



OSCE/ODIHR
TECHNICAL ASSESSMENT MISSION
BELARUS 2000
PARLIAMENTARY ELECTIONS

STATEMENT OF PRELIMINARY FINDINGS & CONCLUSIONS

Minsk, 16 October 2000 – The Technical Assessment Mission (TAM) of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) for the 15 October 2000 parliamentary elections in Belarus issues this statement of preliminary findings and conclusions.

Preliminary Conclusions

The 15 October parliamentary elections process in Belarus failed to meet international standards for democratic elections, including those formulated in the 1990 Copenhagen Document of the OSCE. In particular, these elections fell short of meeting the minimum commitments for free, fair, equal, accountable, and transparent elections. Despite some improvements since previous elections, the process remained flawed.

The OSCE/ODIHR deployed only a Technical Assessment Mission (TAM) for these elections on the basis of a decision by the 30 August Technical Conference in Vienna. As a result of provisions for early voting, mobile ballot boxes, the vote count and aggregation of results falling far short of minimum transparency requirements for an independent verification, the OSCE/ODIHR declined to deploy observers on election day. Even in the best of circumstances, election day proceedings could not remedy these fundamental shortcomings.

Other factors contributing to the failure of these elections to meet international standards include:

- The electoral legislation, adopted in early 2000 and amended in June, while improved, still includes substantial and fundamental deficiencies.
- Nonetheless, this law could have been implemented in an inclusive manner to provide a more democratic process, but the following problems were manifest:
 1. The executive apparatus maintained control on election commissions.
 2. Candidate registration procedures were abused to prevent undesirable candidates from participating in the elections, limiting voters' choice.
 3. Campaign activities were regulated excessively, limiting candidate performance.
- Other laws also significantly restricted the fundamental freedoms of expression, assembly and association, and had an intimidatory and constraining effect on the campaign. Of particular concern has been the continuing use of Article 167(3) of the Code on Administrative Offenses to prosecute those who call for a boycott of elections when a similar provision in the Electoral Code was repealed in June. As a result, the authorities' agreement to respect a "period of peace" during the electoral campaign was not fulfilled. On the eve of election day, Article 167(3) of the Administrative Code was amended, but effective late October. Although, an important measure for future elections, it came too late for 15 October.
- Insufficient respect for the rule of law and due process of law, together with observed instances of the executive interfering with the independence of the judiciary, created an uncertain legal environment characterized by arbitrary implementation of laws. Consequently, electoral disputes, including those relating to controversial decisions of election commissions, were not resolved satisfactorily.
- Heavily biased State-controlled media dominated the electronic and print sectors, and no effective counterbalance was provided by the independent media. In the end, candidates had very limited access to the media. The provision of five minutes free air time on national television to all

candidates on an equal basis, while a positive development over past elections, was not sufficient to inform voters of the choices available and its format was deficient.

These shortcomings remained despite measures undertaken by the authorities during the summer in an attempt to improve the electoral process, including amendments to the new electoral legislation and measures proposed by the President. The most notable improvements over previous elections include:

- The electoral appeals process was opened to the public, thus improving transparency in this area.
- Independent domestic observers worked within an improved regulatory framework, and this promoted the transparency of the electoral process.
- The appointment of representatives from some political parties participating in the election as consultative and non-voting members of the Central Election Commission represented a welcome step towards greater pluralism and transparency.
- The opportunity for some leading opposition figures to continue advocating a boycott without being subject to prosecution, including on the eve of polling, or to take part in the elections as candidates, and their ability to campaign and to criticize the authorities was constructive.
- Another improvement was the revocation of a requirement that political parties must be registered at the regional level in addition to the national in order to field candidates in the constituencies.

The OSCE/ODIHR stands ready to continue the dialogue with the authorities of Belarus with a view to addressing the concerns contained in this statement and forthcoming presidential election.

While the OSCE/ODIHR declined to observe the election day proceedings, the CEC accredited 194 international observers. The CEC coordination of these international observers' activities, in particular their guided visits to polling stations, compromised the credibility of their findings. Unrelated to the CEC, representatives of the Parliamentary Troika of the OSCE, the Council of Europe and the European Parliament visited Minsk around 15 October to prepare a political assessment.

Preliminary Findings

Background

The 15 October elections to the 110 seat House of Representatives were the first parliamentary elections in Belarus since the disputed referendum of 1996 and subsequent constitutional controversy. The elections followed a year of intense domestic and international activity that sought to create the conditions for democratic elections.

