral process is recognised by the Electoral Code in the articles governing nomination procedures.

The International Community Position on Membership of Election Commissions

- 4.6. The Technical Conference Position Paper of 21 May 2000 is clear. It requires “amendment of various articles [of the Electoral Code] to ensure multi-party or pluralistic representation on election commissions at all levels.”

The Government Position on Membership of Election Commissions

- 4.7. First, the Government admits that election commissions “are formed by a joint decision of the representative and executive bodies of power”. Thus, the Government concedes that election commissions are composed of functionaries of the existing political system, and that these functionaries are either directly controlled or heavily influenced by the executive branch of government.

⁸ See footnote 7, *supra*.

- 4.8. Secondly, the position of the Government is that the *illusion* of multi-party or pluralistic membership on election commissions is sufficient. The written response of the Central Election Commission cites the articles of the Electoral Code regulating who may be *nominated* to an election commission. The written response, however, ignores the key issue of the *power of appointment*. The *appointment* process does not, as asserted by the Government, provide “for pluralistic composition of the Electoral Commission” (sic).

Current Reality/Existing Law on the Commission Membership Issue

- 4.9. The legal framework of Belarus does not ensure multi-party or pluralistic membership on election commissions. None of the amendments to the Electoral Code remedy this problem.

DISMISSAL FOR “DISCREDIT” ISSUE

Summary of the Initial Assessment

- 4.10. The legal framework fails to ensure that the Central Election Commission is independent. Of particular concern is Article 3 of the Law on the Central Election Commission as it allows a member to be “dismissed” for “commitment of actions discrediting the Central [Election] Commission”. This article would permit a member, who publicly discloses an act of misfeasance or malfeasance of the commission, to be dismissed as the member would most certainly be committing an action “discrediting the Central [Election] Commission”.
- 4.11. The initial assessment recommended that Article 3 of the Law on the Central Election Commission be amended to delete the provision that permits dismissal of a commission member for “commitment of actions discrediting the Central [Election] Commission”. Additionally, the initial assessment recommended that consideration should be given to including language in the Electoral Code to affirmatively protect members of the commission from threats of removal.

The International Community Position on the Dismissal for “Discredit” Issue

- 4.12. The Technical Conference Position Paper of 21 May 2000 is clear. It requires “deletion of the vague provisions permitting dismissal of a commission member for ‘commitment of actions discrediting the Commission’.”

The Government Position on the Dismissal for “Discredit” Issue

- 4.13. The position of the Government of Belarus is that one should not be concerned about Article 3 of the Law on the Central Election Commission because Article 36 of the Electoral Code does not have the same dismissal for “discredit” language. *The Government’s position ignores three basic facts*. First, Article 32 of the Electoral Code specifically provides that formation of the Central Election Commission is regulated by the Law on the Central Election Commission, thereby making Article 3 of the Law on the Central Election Commission applicable. Secondly, Article 36 of the Electoral

Code, relied on by the Government, regulates the “procedure for alteration” of the composition of *lower election commissions*. Article 36 of the Electoral Code does not apply to the Central Election Commission. Thirdly, even if it could be argued that Article 36 of the Electoral Code applied to the Central Election Commission, there is no language in Article 36 that conflicts with Article 3 of the Law on the Central Election Commission and no language in Article 36 that prohibits application of the Article 3 dismissal for “discredit” provision. The Government’s response ignores the *controlling legal provisions*, Article 32 of the Electoral Code and Article 3 of the Law on the Central Election Commission.

Current Reality/Existing Law on the Dismissal for “Discredit” Issue

- 4.14. The legal framework of Belarus permits a member of the Central Election Commission to be “dismissed” for “commitment of actions discrediting the Central [Election] Commission”.

