



Office for Democratic Institutions and Human Rights

**OSCE/ODIHR ASSESSMENT
OF THE ADOPTED ELECTORAL CODE
OF THE REPUBLIC OF BELARUS**

Warsaw, 6 March 2000¹

1. INTRODUCTION

- 1.1. This comparison reviews and comments on (1) the 20 October 1999 version of the draft Electoral Code of the Republic of Belarus (“the draft Code”), and (2) the final version of the Electoral Code of the Republic of Belarus adopted on 24 January 2000 (“the adopted Code”). This assessment is a comparison of both texts and not a commentary article by article of the adopted electoral code of the Republic of Belarus.
- 1.2. This comparison is based on review of unofficial English translations of the draft Code and adopted Code provided to the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (“OSCE/ODIHR”) by the OSCE’s Advisory and Monitoring Group (“AMG”).
- 1.3. This assessment does not address the issue of the 1996 Constitution, or the legitimacy of either the 13th Supreme Soviet or the National Assembly of the Republic of Belarus.
- 1.4. The draft Code reviewed contains the date of 20 October 1999 and has been represented to be the draft passed by the National Assembly of the Republic of Belarus on the first reading of the draft. The draft Code consists of 126 pages.
- 1.5. The adopted Code reviewed contains the date of 24 January 2000 and has been represented to be the law adopted by the National Assembly of the Republic of Belarus and approved by the Council of the Republic on 31 January 2000 and signed by President Lukashenko on 15 February 2000. The adopted Code consists of 126 pages.
- 1.6. An assessment of the draft Code was prepared for OSCE/ODIHR by Jessie V. Pilgrim. This assessment was released on 20 January 2000 and consists of twenty-five pages (“the ODIHR Assessment”). The ODIHR Assessment will be referenced and cited in this comparison, and is attached to this document.

¹ Part 4 modified on 15 March to take into account an amendment made to the law during the last reading.

- 1.7. Section 2 of this Assessment contains an Executive Summary. Section 3 lists the primary issues raised in the ODIHR Assessment and comments on how the adopted Code addresses those issues. Section 4 identifies differences in the two codes that are not discussed in the first part.

2. EXECUTIVE SUMMARY

- 2.1. **The adopted Code fails to provide for multi-party or pluralistic representation on the Central Commission and other election commissions. The adopted Code grants to the ruling party in the executive branch a monopolistic hold on all election commissions.**
- 2.2. **The adopted Code provides better transparency of election processes than did the draft Code. However, the adopted Code still has deficiencies in the area of transparency.**
- 2.3. **The adopted 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.**
- 2.4. **Changes have been made in the adopted Code regarding candidate registration and verification of signatures in support of candidates. However, deficiencies remain and legitimate candidates can still be prevented from participating in the elections.**
- 2.5. **The adopted Code contains the same deficiencies noted about the draft Code regarding referendum elections and recall elections, regulated by provisions which ran contrary to the 1996 Constitution of the Republic of Belarus.**
- 2.6. **The adopted Code makes minor changes in several articles. These changes are described in Part 4 herein.**
- 2.7. **The adopted electoral Code of the Republic of Belarus falls short of OSCE commitments, in particular those contained in the 1990 Copenhagen Document.**

3. THE PRIMARY ISSUES

The Central Commission on Elections and National Referenda

- 3.1. Paragraphs 3.1 through 3.13 of the ODIHR Assessment provide a discussion and recommendations concerning the Central Commission of the Republic of Belarus on Elections and Holding of Republican Referendums (“the Central Commission”).

- 3.2. The adopted Code does not correct the shortcomings in the draft Code noted by the ODIHR Assessment ..
- 3.3. The observations, criticisms, and recommendations presented in the ODIHR Assessment, regarding the Central Commission, remain valid.

Lower Election Commissions

- 3.4. Paragraphs 3.14 through 3.19 of the ODIHR Assessment provide a discussion and recommendations concerning the lower election commissions.
- 3.5. The adopted Code does not correct the shortcomings in the draft Code noted by the ODIHR Assessment.
- 3.6. The observations, criticisms, and recommendations presented in the ODIHR Assessment, regarding lower election commissions, remain valid.

