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**Belarusian Electoral Law:
Issues of Compliance
with European Electoral Standards**

**by
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INTRODUCTION

With the adoption of changes and additions from the new January 2010 Electoral Code, Belarus is embarking on a new cycle of electoral operation. So far, Belarusian electoral policies have not won the consent of the democratic community. Since 1999, independent domestic observers and the international democratic community, have declared every election held in Belarus as flawed and fraudulent. This was no different for the election of deputies of local representative councils which took place on 25 April 2010. The next presidential elections are due in February 2011.

Deficiencies have been caused mainly by the way the Belarusian electoral law has been applied. It is evident that such application of the law is a reflection not only of complete disregard of many of its norms on the part of state agencies and electoral commissions but also a reflection of actual incompliance of a number of its provisions with the commonly recognised international electoral standards.

At the end of 2008, Belarus agreed to start a negotiating process to improve the provisions of the national law with a view to bring it closer to international standards. Recommendations put forward by OSCE ODIHR in its final report on the results of 2008 parliamentary elections became the basis for introducing changes to the electoral law. This was an historic moment, representing the first time that the views of civil society, the expert community and an international organisation such as OSCE ODIHR were taken into serious consideration. At the same time, the drafting of proposed changes to the electoral law took place behind closed doors and excluded OSCE ODIHR, other international structures and the Belarusian public.

The Draft Law of the Republic of Belarus "On Introducing Addenda and Amendments to Some Laws of the Republic of Belarus on Holding Elections and Referenda, and on the Expiration of the Law of the Republic of Belarus 'On the Central Commission of the Republic of Belarus on Elections and Holding National Referenda'" was introduced to the Chamber of Representatives on behalf of the president on 23 November 2009. On 30 November, the Chamber of Representatives passed it at the first reading, and on 11 December - at the second reading. The Draft Law was approved by the Council of the Republic on 17 December and signed by the President on 4 January 2010. This meant the amended law was in place for the local and presidential elections of 2010 and 2011. Any further changes may be introduced to this law only in the run-up to the parliamentary elections of 2012. More than a third of the Electoral Law has been changed, with a number of key improvements.

1. The New Law: Attempts to Rectify Past Problems

Based on a comprehensive analysis of the former Belarusian electoral law, other related laws (on mass gatherings, mass media, political parties and a number of others) and of the way the law has been applied during past elections, one can conclude that elections in Belarus have fallen significantly short of international electoral standards. The most consequential divergences result from Belarus' failure to provide for free competition of candidates and ideas. On the one hand, government authorities, including electoral commissions and courts subordinated to the authorities, have misused the grounds for denying registration and revoking registration, thus pre-selecting candidates and excluding candidates. On the other hand, government authorities have established unequal conditions for electoral campaigning, such as unequal access to mass media.

In the majority of instances, the deficiencies cited arise from unsatisfactory ways in which the law is applied; however, to a considerable extent they result from flaws in the electoral law. Legal provisions for forming electoral commissions, candidate nomination and registration are open for arbitrary interpretation by the authorities. Provisions regulating electoral campaigning do nothing but declare equality of candidates; whilst provisions for voting, the vote count and the establishment of election results do not contain effective mechanisms to prevent fraud.

The 2010 amendments cover many areas, but the most significant changes were noted in the following fields:

1. Candidate Nomination and Registration

The code is believed to simplify procedures for the nomination of presidential candidates, candidates for the House of Representatives and the local councils of deputies, both by collecting signatures (where certification will be needed from a member of the group collecting the signatures, rather than the head or deputy of the local electoral commission) and from political parties (where the requirement for national or district party availability was eliminated).

2. Electoral Commissions

The formation of electoral commissions, with the exception of the Central Commission, was altered so that a minimum of one third are representatives of political parties and public associations. The means of collecting signatures to nominate a commission member was also made easier by lowering the number of signatures necessary from 30 to 10.

3. Election Campaigning

The code envisages a change in election campaign conditions, including establishing the equal right to use campaign premises for all candidates. It is also the first time that joint meetings with voters can be held by mutual agreement of the candidates. However the law cuts short of ensuring free meetings with voters.

4. Candidate Funding

A significant amendment is the granting of permission for non-state financing of election campaigns for presidential candidates and candidates for deputies of the House of Representatives by establishing their own election funds. However, funding from foreign or anonymous sources will continue to be illegal.

5. Voter Turnout

Only for the election of local councils of deputies will the 50% voter turnout threshold which validated the election be abolished. But this voter turnout threshold will continue to be used during presidential and parliamentary elections.

However, a caveat must be made clear. Although these amendments are clearly the correct step forward, other reasons as to why elections in Belarus cannot be considered fully free and fair can be found beyond the field of electoral law. The general inadequacies of the judicial system mean that judges don't always make decisions impartially. In addition, the strong dependence of mass media on the executive makes it impossible for a genuinely competitive election to take place. Another equally significant factor is the administrative system that has evolved to the point where Belarusian government officials up to the very top level openly disregard the principles of the constitutional state which provides that they have the right to exercise only the powers granted to them by law. As a result, the executive bodies have become the main actors of any election while their administrative intervention has grown to be a real electoral disaster.