UNIFORM APPEAL PROCESS TO SUPREME COURT ISSUE

Summary of the Initial Assessment

- 4.15. The initial assessment noted that, in Article 6 of the Law on the Central Election Commission, appeals of decisions of the 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 Electoral Code do provide for appeal to the Supreme Court of certain decisions of the Central Election Commission. However, there is no uniform appeal process in either the Electoral Code or the Law on the Central Election Commission.
- 4.16. The initial assessment recommended amendment of the Electoral Code to include provisions for a uniform appeal process for review of decisions and actions of the Central Election Commission by the Supreme Court. The reference in Article 6 of the Law on the Central Election Commission to appeals “in cases stipulated by the legislation of the Republic of Belarus”, and the various articles scattered throughout the Electoral Code providing for appeal to the Supreme Court of certain decisions of the commission, are not sufficient.

The International Community Position on the Uniform Appeal Process Issue

- 4.17. The Technical Conference Position Paper of 21 May 2000 is clear. It requires “establishment of a uniform appeals process to the Supreme Court for review of all decisions and actions of the Central Election Commission.”

The Government Position on the Uniform Appeal Process Issue

- 4.18. The position of the Government is that a uniform appeal process is not necessary. In support of this argument, the Government cites *thirty-eight articles scattered throughout* the Electoral Code that “define” the “17 most important positions (sic), on which the decisions and actions of commissions and other bodies can be appealed

against in court” (sic). The Government’s response supports the international community position that there should be a uniform appeal process.

Current Reality/Existing Law on the Uniform Appeal Process Issue

- 4.19. The need for a uniform appeal process is underscored by the importance of the right to vote. Since the right to vote is a fundamental human right under international legal instruments, the right to a remedy for violation of the right to vote is also a fundamental human right.⁹ The legal framework must make it clear that the complaints and appeals process for protecting the right of suffrage includes:
- The right to present evidence in support of a complaint
 - The right to a public hearing on the complaint before an impartial tribunal¹⁰
 - The right to a fair hearing on the complaint
 - The right to transparent proceedings on the complaint
 - The right to a speedy and effective remedy¹¹
 - The right to appeal to an appellate court if a remedy is denied
- 4.20. The reference, in Article 6 of the Law on the Central Election Commission that appeals against decisions of the Central Election Commission can be made to the Supreme Court “in cases stipulated by the legislation of the Republic of Belarus”, is insufficient to protect the rights listed above in paragraph 4.19. The rights listed above are minimum requirements for free and fair elections. A uniform process for appeals to the Supreme Court is essential to protect the suffrage rights of citizens of Belarus.
- 4.21. The current language of the Electoral Code does not adequately ensure protection of the suffrage rights of citizens of Belarus.

TRANSPARENCY ISSUES

Summary of the Initial Assessment

- 4.22. The initial assessment noted that the Electoral Code failed to ensure sufficient transparency of electoral processes.

⁹ See Article 2 of the International Covenant on Civil and Political Rights and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁰ Article 10 of the Universal Declaration of Human Rights provides that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights....” Similar guarantees are stated in the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. These principles are consistent with OSCE commitments. See Paragraph 13.9 of the OSCE 1989 Vienna Document, Paragraphs 5.9 to 5.12 of the OSCE 1990 Copenhagen Document, and Paragraphs 18 to 21 of the OSCE 1991 Moscow Document.

¹¹ Article 8 of the Universal Declaration of Human Rights provides that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

- 4.23. The initial assessment recommended that the Electoral Code should clearly 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. Important electoral documents should be publicly posted without any request for examination or inspection. This would include documents such as the voters list, results of counting, 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 polling station, precinct, district, and central election commission levels. Additionally, all such documents should be posted as soon as possible and should be maintained for a sufficient period of time to allow for public inspection and examination of such documents.
- 4.24. The initial assessment also recommended that the Electoral 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.

The International Community Position on the Transparency Issues

- 4.25. The Technical Conference Position Paper stated that the following should be in the Electoral Code: (1) inclusion in Article 13 of the term “domestic observers” and remedies for observers in the event their rights are denied during the course of observation, (2) publication and posting of all important electoral documents for a sufficient period of time to allow for public inspection and examination at all levels of election administration¹², (3) providing international and domestic observers with a certified copy of official results at all levels upon request, and (4) granting international and domestic observers full access to military voting and other restricted areas where voting occurs.