Transparency

- 3.7. Paragraphs 3.20 through 3.24 of the ODIHR Assessment provide a discussion and recommendations concerning transparency.
- 3.8. The adopted Code does amend Article 13 of the draft Code, which provides for domestic and international observers.
- 3.9. Article 13 of the adopted Code is an improvement as it lists some election commission meetings that may be attended by observers. However, it still does not address the failure of the electoral law to clearly set forth remedies for observers in the event election commissions or administrators deny the rights of observers.
- 3.10. Nor does the amended Article 13 specifically state that all electoral documents will be made available for public examination and inspection at all levels of election administration. The electoral law should require that all important electoral documents be publicly posted without any request for examination or inspection. This would include documents such as the voter lists, 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. Nor does Article 13 require that all electoral documents be maintained for a sufficient period of time to allow for public inspection and examination of such documents.
- 3.11. Article 55 of the adopted Code does require public posting of protocols at the polling station level. This is commendable. However, most “numbers” fraud occurs subsequently when the polling station results are tallied and tabulated. This possibility exists within the Belarus electoral framework, as intermediate commissions are not required to publicly post the tallies and tabulations.²

² As an example, in a Presidential election, the protocols are posted at the polling station level. Then, middlemen commissions become involved under Articles 78 and 79 and provide tallies and tabulations,

- 3.12. The observations, criticisms, and recommendations presented in the ODIHR Assessment, regarding transparency, have been partially mitigated.

Excessive Campaign Regulation and Limitations on Freedom of Speech

- 3.13. Paragraphs 3.25 through 3.30 of the ODIHR Assessment provide a discussion and recommendations concerning excessive campaign regulation and limitations on freedom of speech.
- 3.14. The adopted Code does not correct the shortcomings in the draft Code noted by the ODIHR Assessment.
- 3.15. The observations, criticisms, and recommendations presented in the ODIHR Assessment, regarding excessive campaign regulation and limitations on freedom of speech, remain valid.

Verification of Candidate and Referendum Signatures

- 3.16. Paragraphs 3.31 through 3.36 of the ODIHR Assessment provide a discussion and recommendations concerning verification of candidate and referendum signatures.
- 3.17. The adopted Code makes changes in the provisions governing verification of signatures. However, the adopted Code suffers from the same deficiencies of the draft Code 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. This problem was discussed in paragraph 3.31 of the ODIHR Assessment. How this problem is addressed in the adopted Code is discussed in the paragraph immediately below.
- 3.18. Article 61, paragraphs 15 and 16, of the English translation of the adopted Code states the following regarding verification of signatures for a Presidential candidate nomination:

“If the number of inauthentic electors’ signatures found during verification constitutes more than 15 per cent of the number of the signatures verified, another 15 per cent of the electors’ signatures in the signature lists submitted to the respective commission by a member (members) of the initiative group shall be verified.

When the total number of inauthentic electors’ signatures found during verification constitutes more than 15 per cent of the total number of verified signatures in the signature lists, a further verification of signatures in the signature lists by the regional, town or town district commission shall be terminated and all the electors’ signatures in the submitted signature lists shall not be taken into account in determining the results of collection of signatures in the region, town or town district.”

which are not publicly posted, to the Central Commission. The Central Commission does further tabulations and announces the results.

Article 67 of the English translation of the adopted Code incorporates the verification procedure of Article 61 for verification of signatures for candidate nomination for the Chamber of Representatives and states:

“If the number of inauthentic electors’ signatures as found out during verification constituted more than 15 per cent of the number if (sic) signatures verified, another 15 per cent of electors signatures from the number of signatures required for registration of a candidate for deputies shall be verified.

In case when the summary number of inauthentic electors’ signatures found during verifications constitutes more than 15 per cent of the total number of the signatures verified in the signature lists, a further verification of the signatures in the signature lists shall be terminated.”

An example shows why this method of verification is unacceptable. A candidate for the Chamber of Representatives needs at least 1,000 valid signatures under Article 65 to meet the requirements for candidacy. Candidate M is extremely popular and receives 2,500 signatures of support. However, 100 electors wrote down the wrong passport number and, thus, these signatures are invalid under Article 61. Another 100 persons signed the list who will not reach 18 years of age by election day and, thus, these signatures are invalid under Article 61. Thirty (30) electors neglected to write down their date of birth and, thus, these signatures are invalid under Article 61. Twenty (20) electors forgot to sign the list and, thus, their signatures are invalid under Article 61. Twenty (20) electors neglected to write down their patronymic names and, thus, their signatures are invalid under Article 61. Finally, 100 persons signed who simply are not electors and, thus, their signatures are invalid under Article 61. The total number of invalid signatures is 370. The remaining signatures are valid. Reality is that there are 2,130 valid signatures, more than twice the number needed to support the candidacy.

