



**CIVIL CAMPAIGN *HUMAN RIGHTS DEFENDERS FOR FREE ELECTIONS***

**Priority recommendations on reforming the  
electoral legislation of Belarus**

**Background**

In line with country's commitments as an OSCE participating State, the Republic of Belarus solemnly declared in 1992 under the Copenhagen Document that free elections are "among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings." Elections are expected to be held "at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives." The Copenhagen Document declares that the "will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes."

The availability of a high-quality electoral legislation is one of the conditions for the conformity of elections with the standards for free and democratic elections and increasing confidence in them among public institutions and citizens; the legislation should be designed to ensure democracy and transparency of the electoral procedures.

It should be noted that the Republic of Belarus acceded to the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member States, the rules of which, if implemented in the Electoral Code, would bring the country's electoral process considerably more in line with democratic standards.

Since 1995, elections in the Republic of Belarus have not been recognized by international and national observers as free and democratic, and have been subjected to fair criticism of the OSCE ODIHR, the European Union and the United States. Likewise, domestic observers do not consider the elections to be in

line with international standards and national legislation. In addition, the election results are not recognized by any of the country's opposition parties.

It is essential to note that over the history of Belarus' relations with the EU and the United States it was the lack of conformity of the country's elections with international standards that has repeatedly led to the introduction of personal sanctions against election officials. In 2004, the Chairperson and Secretary of the Central Election Commission were banned from entering the EU countries, and after the presidential elections in 2010, all members of the Central Election Commission, as well as heads of regional and Minsk city election commissions were blacklisted as persons banned from entering the EU. At the moment, all these persons have been excluded from this list, but the requirement to change the electoral law and to hold free and democratic elections remains on the agenda of different platforms for dialogue between Belarus, the EU and the US.

The Electoral Code has been repeatedly subjected to amendments, which were announced as steps aimed at the implementation of the OSCE ODIHR recommendations made following the work of international election observation missions in Belarus. In 2009, the Code was supplemented by a number of changes, which simplified the procedure of collecting signatures for the nomination of candidates, and streamlined campaigning rules. However, election procedures preserved their key drawbacks, as evidenced by the latest report of the OSCE ODIHR mission published after observing the parliamentary elections in 2016.

A considerable part of society does not trust the results of the elections, which is due to serious violations of electoral rights and freedoms, as well as the opaque procedures for vote counting. The authorities formed during the elections are often not recognized as democratically elected bodies, which affects their internal and external legitimacy. This situation leaves Belarus outside a number of key international democratic processes: in particular, the Belarusian parliament is not represented in the PACE and Euronest.

The absence of a democratically elected government as a whole affects the international image of the Republic of Belarus and its investment attractiveness.

### **Key problems of the Belarusian electoral legislation**

#### **Work of election commissions**

The executive power is still able to influence the course and results of the election procedures. Election commissions at all levels are actually closed to representatives of the democratic opposition, and their work remains largely closed to observers.

## **Early voting**

The opacity of early voting is one of the main objects of criticism by both international and national observers, and the participants of the electoral process. Early voting is associated with numerous facts of abuse of administrative resources for the purpose of forcing the voters to take part in the vote. This pressure is exerted by employers and academic authorities. During the elections of deputies of the House of Representatives of the National Assembly held on 11 September 2016, observers of the campaign "Human Rights Defenders for Free Elections" documented numerous cases of inflated voter turnout at the polling stations covered by independent observation.

During the observation of early voting, there were numerous documented cases of coercion of citizens to participate in it on the part of the administration of enterprises and universities (up to 18% of the observed polling stations).

Information on voter turnout provided by the election commissions and that reported by the observers differed substantially. In the PECs, which were covered by observation, the difference between the data on the number of voters who took part in early voting was 14% (in the parliamentary elections 2012, this difference was 10.4%).

Around 31% of the voters participated in the early voting in last year's parliamentary elections, which exceeds the number announced during the previous parliamentary elections in 2012 (26%). Early voting actually became a rule that does not meet the requirements of the Electoral Code, which provides that participation in early voting should be an exceptional form in case of absence at the place of residence on Election Day.

It can be stated that the practice of early voting remains one of the systemic problems of the electoral process and creates opportunities for the abuse of administrative resources and other manipulations. In this regard, the OSCE ODIHR recommendations regarding changes to early voting procedures remain relevant.

## **Vote count**

The Electoral Code does not describe the procedures for counting the ballots. The recommendations of the OSCE ODIHR and proposals by the campaign "Human Rights Defenders for Free Elections" on detailed settlement of this procedure through a CEC decree have not been taken into account.

In practice, members of the precinct election commissions arrange a joint and simultaneous counting of the ballots, without announcing or displaying the selection on each ballot. Such a procedure of the vote count is not transparent and

does not allow to correlate the results of observation with the data reflected in the protocol on the voting results. About 95% of the observers of the campaign "Human Rights Defenders for Free Elections" noted that the vote-counting procedure was of an opaque nature (during the observation of the parliamentary elections in 2012 the figure was 92.3%).

During the observation of the vote counting procedure, the observers reported other violations of the counting procedures: in 32% of the observed PECs, election officials failed to publish the results of separate vote count; in 42% of the observed PECs, the ballots cast for each candidate were not counted separately; in 61% of the observed PECs, the observers were seated in places that prevented them from properly monitoring the vote count.

It is important to note that the vicious practice of counting the votes in Belarus does not meet the procedures practiced by the majority of the CIS countries.

It was the gross violations during the vote count that had a decisive influence on the decision not to recognize the parliamentary elections in 2016 by the OSCE ODIHR international observers.