Following commitments by President Lukashenko to hold free, fair and democratic parliamentary elections in 2000, negotiations between the authorities and opposition to seek resolution to the constitutional controversy began in the autumn of 1999. The negotiations concentrated on access to media for all political forces, the Electoral Code and the functions of the parliament to be elected. Initial optimism arising from the signing of an agreement on access of the opposition to the electronic State media, proved unfounded when the agreement was subsequently revoked by President Lukashenko. Parliament adopted a new electoral code in January 2000 without consultation with the opposition. No further negotiations took place and in February, President Lukashenko announced the establishment of a "Public Political Dialogue". This was considered by the OSCE not to be a substitute for direct talks between the government and key opposition parties and was boycotted by opposition parties.

Following a meeting of European institutions in April – including the OSCE, the Council of Europe, the European Commission, and a Parliamentary Troika made of the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the European Parliament – a series of

guidelines were developed outlining improvements required. These focused on four key areas – improvement of the electoral code, access by the opposition to the mass media, establishment of meaningful functions of the parliament to be elected and observance of a “period of peace” in the run up to the elections. The Electoral Code was amended in June, improving some provisions. In August, President Lukashenko announced a number of additional measures. However, European institutions declared this progress not sufficient to justify the deployment of a full-fledged observation mission. Rather, the OSCE/ODIHR was mandated to establish a Technical Assessment Mission.

As there had been insufficient progress on the four areas identified by European institutions, seven opposition parties decided to boycott the elections.

Constitutional and Legislative Framework

The legal framework of the elections is constituted by the Constitution, the Electoral Code, decisions of the Central Election Commission, and by other laws governing campaign-related activities, notably the 1984 Administrative Code and the 1997 Law on Gatherings, Street Processions and Picketing. Also instrumental is the 1991 Police Act that allows police officers to detain a person for three hours to ascertain identity.

Whilst the Electoral Code includes some positive provisions, particularly those relating to observers (contained in the Amendments adopted in late June 2000), many other aspects are problematic, including: no provisions ensuring the independence of election commissions, strict candidate registration procedures, excessive campaign regulation, provisions for early and mobile voting that are too broad and that fail to guarantee the integrity of ballot boxes, the absence of any requirement that signed copies of PEC protocols be immediately distributed to candidate proxies and observers, and the failure to provide that District Election Commissions publish detail results aggregated by polling stations. On 25 July 2000, the OSCE/ODIHR published a comprehensive analysis of the amended Electoral Code. The document can be obtained from the OSCE/ODIHR web site at www.osce.org/odihhr.

There was no effective mechanism to resolve apparent conflicts between the Electoral Code and certain provisions of other statutes. Notably, conflict between the provisions relating to calls for boycott in the Electoral Code and in the Administrative Code remained unresolved. Furthermore, the distinction between a voter meeting as provided by the Electoral Code and an unlicensed picket as defined by the Law on Meetings was not clarified. One judge sitting at the Sovietsky District Court acknowledged the need for clarification as regards boycott provisions whilst others simply applied the Administrative Code as opposed to the Electoral Code, without justifying their preference. There was no judicial reference to the Law on Normative Acts which provides that the later and the more specific of two laws relating to the same subject should prevail.

Furthermore, as regards Article 167(3) of the Administrative Code and the calls for boycott, a similar provision in the Electoral Code was repealed in June, according to First Deputy Foreign Minister Sergei Martynov (address to third Technical Conference on Belarus election, 30 August in Vienna), on the “basis of OSCE recommendations”. Since then, instead of the advocates of boycott pursuing their activities “safe and sound”, as promised to the Vienna Conference, more than 100 have been charged for breaching Article 167(3) and related provisions. On the eve of the election, an amendment to Article 167(3) of the Administrative Code was signed by President Lukashenko, but to come into effect late October. Though an important measure for future elections, it came too late for 15 October.

A similar absence of mechanism to challenge CEC decisions of general application has permitted the CEC to issue decisions which are beyond its powers. A case in point is the CEC decision dated 11

September 2000 which purports to regulate the activities of the non-State media despite the fact that it is only endowed with the power to regulate the State-run media.