Now it is time to verify the signatures. Article 67 requires initial verification of at least twenty percent (20%) of the signatures. Five hundred (500) signatures are “verified” (checked) and of this number 151 of the 370 “inauthentic” (invalid) signatures appear. At this point, of 500 “verified” (checked) signatures there are 349 “authentic” (valid) signatures and 151 “inauthentic” (invalid) signatures. As the number of inauthentic signatures constitutes more than fifteen percent (15%) of the number of “verified” (checked) signatures, the adopted Code requires that additional signatures be “verified” (checked). Pursuant to the Code, fifteen percent (15%) – or 375 additional signatures are “verified” (checked). Of these 375 signatures, only 25 signatures are “inauthentic” (invalid) and 350 are “authentic” (valid). At this point, there are now 699 “authentic” (valid) signatures, 176 “inauthentic” (invalid) signatures, and 1,625 “unverified” (unchecked) signatures. Of the 1,625 “unverified” (unchecked) signatures, 1,431 are “authentic” (valid). Now, however, “further verification of the signatures in the signature lists shall be terminated” because the “number of inauthentic electors’ signatures found during the verifications constitutes more than 15 percent of the total number of signatures verified in the signature lists”(Article 67, paragraph 4). The end result is that a candidate, who had 2,130 valid signatures, when only 1,000 were needed, is prohibited from being a candidate.

- 3.19. The adopted 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.
- 3.20. Articles 61 and 116 have now consistent requirements for invalidating signature lists.

National Referendum

- 3.21. Paragraphs 3.37 through 3.43 of the ODIHR Assessment provide a discussion and recommendations concerning national referendum elections.
- 3.22. The adopted Code does not correct the shortcomings in the draft Code noted by the ODIHR Assessment.
- 3.23. The observations, criticisms, and recommendations presented in the ODIHR Assessment, regarding national referendum elections, remain valid.

Recall Elections

- 3.24. Paragraphs 3.44 through 3.45 of the ODIHR Assessment provide a discussion and recommendations concerning recall elections.
- 3.25. The adopted Code does not correct the shortcomings in the draft Code noted by the ODIHR Assessment.
- 3.26. The observations, criticisms, and recommendations presented in the ODIHR Assessment, regarding recall elections, remain valid.

4. CHANGES MADE BY THE ADOPTED CODE NOT DISCUSSED IN PART 3

The adopted Code also makes minor changes to several articles, as described below. Some amendments introduce small improvements, others on the contrary reinforce the restrictive nature of the Code; none address the fundamental flaws described in above Section 3.

- 4.1. The draft Code specified, in Article 46, the exact number of campaign posters that would be printed for candidates. The adopted Code deletes this provision from Article 46.
- 4.2. Article 50 of the draft Code provided that voting would take place between 0700 and 2200 hours. The adopted Code provides that voting will take place between 0800 and 2000 hours.
- 4.3. Article 60 of the draft Code provided that the nomination period for candidates for the position of President of the Republic of Belarus began 75 days and ended 35 days before the election. The adopted Code changes this to 80 and 50 days, respectively. Thus, the adopted Code shortens the nomination period by ten days.

- 4.4. Article 61 of the draft Code provided that the application for registration of a candidate for the position of President of the Republic of Belarus had to be submitted no later than 80 days before the election. The adopted Code changes this to 85 days. Thus, the adopted Code requires the application to be submitted five days earlier.
- 4.5. The adopted Code has additional language in Article 69 that permits a decision of the Central Commission, on recognition of the withdrawal by a candidate for the position of the President of the Republic of Belarus or for deputy, to be appealed in court.
- 4.6. Articles 83 and 87 of the draft Code required a voter turnout of fifty percent (50%) in a second round of voting to validate the results in an election for the Chamber of Representatives. The adopted Code reduces this requirement to twenty-five percent (25%).
- 4.7. The second paragraph of Article 128 in the draft Code permitted a local Council of Deputies to take a decision not to form a commission on the holding of a local referendum, but to impose the exercise of its powers on the respective territorial commission until the election of a new local Council. The adopted Code deletes this paragraph.
- 4.8. Article 141 of the adopted Code incorporates mobile voting for recall elections for the Chamber of Representatives and local Councils of Deputies. The draft Code did not provide for mobile voting for these specific recall elections.
- 4.9. Article 155 of the draft Code is now Article 156 of the adopted Code.
- 4.10. The definitions in annex of the draft Code are now Article 155 of the adopted Code and include two new definitions: “Electoral Commissions” and “Commissions”.