The Government Position on the Transparency Issues

- 4.26. The Government response is that “the term representatives of general public” has been replaced by the word “observer” in Article 13 of the Electoral Code. Additionally, the Government states that Article 13 has been amended to grant an “observer” the right to be present at meetings of election commissions and to see the protocols and all voting results. The Government asserts that these changes, along with existing language in the Electoral Code, remedy any complaints that have been made concerning transparency of the election processes. The Government cites Articles 13, 15, 18, 21, 46, 55, 68, 79, 82, 85, 92, 108, 121, 138, and 148 as satisfactorily addressing all transparency issues. Contrary to the assertion of the Government, these articles do not satisfactorily address the transparency issues. These articles, in general terms, require that voters be informed about the boundaries of electoral constituencies, the locations of election commissions, the locations of polling stations, the lists of candidates, the content of decisions made by election commissions, and the final election results. Contrary to the assertion of the Government, these articles do not establish the minimum elements necessary for transparency of the election processes.

¹² Including publication in newspapers as well as posting at polling stations and election administration facilities.

- 4.27. Concerning the issue of expeditious and meaningful appeal for violation of the rights of an observer, the Government states that this is not an issue as such protection is contained in Article 49 of the Electoral Code. Contrary to the Government's assertion, although Article 49 does allow complaints about election processes, it does not establish protections for the rights of observers or provide a procedure for obtaining corrective relief should an election commission or administrator deny the rights of an observer.

Current Reality/Existing Law on the Transparency Issues

- 4.28. Minor improvements have been made in the Electoral Code in the area of transparency of election processes. The term "observer" has been included in Article 13. Additionally, more detailed descriptions of the rights of observers and mass media have been provided.¹³ Observers are now permitted to "familiarise" themselves with the protocols of "all relevant commissions". However, there is no requirement that observers be provided with certified copies of the counting results, tabulations, and tallies at all levels of election administration. This is a substantial failing of the Electoral Code.

CAMPAIGN AND MEDIA REGULATION ISSUES

Summary of Initial Assessment

- 4.29. The original assessment noted that Article 47 of the Electoral Code 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.
- 4.30. The original assessment noted that Article 49 allows a person to be prosecuted for spreading false data defaming a candidate. There is no definition of "false data". Article 49 imposes vicarious liability on a candidate for a violation committed by a supporter. Article 49 permits cancellation of the candidate's registration based on a supporter's act.
- 4.31. The overriding problem with Articles 47 and 49 is that the prohibitions in these articles are so *vague and broad* that they violate OSCE commitments and international standards. Due to the vague and broad language of these provisions, the categories of speech and expression that subject a person to liability could include speech and expression critical of the government, government officials, and candidates in the electoral campaign.
- 4.32. A free and fair election is not possible where the legal framework inhibits or chills campaign speech and expression. Paragraph 7.7 of the OSCE 1990 Copenhagen Document requires that the "law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their

¹³ The Electoral Code lists some election commission meetings that may be attended.

views and qualifications, or prevents the voters from learning and discussing them....” This OSCE commitment recognises the principle that robust and vigorous campaign speech is critical to election campaigning and the expression of political ideals necessary to enable voters to distinguish between candidates, make an informed choice, and vote accordingly.

- 4.33. Articles 47 and 49 are contrary to Article 19 of the Universal Declaration of Human Rights, which protects freedom of expression and speech. The initial assessment recommended that Articles 47 and 49 be deleted from the Electoral Code.
- 4.34. Another example of excessive campaign regulation, noted in the original assessment, is Article 48. This article provides that the electoral campaign is financed exclusively from the state budget. Private contributions to a political party or candidate are prohibited.
- 4.35. Article 48 is contrary to standard international practice. For example, an absolute prohibition on private contributions would violate the free expression article of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁴ The initial assessment recommended that Article 48 be amended to allow for private contributions directly to parties and candidates and require disclosure of the sources of such financial support.