Basic principles of due process were routinely breached: candidates refused registration were denied written decisions of refusal or copies of the signatures on petitions that had been considered invalid. They were accordingly obliged to draft their appeals “blind”. Some Supreme Court hearings took place in the absence of the appellants. Also problematic is the status of letters from signatories in which the signatories purported to withdraw their earlier signatures, sometimes without explanation. Not only are there no provisions for such withdrawal in the relevant Central Election Commission (CEC) decision, but such withdrawals might most sensibly be regarded as confirmation that the original signature was valid. Such signatories were not required to come to Court and confirm their withdrawal. Abrupt adjournments of district court hearings, sometimes in the course of police officer testimony, did not promote faith in the judicial process. There was no evidence of any judicial principles of interpretation, particularly as regards what might be understood to be the spirit and purpose of the Electoral Code.

Election Administration

Whilst the Electoral Code creates an illusion of plurality by providing for nomination of electoral commission members by a variety of parties, in fact, the executive has appointed all commission members. As a result, members are drawn predominantly from executive bodies and State-owned enterprises, and are subordinate to them.

On 11 September 2000 by way of Decree No. 18, the President appointed nine additional CEC members with consultative status only. These members were drawn from political parties participating in the elections. While the procedure for appointing the additional members was questionable, in practice, it was a useful step towards a CEC composition reflecting the political spectrum and promoted transparency.

Of 330 District Election Commission (DEC) chairmen, deputy chairmen and secretaries, 86% occupy senior positions in executive bodies and State enterprises. In District No. 50, the DEC Chairman is the Deputy of the Volkovysk City Executive Committee. The Chairman of the same executive committee is a candidate.

As far as the composition of Polling Election Commissions (PECs) is concerned, it appears that workplace lines of management are often replicated in PEC membership. For instance, in Gomel-Promyshlenny Constituency No. 37, of 373 PEC members, 354 have a subordinate employment relationship with the PEC chairmen or deputy chairmen.

This composition predisposes the commissions to work in the interest of the authorities. Such a predisposition has been demonstrated particularly in the spheres of candidate registration and refusal thereof, the campaign and by the interference of the executive in the work of the commissions.

The Electoral Code and its accompanying regulations have not been made sufficiently available to candidates, initiative groups and the electorate. In a polling station in district No. 105, the commission members were in possession of out-of-date electoral laws that were believed to be still in force. This lack of knowledge of the Electoral Code became particularly apparent during candidate registration appeal hearings.

Candidate Registration

For the 110 seats in the Parliament, 769 candidates were nominated, of whom 551 were eventually registered by the DECs. Of the 218 who were refused registration, 146 appealed to the CEC. The

CEC allowed 23 of the appeals. Of the 123 whose appeals were not allowed by the CEC, 85 appealed to the Supreme Court. The Supreme Court allowed only five of the appeals. Accordingly, there were 578 candidates registered. Eleven have subsequently withdrawn, and one candidate has had his registration canceled.

“Independent” candidates, as opposed to those nominated by labor collectives and political parties, were required to submit lists of signatures from at least 1,000 supporters. All candidates, regardless of mode of nomination, were required to submit income and property declarations. In both cases, the Electoral Code was applied arbitrarily and the DEC’s were given a broad margin of latitude to deny registration.

As far as the income and property declarations were concerned, candidates were refused registration for very minor reasons, including failure to declare a trailer or receipt of a sum equivalent to \$0.50. DEC’s would check information with the tax authorities, who were empowered to divulge details of a candidate’s previous tax declarations. In effect, an undue degree of latitude was afforded to the tax and other State authorities to confirm inconsistencies and without the possibility of any effective challenge from the subject candidate.

Moreover, the secrecy provisions of the income and property declarations do not provide for any verification of the process. The overly detailed declaration form seems to serve little purpose other than to provide yet another tool for the authorities to reject undesirable candidates. For example, in Stolin District No. 16 in rural Brest oblast, candidate Alexander Ignatiuk was de-registered largely, but not exclusively, because of minor errors in the income and property declaration. The complaint that led to the de-registration was lodged by Ignatiuk’s rival, incumbent deputy Ivan Pashkevich.

The failure of the Electoral Code and the CEC to define a uniform method for selection of a random sample of signatures and for completing the income and property declaration forms created scope for DEC’s to examine signature lists for the highest concentration of problematic signatures in the lists presented by candidates known not to be sympathetic to the authorities.

In the end, only 20% of candidates proposed by labor collectives and political parties were rejected, while approximately 50% of candidates proposed by collecting signatures were rejected. Since opposition candidates (excluding those from the Kalyakin’s Communist Party and the Liberal Democratic Party) were primarily nominated through the collection of signatures rather than political parties or labor collectives, the election commissions appear to have rejected a higher percentage of opposition candidates.

