

a system enables equal guarantees of national and local interests and representation of all major political parties and figures in parliament.

The parliament should be elected for five years, and its members should work on a full-time basis and be barred from holding government posts during their term.

The legislature should have sufficient financing, supplies and resources to perform its functions.

## Election System

by Mikhas Pliska, Syarhei Alfer

The authorities' legitimacy is based on the will of people as expressed in free and democratic elections. Therefore, the electoral system and laws should guarantee the conduct of elections in line with the basic principles laid down in international legal acts. The principles include universal suffrage, equal, free, fair and open (transparent) election, and voting by secret ballot.

The recognition of elections by all opposing sides in the country and the international community is essential for the country's democratic development and for joining the Council of Europe and the European Union.

Below are proposals that may form the basis of Belarus' electoral legislation.

### Voting System

To ensure that both national and regional interests are equally respected, and that political parties (alliances) and voters play key roles in an election process, and to give greater stability to political institutions in the country, Belarus should introduce a voting system based on mixed-member proportional representation in parliamentary elections. Half of the seats in a unicameral 260-member parliament are awarded along the lines of party lists, with the other half resulting from majority voting in single-member constituencies.

The single-member majority system is used for electing members of primary-level councils. And mixed proportional-majority system is used both for par-

liamentary and second level (other) elections when 50% are elected by party's lists and other 50% by majority in single-member constituencies.

The winning candidates for the parliament and local councils in single-member constituencies are effectively elected after a single round. The winning candidate is required to garner a majority of the vote.

Voters should be allowed to rank parliamentary or local candidates in order of their preference on a national party ballot (an open party ballot).

To prevent excessive fragmentation of the elected authorities, seats in the parliament and local soviets should be allocated only to parties that pass a 4-percent threshold. If party lists that pass the threshold gain less than 70 percent of the vote, the top performing lists out of those fetching less than 4 percent are added to the allocation of seats until the total vote reaches 70 percent. Seats are allocated to parties according to a quota and the 'largest remainder' formula<sup>29</sup>.

Parliamentary and local elections in Belarus should be held every four years and may not coincide in time.

Presidential elections in Belarus should be held every five years using the absolute majority voting system and may not coincide in time.

No limits should be imposed on turnout in presidential, parliamentary and local elections.

## Electoral rights

Eligible to voting in Belarus are all citizens aged 18 and over, with the exception of persons declared unfit by court decisions. People with a criminal record

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<sup>29</sup> A variety of different formulas exist for accomplishing the actual allocation of seats to parties. One of the simplest is the 'largest remainder formula'. In this approach, the first step is to calculate a quota determined by taking the total number of valid votes in a district, and dividing this by the number of seats. For instance, 100,000 votes were cast and ten seats are to be filled.  $100,000/10 = 10,000$  i.e. the quota. The quota is then divided into the vote that each party receives and the party wins one seat for each whole number produced. Hence, a party that received 38,000 votes, which is divided by 10,000 to produce three seats – with a remainder of 8,000. Once this first allocation of seats is complete, the remaining numbers for the parties are compared and the parties with the largest remainders are allocated the remaining seats (transl.).

may not be elected as deputies. Constituents, political parties and alliances may not recall their deputies. Those eligible for the post of president are citizens of the Republic of Belarus born in this country, aged 35 and over, who have the right to run for elections. A president may not be elected for more than two terms. Eligible to run for the parliament are citizens of the Republic of Belarus aged 21 and over. Eligible for sitting on local councils are citizens of the Republic of Belarus aged 18 and over. A member of parliament cannot hold a local council seat at the same time.

### **Formation of electoral commissions**

Elections are conducted by central (*tsestralnaya*), regional (*terytaryalniya*), district (*akruhoviya*), and precinct (*uchastkoviya*) commissions. Procedures for forming electoral commissions must warrant the largest possible degree of independence from both elected and executive authorities, and prevent political parties and alliances from monopolizing commissions.

The parliament forms the central electoral commission on the party basis with representatives of political parties that are represented in the legislature. Also party non-affiliates may sit on the commission. The chair of the central electoral commission must hold a university degree in law. The chair and secretary of that commission work on a full-time basis. They should not necessarily represent the same party.

Regional (*terytaryalniya*), district (*akruhoviya*) and precinct (*uchastkoviya*) commissions are formed on the parity basis of representing political parties (or party non-affiliates) that are represented in the legislature. The composition of these commissions is subject to approval by the central electoral commission.

### **Nomination and registration of candidates**

Eligible for registering candidates to parliamentary, presidential and local elections are political parties and registered voters. To register a presidential candidate, or a parliamentary candidate in a single-member constituency, vo-

ters must collect a stipulated number of signatures or pay election bail. Electoral commissions may verify signatures in support of a candidate only at a request from another candidate running for the presidency, the parliament or a local council.

At least 50,000 valid signatures must be presented to the central electoral commission to register a presidential candidate, with at least 5,000 signatures collected in every region and the City of Minsk. A presidential candidate may also be registered on payment of bail of 200 times the country's minimum salary.

