



HUMAN RIGHTS DEFENDERS FOR FREE ELECTIONS

Elections of deputies of the House of Representatives of the National Assembly of the Republic of Belarus of the seventh convocation

Analytical weekly report on the results of observation: November 4-9

Observation of the elections to the House of Representatives of the National Assembly of Belarus is carried out by the Belarusian Helsinki Committee and the Human Rights Center “Viasna” in the framework of the campaign “Human Rights Defenders for Free Elections”.

SUMMARY

- observers of the campaign “Human Rights Defenders for Free Elections” report the predominantly low-key character of the election campaign;
- according to the CEC chair Lidziya Yarmoshyna¹, as of November 6, there were a total of 523 registered candidates; 29 people withdrew their candidacies, 10 candidates had their registration revoked by the DEC, and two candidates were reinstated by higher commissions and courts. Only 330 of the registered candidates published their electoral programs in the mass media;
- there were ongoing cases of bans on broadcasting the campaign speeches of opposition candidates; the DEC and the public media have demonstrated an extremely loose treatment of restrictions on campaigning activities, as established by Art. 47 of the Electoral Code, which in most cases constitutes censorship and unacceptable restrictions on freedom of expression;
- several candidates had their registrations revoked by the DEC over alleged violations of Art. 47 of the Code; one candidate was detained by the police;
- administrative resources have been widely abused in the organization of campaign events involving the pro-government candidates;
- appeals against DEC decisions to cancel the registration to the higher TECs and the CEC, as well as to the courts, in most cases, were rejected;
- on November 8, Freedom Square in Minsk hosted a campaign rally announced by the Poland-based critical vlogger NEXTA. According to the observers, the meeting was attended by more than 500 people. The police officers did not allow the use of (and damaged) sound-amplifying equipment. During the event, a German TV crew was detained; the reporters were released 2.5 hours later;
- on November 7, the OSCE ODIHR international election observation mission published an interim report on the results of the observation.

¹ <https://www.youtube.com/watch?v=5JeLDHci65o>

ELECTION CAMPAIGNING

According to the observers, the election campaign is mostly low key. Campaigning activities include meetings of candidates and their proxies with voters, as well as media appearances. Outdoor events are mostly organized by representatives of the political opposition. Pro-government candidates often campaign during their meetings with voters in schools, houses of culture, etc. The observers report cases of using administrative resources in the organization of such meetings.

In particular, on November 6, Raman Yurhel, a long-term observer of the campaign “Human Rights Defenders for Free Elections”, visited school No. 1 in Hrodna to attend a campaign meeting of Iryna Lukanskaya, a pro-government candidate in electoral district No. 49.

Administrative resource was obviously used during the organization of the meeting. Despite the school holidays, about 100 teachers, who are also members of precinct election commissions Nos. 31, 32, and 33, had been summoned for the event.

On November 4, a meeting of the Hrodna Kastryčnicki district office of the Veterans’ Association was attended by 40 heads of local branches. The participants received handouts with the information on preferred candidates and the electoral platforms of three pro-government candidates: Iryna Lukanskaya, Alena Patapava, and Liliya Kiryak. The meeting was chaired by head of the Association’s district branch Uladzimir Tsiutsiunnik, together with deputy Tatsiana Sakovich (both members of DEC No. 49).

The observers continue to report cases of issuing warnings to candidates over alleged violations of electoral legislation during their campaigning activities. The same reasons are used to justify the ongoing practice of bans on airing the televised speeches of candidates.

The main reason for the warnings is violation of Art. 47 of the Electoral Code, which contains a number of restrictions on election campaigning, most notably prohibition of incitement to hatred on the grounds of nationality, religion, race, calls for a violent change of the constitutional order, insults of officials, etc.

As previously noted by the campaign’s experts, the DEC’s have applied an excessively broad interpretation of law-stipulated restrictions, resulting in issuing warnings and bans on broadcasting campaign appearances on radio and television, often constituting censorship.

In particular, on November 5, Volha Damaskina, a candidate in the Navapolack-based electoral district No. 24, received a warning from the DEC for violation of Art. 47 related to a campaigning picket held together with representatives of the party “Narodnaya Hramada” on October 29. The penalty referred to the illegal use of a banner reading “Down with the Dictatorship of Fear.”