Interference by the Executive Authorities

The Electoral Code provides that the executive authorities should provide “support” to the election commissions. In fact, their role is often more directive than supportive. The location of election commissions in government executive offices and the appointment of government officials to election commissions provided ample opportunities for executive interference. Undue intervention by the executive authorities is particularly in evidence in relation to campaign activities.

In Brest, for example, municipal executive committee chairman Genady Mosko planned to assign deputies to visit all of the city’s polling stations. In Grodno oblast, on 12 October the director of a State-owned enterprise wrote to the supervisors of his 2,000 employees on official Oblast Executive Committee stationery, urging 100% participation of employees on election day and ordering them to report back to him personally no later than 10am the day after polling. In Brest City, the local authorities required candidates to submit their platforms for pre-publication approval.

Another example is President Lukashenko's address to the Congress of Soviets (local councils) on 29 September when he stated: "Some ill-wishers say that there is pressure from the side of authorities. It has never happened and never will. Each of my working days starts with the clarification of issues of the CEC. The head of the CEC reports directly to me about the kind of assistance that is needed."

Campaign

During the campaign, limits were imposed both upon voter choice and candidate activity. Voter choice was limited as a result of the frequent exclusion of candidates opposed to the authorities and the decision by seven opposition parties to boycott the elections.

The total fund candidates were able to spend on campaign materials is restricted to 50 times the minimum monthly salary, the equivalent of Belarusian Roubles 130,000 (\$130). This fund was generally controlled by DEC's and sometimes led to late and discriminatory production and distribution of campaign material. Since the average number of voters in each constituency is 70,000 and the fund could only cover the production of some 10,000 leaflets, candidates would struggle to run an effective campaign within the bounds of the law with these resources. Under the circumstances, some candidates had to use other means to support their campaign and print more materials than were legally permitted. In some cases, general political party literature was used that did not contain candidate names or specific platforms. In other cases, payment for materials was deferred to avoid a technical breach of the candidate expenditure limit.

Another example of constraints on candidate activity is interference by the authorities. The TAM received numerous complaints from independent candidates that their ability to campaign was hindered by directors of State institutions and enterprises preventing them from gaining access to their workforce in order to address voters.

The support provided by DEC's and their attitude to candidates also varied. As a result of an amendment to the Electoral Code, DEC's are required to "create conditions" for campaigning. Prior to the June amendments, DEC's' obligation was only to "assist". Some DEC's were more active than others in organizing voters meetings, and the TAM received complaints from independent candidates that meetings were not publicized or were only open to certain desirable candidates.

Another example is provided in a letter dated 4 October from the Chair of the CEC, Ms. L. Yermoshina, addressed to the Editor-in-Chief of the Orshanskaya, a regional newspaper. Ms. Yermoshina writes, in the case of a candidate who had submitted his campaign platform to be published in the newspaper, "the platform can be published only if the author agrees to exclude points 1 and 4 from it or edit their content. The author's claim [in point 1] about the 'authoritarian regime' in Belarus is groundless and contradicts the Constitution of" Belarus." In addition she writes, the claim in point 4 "about the so-called political persecution of mass media in Belarus is not true and should be considered far-fetched." Moreover, she urges the candidate that in "his platform there are accusations against a public official of committing a crime, which is not substantiated by facts and therefore can be regarded a libel."

Notwithstanding these restrictions, registered candidates were able to present a variety of platforms and, with approximately five candidates standing in each district, voters were provided with some degree of choice. Moreover, candidates were able to air their views during meetings and door-to-door campaigning.

While the Freedom Marches of 1 and 8 October organized by those advocating the boycott passed off without serious incident, a number of activists were charged with various offenses, often several days after the marches in question. In total, more than 100 advocates of the election boycott were charged under the provision of Article 167(3) of the Administrative Code and other boycott and unauthorized

picket-related offenses. This could only have a chilling effect on the campaign environment as a whole. Nonetheless, another march in Minsk on 14 October in favour of boycott went on without any incidents and without a visible presence of security forces.

Media

Only limited pluralism exists in the media. State-controlled media dominate both electronic and print sectors and no effective counterbalance is provided by the independent media. No private electronic media with nationwide coverage exist. Although the independent press provides a forum for the opposition to criticize the Government, it has approximately one third of the circulation of the State owned press. The distribution of print media is under the strict control of the State.