The 2010 changes in the Electoral Code may result in a democratisation of the electoral process in Belarus. At the same time, they – once again – provide the executive with a lot of room for manoeuvre while failing to offer genuine guarantees for others to participate in the electoral process on equal grounds.

2. Application of the New Election Legislation in the 2010 Election to Local Councils

The elections to local councils in April 2010 showed that amendments to the Election Code led to certain changes in the election procedure. For example, all election commissions followed the provision requiring that at least one third of the membership of each election board should be representative of political parties and NGOs. However, in most cases this fact did not entail changes in the membership of the election commissions as compared to the previous election. This was due to the fact that the same individuals who had been 'nominated' through collecting voters' signatures, were this time nominated by various pro-governmental NGOs and political parties. Polling station boards were still formed exclusively by the management of state-owned enterprises and other state institutions located on the territory of the given constituency, just as it had been before.

Amendments to the Election Code simplified the nomination procedure, which enabled political parties to nominate more candidates to the regional and Minsk city councils. This was almost the only democratic amendment to the election legislation fully implemented. At the same time, election commissions showed a tendency towards denying registration to candidates nominated through collecting voters' signatures.

In vote counting, most commissions ignored the legal provision requiring that the numbers of votes in casted during early voting, voting out of the polling station and on the voting day proper should be announced separately. At the same time, those polling stations where voting results were indeed announced separately for each category, demonstrated a dramatic difference in the results casted during early voting and on the voting day proper, which attest to ballot box stuffing during early voting and unfair election results in general. Thus, in constituencies with several candidates standing for local councils, pro-governmental candidates typically got over 90% of votes in early voting counts, whereas on the voting day they as a rule lost to opposition candidates. At most polling stations vote counting was closed and nontransparent.

Thus, the amended election legislation allowed political parties to nominate more candidates to the regional and Minsk city councils only. At all the other stages of the election process, amendments did not entail changes in the Election Code application practices. It is clearly necessary to amend the legislation further to ensure open and transparent elections in Belarus in the future, making their results just and fair.

3. Recommendations on further changes in electoral law

The following recommendations are based on which further changes the EU could pressure Belarus into making, in regard to additional improvements to both the electoral law and the voting system in general.

1. A democratic, pluralistic order of the formation and operations of electoral commissions should be established.

Territorial, constituency and precinct electoral commissions ought to consist, foremost of political party representatives. The remaining share of commission seats should be filled with representatives of public associations, enterprises and citizens' representatives nominated as

commission members by submitting petitions. The law ought to require that representatives of political parties in opposition to incumbent authorities be included in the electoral commissions (no less than one third of the commission seats).

Registered political parties should have the right to nominate representatives with advisory votes to all electoral commissions, whose power should be the same as other members with the exception of the right to vote.

All electoral commissions ought to act openly and publicly. Observers and representatives of the media must have the right to attend commission meetings and receive certified copies of protocols.

2. The vote count procedure should be changed.

The vote count procedure must be open and public. Commission members ought to be obliged to announce the elector's will out loud. A precinct commission's protocol of voting results ought to be drawn as a chart with separate columns and lines for the electoral commission to enter both separate and summarised vote count numbers on each candidate and each type of voting (early voting, voting at citizens' locations, and voting at the voting station).

3. Conditions for genuine control on the part of the public over the preparations and holding of elections ought to be established.

Public associations ought to have the right to control the activities of electoral commissions. Observers from international organisations, political parties and other public associations must be listed in the electoral commissions' meeting minutes and be offered to sign protocols to confirm the vote count results or enter their comments on the way voting went.

At the request of any electoral commission member or observer, the electoral commission must provide him/her with a certified copy of the protocol reflecting voting results, with full protocol visibility for the public guaranteed.

4. Genuine opportunities should be provided for taking any electoral disputes to court.

The law must be brought in compliance with Article 60 of the Constitution and guarantee the right to contest any decisions and actions of the electoral commissions of all levels. In this light, it is necessary to annul Item 1 Article 335 of Belarus' Civil Code of Procedure. It must be provided that not only decisions of electoral commissions but also any election-related actions may be contested in court with no government due entailed.

CONCLUSION: Looking Towards Future Elections

The amendments to the Electoral Code are indeed highly significant, partly due their very existence, but also due to the fact that the changes were brought about via state acceptance of the advice of international organisations, the Belarusian expert community and local civil society representatives. However, the proof is in the implementation. The local elections of April 2010 and the upcoming Presidential vote in 2011 will ultimately provide the evidence for interested parties to observe how the new rules are put into practice. During the local elections, observers were from domestic organisations such as BHK and Vesna 96. Key attention was paid towards the forming of electoral commissions, the registration of candidates, the possibility of an agitated campaign and the openness of polling. In addition, particular questions surrounding voting procedures will be important for the presidential vote in 2011. Most specifically will be the observations concerning freedom of participation, in terms of early voting, voting in army barracks, hospitals and universities, as well as issues surrounding the procedures for storing ballot boxes during early voting rounds.

The new electoral code has the potential to form the basis for an improvement in Belarus' voting fortunes. However, as this paper has examined, there remains a mountain to be climbed before Belarus can truly proclaim the legal might to be able to hold genuinely free and fair elections.

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