On November 5, the Hrodna regional election commission heard an appeal against a warning issued by the DEC to candidate Iryna Davidovich running in the Iŭje-based electoral district No. 54.

It is worth mentioning that the reason for the warning was the candidate’s video address posted in social media after it was taken off air by the regional TV. The TEC unanimously voted to reject the appeal, since, according to the commissioners, “Iryna Davidovich chose to impose her views on all the voters of the region by spreading calls that would lead to social tension. And the candidate’s campaigning video itself is based on negative judgments and harsh criticism of government policies.”

The government-owned newspaper “Babrujskaje Žyccio” refused to publish the election platform of Aliaksandr Komar, a United Civil Party candidate in electoral district No. 78.

The decision stemmed from the candidate’s claim that “with Lukashenka, the country has no future. He has led the country to a standstill.”

CANCELLATION OF CANDIDATES’ REGISTRATION

There were more cases of candidates’ registration being revoked by the DEC’s. The decisions exclusively affect unaffiliated or opposition candidates.

On November 8, Dzmitry Kazlou, a candidate in the Orša-based electoral district No. 25, known for his critical blog, received a second warning and his registration was cancelled, as a result. The first warning was issued for using in his campaign pickets posters reading “End Kolkhoz Dictatorship!” and “End Fake Elections!”. The candidate was deprived of his registration for the repeated use of these slogans.

Also on November 8, Dzmitry Kazlou was reported to be detained by the police and taken to a local police station. The alleged reason for the detention is preventing his participation in the meeting on Freedom Square in Minsk, earlier announced by vlogger NEXTA.

According to the CEC, as of November 6, the DEC’s canceled the registration of 10 candidates, and 29 more chose not to run in the elections.

REVIEW OF ELECTORAL DISPUTES AND APPEALS

Some candidates whose registration was canceled by the DEC’s chose to not appeal against these decisions.

The results of appealing indicate that the TEC’s and the courts generally continued the practice earlier demonstrated by the district commissions to apply a prejudiced and formal approach, without regard to the presumption in favor of the candidates’ rights and fundamental freedoms.

On November 4, the Brest regional election commission considered² an appeal against the decision of the Brest-based DEC No. 4 to annul the registration of candidate Uladzimir Maroz. The commission concluded that the candidate’s leaflets contained “calls for the unconstitutional change of power”: “We are faced with corruption, the silence of officials, with a loose interpretation of the law, police lawlessness and total absence of a fair trial. Let’s change the corrupt government together.” In addition, the commission said there were “clear signs of incitement to social hatred” in the phrases “police lawlessness” and “total absence of a fair trial”. As a result, the appeal was turned down.

The same result was reported in the hearing of Uladzimir Maroz’s appeal to the Brest Regional Court. The November 8 ruling³ only accepted the TEC’s findings. Without bringing evidence to support such conclusions, the court’s decision is unjustified.

Thus, neither the superior commission nor the court failed to restore the candidate’s right to freedom of expression provided for by the Belarusian Constitution and the right to present the election platform in the wording determined by the candidate, as set by the Electoral Code. Uladzimir Maroz’s platform did not contain propaganda of war, incitement to violent change of the constitutional order, violation of the territorial integrity of the Republic of Belarus, calls for

² <http://brest-region.gov.by/attachments/article/10102/10102-4555.pdf>

³ <http://court.gov.by/ru/vibori/brest/bel/bebf332237b043d0.html>

social, national, religious and racial hatred, calls to disrupt, cancel or postpone the elections, as well as insults and slander against officials of the Republic of Belarus and other candidates.

On November 5, the Supreme Court considered the appeal of Uladzislau Sysa against the CEC's decision to dismiss the complaint against the Brest regional election commission, which earlier cancelled the candidate's registration over his alleged permanent residence outside Belarus.

The Court confirmed⁴ that Sysa could not be registered as a candidate, because he did not meet the requirements of para. 2, Art. 57 of the Electoral Code, which provides that only a person permanently residing in the Republic of Belarus is eligible to run for the House of Representatives.