The CEC publication of the Decree on the Order of Usage of State-owned Mass Media During Preparation and Holding of Elections of Deputies of the Chamber of Representatives of the National Assembly of the Republic of Belarus, on 11 September 2000, was a positive step towards a fair and more detailed regulation of the mass media during the election period. Whilst recognition of the principle of equal time and space for every candidate is to be welcomed, the decree contains some weaknesses. Paragraph 13 of the Decree purports to control the private media, which, according to Article 33(8) of the Electoral Code, is beyond the scope of CEC powers. Furthermore, the appearance of candidates on current affair and news programs and articles fell outside the sphere of control. The body in charge of implementation and monitoring of this decree is the CEC assisted by the Monitoring Council, a consultative body whose appointment is approved by the CEC.

Harassment of the independent press is evident. After a 13 September raid on a leading independent publishing house (Magic Publishing House), the government charged owner and president Yuriy Budko with violating article 167(3) of the Administrative Code. During the raid, copies of the independent Rabochoy newspaper, which advocates boycott of the parliamentary elections, were seized. On 18 September, all charges were dropped against Budko. But on Wednesday 11 October, Budko said the government froze the firm's bank accounts. Then, on Friday 13 October, Budko said the government threatened to seize his printing press, allegedly to satisfy back taxes of publishing house benefactor Soros Foundation, which closed its offices in Belarus in 1997. Budko encountered similar problems in the run-up to the 1996 referendum.

During the election campaign, coverage of politics, including the election, was very limited. On State TV, only 10% of all air-time was devoted to the subject, while in both the State-owned and independent print-media it amounted to only 6% of space. Of this limited coverage, the amount devoted to candidates was relatively small. On State TV, they received only 35% of political coverage, while in both the independent and State-owned press, it was an even smaller 20%.

Political coverage in both the electronic and print media was dominated by the President and executive branch. The President received 55% of all political air-time on State TV and 72% of space devoted to politics in the State-owned newspapers. In contrast, the opposition received 11% of all political air time on State TV, the vast majority of which was negative, and 12 % of space devoted to politics in the State-owned print media. The opposition never was given the opportunity on State-owned media to explain its position to voters, including on the boycott. More than 50% of the space devoted to politics in the independent print media was given to the opposition.

Free air-time allocated to candidates on State TV was equitably apportioned, a positive development. However the allocation was not an effective means by which parties and candidates could inform the electorate. Due to time limitations, five minutes per slot, candidates were not able to present their programs in detail. Furthermore, information about the method of nomination or party affiliation was generally lacking and it was difficult for voters to ascertain when candidates in their districts are

allocated a slot, since schedules were not published in advance and the order in which candidates appeared was random.

A negative tone was often adopted by the State electronic media in relation to the opposition. For instance, the tone of coverage of the 1 October Freedom March was sarcastic and insulting.

International Observers

While the OSCE/ODIHR declined to observe the election day proceedings, the CEC accredited 194 international observers, including 74 from the Commonwealth of Independent States (CIS). Some of these observers were invited by the CEC with hotel expenses paid. On election day, the CEC provided most of these observers guided bus tours of selected polling stations. The following day, these observers were invited by the CEC to participate in a press conference where the results of the elections were to be announced.

Thus, the CEC coordination of these international observers' activities, in particular their guided visits to polling stations, compromised the credibility of their findings.

Unrelated to this CEC coordinated effort, representatives of the Parliamentary Troika of the European Parliament, the Parliamentary Assemblies of the OSCE and of the Council of Europe also visited Belarus around election day to prepare a political assessment of the elections in light of the OSCE/ODIHR Technical Assessment Mission's findings.

*This statement is also available in Russian.
However, the English text remains the only official version.*

Mission Information & Acknowledgments

The OSCE/ODIHR Technical Assessment Mission (TAM) wishes to express appreciation to the Ministry of Foreign Affairs and the Central Election Commission of Belarus for their assistance and cooperation during the course of the assessment.

The preliminary statement is issued before the final certification of the election results and before a complete analysis of the TAM's findings. The OSCE/ODIHR will issue a comprehensive report on the parliamentary elections within a month after the completion of the electoral process.

The TAM was established on 14 September 2000 in Minsk with eight election experts and Elisabeth Rasmusson as the Head of Mission. Their findings include the pre-election preparations, the election campaign, and the media.

For further information, please contact:

- Elisabeth Rasmusson, Head of TAM, in Minsk (+375.17.270.39.94); or
- Andy Bruce, ODIHR Election Advisor, in Warsaw (+48.22.520.0600).

OSCE/ODIHR TAM

IBB, Prospect Gazety Pravda, 11
Minsk 220116
e-mail: odihrtam@osce.org.by