To register a parliamentary or local candidate by collection of signatures, signatures of at least one percent of the Belarusian citizens living in a constituency must be presented to the district electoral commission. A parliamentary or local candidate may also be registered on payment of bail of 20 times the minimum salary.

A candidate who falls short of the required number of signatures after verification may pay specified bail in order to be registered.

To register lists of candidates with respective electoral commissions, parties must pay bail of 200 times the minimum salary for a parliamentary election, and 50 times the minimum salary for a local election.

If a presidential candidate, or a parliamentary candidate in a single-member constituency, or a party that put forward its list of candidates gains less than 3 percent of the vote, the bail should not be returned.

Political parties may form alliances for parliamentary and local elections and must register with respective electoral commissions accordingly.

## **Funding elections**

Electoral commissions should be publicly funded, while central and local authorities should be responsible for logistical support.

Presidential candidates, parliamentary and local candidates in single-member constituencies and political parties and alliances that put forward party lists should set up funds to finance their campaigns. Candidates on a party list ballot may not set up campaign funds. The funds should accumulate contribu-

tions from candidates and parties, and donations from individuals and companies, with the exception of foreign entities.

The right to use money out of campaign funds should be given to the presidential, parliamentary or local candidates, political parties and alliances that established these funds. Presidential, parliamentary or local candidates, political parties and alliances should keep record of sources and application of funds and present financial reports to respective electoral commissions.

## **Campaigning**

All candidates for the presidency, parliament or local councils should have equal rights. Candidates may not take advantage of their official position in order to be elected.

The law warrants equal rights to political parties in placing their advertisements in the media, and equal rights to presidential candidates and political parties that register their candidate lists during mandatory election debates.

During campaign, presidential, parliamentary and local candidates, parties and alliances have the right to hold campaign rallies and demonstrations, meet voters at home and in public spaces. Candidates are not required to notify authorities of their planned meetings with voters. Notification is required for rallies, demonstrations and other mass campaign events.

Campaigning (including for boycott of an election) is prohibited on Election Day. Publication of results of election-related opinion polls is prohibited within three days prior to the election.

Campaign ads, public speeches by candidates or their publications in the media may not call for war, incite racial, ethnic or religious hatred, or call for a forcible change of the constitutional system, or violation of territorial integrity of the Republic of Belarus.

## Voting

Local government authorities should list eligible voters in each constituency and transfer these lists to respective commissions. The voting lists should be publicized 15 days prior to election.

All arrangements for printing, storage and transfer of ballot boxes should be open to the public. Ballots should be protected from counterfeiting.

Polling stations should be open for election from 8 a.m. to 8 p.m.

The law allows for voting by mail in addition to voting at polling stations. Eligible voters who cannot come to the polling station for health or other reasons may vote by post. To cast a ballot by post, voters need two special envelopes, a ballot and an identity certificate signed by another person. Voters put their ballots in one envelope and the identity document in the other.

## Liability for breach of the electoral law

Persons who apply for registration as candidates for presidency, the parliament or local councils, as well as political parties and election-focused alliances taking part in elections have the right of judicial recourse against all decisions of electoral commissions, including those concerning election results.

The registration of a candidate for presidency, the parliament, local council or a party list may be judicially declared null and void at the request of a relevant electoral commission, other candidates for presidency, parliament or local council or by political parties and alliances that registered their lists of candidates.

Election fraud, ballot secrecy violations, or rigging vote count by electoral commission members of and other participants in the election process, as well as other breaches of the electoral law are punishable under the Administrative Offences Code and the Criminal Code.

## Election transparency

Elections should be prepared and conducted openly. Governmental agencies, elected authorities and electoral commissions must publicize all decisions regarding preparation and conduct of elections in the media.

The pluralistic composition of electoral commissions and domestic observers should warrant an open election.

Observers from political parties and non-governmental organizations may a) attend meetings of local commissions without prior notice; b) observe the vote count at a distance enabling them to see the content of the ballot boxes; c) recount ballots, if necessary; d) ask commissions for certified copies of polling protocols.

On signing a protocol of voting results, local electoral commissions should post it in the voting room for public notice.

## An ideal model for Belarus' judiciary and law enforcement agencies

by Mikhail Pastukhou

Like in other European countries, courts in Belarus should act as guarantors of human rights and freedoms. Independence of courts is an indispensable condition.

In this report, the judiciary is regarded as a system of state agencies empowered to settle legal disputes and administer punishment to people found guilty of crimes<sup>30</sup>. The judiciary's role in a democratic state is to enforce the law, prevent any arbitrariness in society and defend people's rights and freedoms.

Belarus still has a centralized judicial system which bears on the country's administrative division and the executive power; it operates as a repressive mechanism rather than a tool for protecting against unlawful actions.

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<sup>30</sup> И. И. Мартинович, М. И. Пастухов, *Судебно-правовая реформа в Республике Беларусь*, Мн.: Амаффея, 1995, р. 22.