The International Community Position on Campaign and Media Regulation Issues

- 4.36. The Technical Conference Position Paper requires removal of Articles 47 and 49 or, alternatively, acceptable amendment of the vague and broad language of these articles so that they comply with international standards.
- 4.37. The Technical Conference Position Paper also requires deletion of the Article 49 provision that permits prosecution of a person who publicly appeals for a boycott of elections.
- 4.38. The Technical Conference Position Paper requires amendment of Article 48 to permit private contributions directly to political parties and candidates, with the provision that the source of such financial support be disclosed.
- 4.39. The Technical Conference Position Paper requires amendment of Articles 46 and 74 to provide detailed rules and regulations requiring equal access to state media to ensure that the Electoral Code fully complies with Paragraph 7.8 of the OSCE 1990 Copenhagen Document.¹⁵

¹⁴ See *Bowman v. The United Kingdom*, Case No. 141/1996/760/961, European Court of Human Rights, 19 February 1998. Although Belarus is not a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Protection of Human Rights and Fundamental Freedoms reflects good practice.

¹⁵ Paragraph 7.8 of the OSCE 1990 Copenhagen Document requires that the government ensure that “no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.” Non-discrimination is a cornerstone principle critical to free and fair elections. See Articles 2 and 21 of the Universal Declaration of Human Rights, Articles 2 and 25 of the International Covenant

The Government Position on Campaign and Media Regulation Issues

- 4.40. The Government response states that Article 47 is necessary and “directed against introducing in Belarus dirty technologies with the use of libel and insults in respect of candidates, which are widely used during elections in many countries”. As for Article 49, the Government responds that this article “does not provide for the judicial responsibility, but only establishes the fact, that such persons can be brought to responsibility in general order for libel and insults”. The Government’s position, reduced to its essence, is that the protection of a government official from personal insult is more important than the protection of the right of a citizen to express a political opinion.
- 4.41. The Government response on the issue of private funding for political parties and candidates is that private contributions can be made to the government budget fund, which in turn finances the election campaigns of all electoral participants.
- 4.42. The Government response notes that the Article 49 provision that permits prosecution of a person who publicly appeals for an election boycott is no longer in the Electoral Code.
- 4.43. The Government response on the equal access issue is that Articles 46 and 74 of the Electoral Code provide for equal access to media and that one should not be concerned as the Central Election Commission will issue regulations ensuring that this does in fact occur.

Current Reality/Existing Law on Campaign and Media Regulation Issues

- 4.44. The Article 49 provision that permits prosecution of a person who publicly appeals for an election boycott has been deleted from the Electoral Code. However, the other problems with the campaign and media regulations remain.
- 4.45. The arguments of the Government on the free speech and expression issue are spurious. The right to free expression and speech, especially within the context of a political campaign, are universally recognized as far outweighing the desire for polite talk.¹⁶ It is universally recognized that a democratic society is preferable to an undemocratic society, even where the undemocratic society may be genteel one.
- 4.46. The Government’s argument on the issue of private campaign contributions, demanding a complete prohibition on private contributions would violate the free expression article of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁷

on Civil and Political Rights, and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁶ See, e.g., *Oberschlick v. Austria*, Case No. 6/1990/197/257, European Court of Human Rights, 23 May 1991.

¹⁷ See *Bowman v. The United Kingdom*, Case No. 141/1996/760/961, European Court of Human Rights, 19 February 1998.

4.47. In summary, the problems identified by the two prior assessments and the Technical Conference Position Paper have not been corrected. The Electoral Code remains contrary to democratic principles, OSCE commitments, the Universal Declaration of Human Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

CANDIDATE REGISTRATION ISSUES

Summary of Initial Assessment

4.48. The initial assessment noted that Article 61, governing signature requirements for candidates, permits a small number of invalid signatures to invalidate the attempt at registration. The original assessment recommended that, 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.¹⁸ Candidates should not be required to submit a fixed percentage of valid signatures, but should be required to submit a fixed number of valid signatures.