According to the Court, "based on the systematic interpretation of this provision and the electoral law, a citizen permanently residing in the Republic of Belarus is the person whose priority place of stay, including considering their occupation, is the territory of our state. Such a citizen may be elected a deputy of the legislative body of the Republic of Belarus to carry out public service on a professional basis."

However, the judgment does not contain any "systematic interpretation" as such; it fails to define the interrelations between the interpreted rule and other provisions; nor does it determine the role of the interpreted rule in the legal system.

Meanwhile, the International Covenant on Civil and Political Rights provides for the right of everyone without any discrimination (race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other circumstances) and without unreasonable restrictions to elect and to be elected at genuine periodic elections which shall be universal and equal suffrage by secret ballot, guaranteeing the free will of the voters.

In accordance with the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS member states (October 7, 2002, Chişinău), "legislative regulation of the right to elect and to be elected, of the election procedures (election systems) as well as limitations of the citizens' voting rights and freedoms should not constrain or revoke the generally accepted rights and freedoms of the person and citizen, and/or legislative guarantees of their implementation, as well as have a discriminative nature." Limitations regarding nomination of candidates, lists of candidates, relating to creation and activities of political parties (coalitions), citizens' voting rights and freedoms can be applied in the interests of defense of the constitutional system, national security, maintenance of public peace, protection of public wealth and morality as well as protection of rights and freedoms of citizens; however, the given limitations should comply with international obligations of the state.

The Convention prohibits any direct or indirect participation of foreign citizens, persons without citizenship, foreign legal entities, international public movements, international organizations in activities facilitating or hindering preparation and conduct of elections.

The Law of the Republic of Belarus of September 20, 2009 No. 49-Z "On the procedure of exit from and entry to the Republic of Belarus of the citizens of the Republic of Belarus" states that permanent residence outside the Republic of Belarus is formalized by issuing a passport of a citizen of the Republic of Belarus for permanent residence outside the Republic of Belarus and the registration of such citizens with the consular department of the Republic of Belarus. The registration of permanent residence outside Belarus is preceded by the execution of certain

⁴ <http://court.gov.by/ru/vibori/suprim/8d840e7ddaf04a6f.html>

conditions, the essence of which is the termination of the citizen's obligations and relations with national institutions.

The legislation does not contain the concept of "permanent residence on the territory of the Republic of Belarus", nor does it provide for any criteria to determine the status of permanent residence. However, leaving the country to receive an education is viewed by different areas of law as a classic example of the temporary nature of change of residence.

As previously noted by analysts of the campaign, in 2001 the Constitutional Court, at the request of the Central Election Commission, adopted a decision "On the legal position of the Constitutional Court on the notion of "the citizen of the Republic of Belarus permanently residing in the Republic of Belarus" used in Article 80 of the Constitution". The said decision ruled that the determination of the place of residence should not only include the place of actual location of a person in a given period of time (in the Republic of Belarus or abroad), but also his or her intention to have this place as their place of permanent residence. The content of this concept is predetermined by the objectives of the person's exit from the Republic of Belarus: whether it is a temporary departure or permanent residence in another state. The temporary nature of a stay outside the Republic of Belarus and the preservation of the Republic of Belarus as a place of permanent residence, according to the Constitutional Court, are evidenced by such circumstances as the preservation of citizenship, lack of formalized departure for permanent residence in another state, or a request for asylum in a foreign country.

By allowing the "systematic interpretation of the rule" and adopting a corresponding decision, the Supreme Court, the highest court of the judicial system of Belarus, demonstrated the absence in its legal culture of practices to justify restrictions on rights and fundamental freedoms by relevant interests, as well as the neglect of both international legal standards and national legislation. Permissible, from the point of view of the interests of national security, restriction on participation in the elections of foreign entities, as well as restrictions on the right to be elected to state bodies of Belarusian citizens who completely stopped the property and other relations with the state of their nationality, cannot be arbitrarily applied against citizens who were temporarily absent in Belarus due to the nature of their activities or other circumstances.

This decision, according to analysts of the campaign "Human Rights Defenders for Free Elections", laid the foundation for the subsequent flawed practice of selective deprivation of the right to be elected from the citizens of Belarus, who for some reasons were forced to temporarily leave Belarus to study, work, or for family and security reasons.