### **Electoral disputes**

It should be noted that the Electoral Code of the Republic of Belarus contains a limited list of cases of judicial review of decisions by election commissions during the elections. This leads to the fact that the courts refuse to initiate proceedings on complaints, in case the right to file them is not expressly provided for in the Electoral Code. In fact, the court is not a place for the resolution of electoral disputes.

Analysis of the practice of judicial review of decisions by local authorities on the formation of election commissions has shown that in the absence of objective criteria of assessing the person delegated to election commissions, the courts, being unable to go beyond the rules of the electoral law, have no objective opportunities to take a decision in the applicant's favor. Thus, there has been no court rulings, which would be made in favor of a person who was denied membership on an election commission.

We view as illogical the provision of Part 2, Article 84 of the Electoral Code, according to which it is only the decision of the Central Election Commission on recognizing the elections of deputies of the House of Representatives invalid that can be appealed to the Supreme Court. Given the fact that in practice the courts only consider appeals in case their submission is directly stipulated in the Electoral

Code, candidates are denied the right to challenge in court the results of parliamentary elections.

It is worth noting that the prosecuting authorities also abandoned the duty of exercising supervision over the implementation of electoral legislation. Nearly all the complaints and petitions, which were received by the Prosecutor's Offices during the recent election campaigns, were forwarded for consideration to the election commissions, even if they were aimed at appealing the actions or decisions of the election commissions themselves.

### **Priority recommendations of the campaign *Human Rights Defenders for Free Elections***

#### **Formation of election commissions**

We recommended to legislate the right of every political party after the announcement of the election campaign to delegate one representative with a right to vote to the election commissions of all levels (except for the Central Election Commission). It is necessary to legalize the priority of political parties to send their representatives to the election commissions, providing for the right of citizens, public associations and labor collectives to claim the vacant seats on the commissions if a political party has not exercised its right to send its representatives to the election commissions. Such a procedure for the formation of election commissions will increase the role of political parties as key participants in the electoral process, will contribute to a higher level of confidence in the election commissions, as well as make the work of these commissions transparent for the whole Belarusian society. Furthermore, this provision will create confidence in the results of voting announced by such commissions.

Securing the right of citizens, public associations and labor collectives to nominate their representatives to the election commissions if the parties cannot nominate a sufficient number of their representatives will provide the necessary staffing of election commissions.

#### **Early voting**

It is necessary to legislate that citizens who on Election Day cannot be present at the polling station can vote in advance upon presentation of documents confirming the fact of inability to vote on Election Day. Such documents include business trip permits, tickets for intercity (international) transport, medical appointment for treatment or rehabilitation outside the municipality, other

documents stipulated by law or regulations of the Central Election Commission. Such documents shall be submitted to the precinct election commission.

It is also necessary to provide that early voting shall be conducted at no more than 10% of the polling stations in the electoral or administrative district. Such polling stations shall be specialized stations for early voting only.

This legislative rule is expected to restore the true meaning of early voting as an exceptional form of voting, as well as to promote credibility of the results of such a vote, as the number of early voters will be reduced significantly.

### **Vote count**

It is proposed to legislate the following recommendation of the OSCE ODIHR: “The vote count should be held in a transparent manner, whereby all PEC members, observers and candidate proxies would be able to verify the outcome of the process. As a means to build public confidence, consideration should be given to announcing and showing the selection on each ballot to those present as well as announcing all the figures entered into PEC protocols.”

The introduction of a true transparent counting of votes will restore confidence in the election results, as well as, along with the implementation of other recommendations, will create the conditions for the recognition of the election results by both the international community and a significant part of the country’s society. This will return confidence in the representative bodies of Belarus.

In order to strengthen confidence in the election results, we propose to introduce in the electoral law a rule obliging local executive authorities to publish on their websites (in special sections) and in the print media, which are run by these bodies, information on the results of voting in the respective administrative-territorial unit (electoral district, administrative district, city district, region), with separate data on each polling station. Information on the voting results with a station-by-station breakdown should also be posted on the website of the Central Election Commission of the Republic of Belarus.

### **Judicial disputes**

It is necessary to legislate the right of judicial review of all decisions of election commissions at all levels that affect the rights of the participant of the election campaign.

The introduction of this provision will create a civilized system of adjudication of election disputes, increase the credibility of the final judgment, and strengthen the overall respect for the country’s judiciary. With a view to further

strengthen the principle of publicity of the electoral process, we propose to continue the practice of publication on the websites (in special sections) of executive authorities and courts of copies of decisions on submitted complaints taken by the courts.

### **Opportunities for observation**

Experience of election observation by the campaign "Human Rights Defenders for Free Elections" shows that the election commissions restrictively interpret the provisions of Article 13 of the Electoral Code (the observer is only entitled to the rights expressly provided for in Part 5 of Article 13 of the Electoral Code). In practice, this leads to a narrowing of the possibilities of observation, for example, observers are not allowed to attend the verification of voters' signatures submitted in support of the nomination of a candidate (presidential candidate). In order to ensure the true transparency and openness of elections, it is necessary to amend Part 5 of Article 13 of the Electoral Code by providing that the observer is entitled to "other rights".

### **Conclusion**

The priorities set out in this document are not exhaustive recommendations of the campaign "Human Rights Defenders for Free Elections", but their implementation in the electoral legislation is critically important for the conduct in the Republic of Belarus of free, fair and democratic elections.

The document was developed by experts of the civil campaign "Human Rights Defenders for Free Elections".