The International Community Position on Candidate Registration Issues

4.49. The Technical Conference Position Paper requires amendment of Article 61 and all related provisions regarding signature validation so that a fixed number of signatures is the basis for acceptance of a candidate's registration.

The Government Position on Candidate Registration Issues

4.50. The Government response to the Technical Conference Position Paper is that Article 61 has been amended so that an invalid signature shall not cancel valid signatures, and the number of invalid signatures necessary to cancel the remaining signatures on a registration application has been doubled. This argument is internally inconsistent.

Although the number of invalid signatures necessary to invalidate other signatures has been raised, the fact remains that a certain number of invalid signatures will invalidate valid signatures.

Current Reality/Existing Law on Candidate Registration Issues

4.51. The Electoral Code makes changes in the provisions governing verification of signatures. However, the Electoral Code remains deficient as it permits a percentage of invalid signatures to invalidate remaining signatures that may very well be valid and of a sufficient number to support registration of a candidate. The Electoral Code will prevent candidates, who have broad support and a sufficient number of valid signatures, from standing for election because of deficiencies in the signature verification process.

¹⁸ An invalid signature should be merely what it is – an invalid signature. An invalid signature should not invalidate other signatures or the signature list.

- 4.52. Additionally, recent amendments to Article 61 create confusion as to what information on a signature list must be written by the voter. An amendment to part 6 of Article 61 suggests that a voter does not have to enter information on a signature list by the voter's own hand if the voter "date this information with his own hand". However, an amendment to paragraph nine of part fourteen of Article 61 suggests that in order for a voter's signature to be valid, it is necessary that the voter's information is "entered personally by [the] voter." These amendments are confusing and may result in the invalidation of valid signatures.¹⁹ Article 61 should clearly state what information the voter must personally write on the signature list.
- 4.53. A positive amendment has been made with the deletion of the phrase "not later than six months" in the first paragraph of Article 62. This amendment, applicable to candidates for deputies of the Chamber of Representatives, is to be commended as it appears to make it easier for a candidate to obtain ballot access.

NATIONAL REFERENDUM ISSUE

Summary of the Initial Assessment

- 4.54. The initial assessment criticized articles of the Electoral Code, on national referendum elections, as appearing to be contrary to the 1996 Constitution of Belarus.²⁰ The initial assessment made specific recommendations for amendments in the Electoral Code to bring it in compliance with the 1996 Constitution of Belarus.
- 4.55. The Technical Conference Position Paper does not address this issue and, as a result, there is no response by the Government of Belarus. However, it should be noted that no amendments have been made in the Electoral Code to address this issue. The observations, criticisms, and recommendations presented in the initial assessment remain valid.

RECALL ELECTIONS ISSUE

Summary of the Initial Assessment

- 4.56. Articles 129 through 152 of the Electoral Code 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. These articles appear to be contrary to the Constitution of Belarus. The initial assessment sets forth a detailed discussion and analysis on this issue and it will not be restated.²¹ In summary, *there is no constitutional basis for a recall election to prematurely terminate the individual mandate of a member of the Chamber of Representatives, Council of the Republic, or*

¹⁹ For the purpose of this assessment, it is assumed that the English translations provided are accurate.

²⁰ The reader who desires a more detailed discussion of specific language in specific articles should consult the assessments of 17 January and 21 February.

²¹ The reader who desires a more detailed discussion of specific language in specific articles on this issue should consult the assessment of 17 January.

local Council of Deputies. The initial assessment recommended that Articles 129 through 152 and all provisions related to recall elections should be deleted from the Electoral Code.

The International Community Position on the Recall Elections Issue

- 4.57. The Technical Conference Position Paper requires “deletion of Articles 129 through 152 of the [Electoral] Code and all provisions related to recall elections due to early termination of mandates by voters”.

The Government Position on the Recall Elections Issue

- 4.58. The Government of Belarus states that “Article 72 of the Constitution envisages that ‘deputies are recalled according to the provisions made of the law.’”

Current Reality/Existing Law on the Recall Elections Issue

- 4.59. The argument of the Government of Belarus is spurious. The flagship of the Government’s argument, Article 72 of the Constitution, merely provides that (1) elections shall be conducted by election commissions, (2) election procedures shall be governed by law, and (3) no elections shall be held during a state of emergency or martial law. Contrary to the assertion of the Government, Article 72 of the Constitution appears not to “envisage that deputies are recalled”.
- 4.60. Notwithstanding the lack of merit of the Government’s position, and the concrete provisions relied on by the initial assessment, the fact remains that the wrongful premature termination of an elected candidate’s mandate is a serious violation of OSCE commitments. Paragraph 7.9 of the OSCE 1990 Copenhagen Document requires that “candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.” The recall election provisions, although legal provisions, are not legal provisions in conformity with democratic parliamentary and constitutional procedures. Indeed, the recall election provisions violate the Constitution of Belarus.

VOTING PROCEDURE ISSUES

The International Community Position on Voting Procedure Issues

- 4.61. The Technical Conference Position Paper requires the following: (1) amendment of Article 53 of the Electoral Code to (i) limit potential early voting to a prior request for justified reasons of inability to travel to a polling station, (ii) mandate official confirmation of the causes for a voter’s request for use of mobile voting, (iii) add language making mobile voting fully transparent, (2) amendment of Article 4 of the Electoral Code to specify that persons detained but not yet convicted shall be allowed to vote, and (3) amendment of the Electoral Code to require safe storage of voting material after Election Day.

The Government Position on Voting Procedure Issues

- 4.62. The position of the Government is that the request to amend Article 53 in conformity with the Technical Conference Position Paper would create “obstacle (sic) for citizens who won’t be able to vote on the election or referendum day.” Concerning observation by observers of the mobile voting process, the Government argues that *early voting by mail* is conducted in Switzerland, Finland, Lithuania, and other countries without observation. Thus, the Government argues, it is unnecessary to allow observation of *mobile voting* in Belarus.
- 4.63. Concerning voting by persons in detention who have not yet been convicted, the Government states that such persons “are not deprived of the voting right”. However, the Government concedes that a person, who is in custody under Article 64 of the Constitution, may not vote.

Current Reality/Existing Law on Voting Procedure Issues

- 4.64. Minor amendments have been made in the provisions regulating voting procedures for mobile voting. However, the process of mobile voting still fails to provide adequate transparency measures. The argument proffered by the Government regarding *voting by mail* in other countries is simply irrelevant.
- 4.65. The argument of the Government of Belarus in regard to Article 4 of the Electoral Code is perplexing. Article 64 of the Constitution provides that “Persons in respect of whom preventive punishment-detention-is selected under the procedure specified in the law on criminal proceedings shall not take part in voting (sic).” Article 4 of the Electoral Code provides that “Voting shall not be attended by persons who are kept in custody as a measure of suppression according to the procedure established by the criminal procedural legislation.” It is clear that these articles will prevent persons, who have not been convicted of a criminal act, and who may not even be charged with a criminal act, from exercising a fundamental human right – the right of suffrage. There is no justifiable reason to suspend the suffrage rights of such persons. International standards are violated by the unequal treatment given to these persons.²²

5. CONCLUSION

- 5.1. The Electoral Code of Belarus, since the initial assessment, has taken a few minor steps forward. However, substantial and fundamental deficiencies remain.
- 5.2. The Electoral Code of Belarus, as currently written, fails to provide for democratic elections.

²² International standards prohibit unequal treatment or discrimination in exercise of civil and political rights on the basis of “personal status”. See Articles 2 and 21 of the Universal Declaration of Human Rights, Articles 2 and 25 of the International Covenant on Civil and Political Rights, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Paragraph 13.7 of the OSCE 1989 Vienna Document, and Paragraphs 5.9 and 7.3 of the OSCE 1990 Copenhagen Document.