

## PRESIDENTIAL ELECTIONS IN BELARUS

### WHAT ARE THE MINIMAL CONDITIONS UNDER WHICH A FREE AND FAIR PRESIDENTIAL ELECTION COULD BE CONDUCTED IN BELARUS?

#### WHY THIS PAPER?

One of the Belarusian opposition's key demands is the holding of a new presidential election that meets basic criteria for electoral integrity. In two online meetings held in December 2020, a group of Belarusian and international election experts discussed the conditions for holding such elections. This paper is inspired by those discussions, although it does not necessarily represent the different views and suggestions presented during the meetings.

In the context of Belarus' current political crisis, there are two possible scenarios that could potentially lead to the holding of a presidential election. In one of these scenarios, the election would be the result of an abrupt collapse of the incumbent's regime under pressure from the current, unprecedented protest movement in the country. Under this scenario, massive public mobilization could lead the pro-democratic forces to support a unified candidate, similar to the post-revolution developments in Armenia in 2018. Under such conditions, comprehensive reform of electoral law would likely neither be practical, given the compressed timeframe for a snap election, nor perhaps essential, given the pressing public demand for free and fair elections and wide-scale mobilization to exercise public scrutiny of the process (as was the case in Armenia in 2018, or in Albania in 1992).

Under the second scenario, presidential elections would be held as a result of a negotiated transition, where a weakened incumbent and the opposition would negotiate the main conditions and roadmap for overcoming the political crisis. For

many Belarusians, this scenario appears unrealistic, and even unacceptable. The Belarusian leadership has persistently refused to engage in any negotiations with the pro-democracy opposition forces and broader public, instead relying on systemic repression to silence its opponents and thwart any collective dissent.

That said, other repressive regimes have entered into "negotiated transitions" as an alternative to the risk of complete collapse. It can't be excluded that developments in Belarus could take this direction, and opposition leader Sviatlana Tsikhanouskaya has repeatedly stressed her readiness take part in negotiating a resolution to the crisis.

If such negotiations result in a presidential election, the incumbent regime may want to ensure, in one way or another, the continuation of the status quo, for example through supporting its own candidate (the successor, or преемник). If so, the elections could witness a bitter competition in which the regime resorts to past patterns of manipulation, possibly better disguised. At the same time, in order not to waste their chance and momentum, it might be in the interests of the opposition to agree to snap elections without prior deep legal reforms, relying on certain commitments from the regime, along with public mobilization, as safeguards against election fraud. So far, Ms Tsikhanouskaya's team has already proposed some key conditions ("Ten principles") under which a snap presidential election could be held without changes to the election law.<sup>1</sup>

While this paper proposes some additional insights to supplement the Ten Principles, its conclusions concur with the main finding there: A competitive election can be held without

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<sup>1</sup> See: "10 принципов новых выборов. Концепция офиса Светланы Тихановской" (Ten Principles of New Elections. Concept of the Office of Sviatlana Tsikhanouskaya), (in Russian), <<https://tsikhanouskaya.org/ru/events/news/ca47977f76a208b.html>>.

changes to the existing laws if the government demonstrated the necessary fundamental political will to safeguard certain minimal conditions. These conditions could be part of the opposition's position in the event negotiations take place. The recommendations offered in this paper build on those that Belarusian election observation groups and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) have been making for years.

## SUMMARY OF FINDINGS

Looking at the broader context of political rights that need to be protected in order to hold democratic elections, the main problem is not in the law. Rather, it is in the government's abuse and violations of the legal protections that Belarusians should enjoy under their Constitution, imperfect as it is. While the government accuses the opposition and protesters of undermining law and order, the opposite is the case; the government violates law and order on a daily basis, through arbitrary arrests, torture, persecution, intimidation and harassment.

In order to create conditions conducive to the holding of democratic elections, it would be sufficient to merely respect the Constitution and the laws of the country. Some restrictions that could potentially hinder the holding of free election campaigns, for example the requirement to receive prior permission to hold public demonstrations, could easily be interpreted in a democracy-friendly way, providing for the right of freedom of assembly and allowing for campaigning without fear or pressure. In any transition negotiation, basic respect for fundamental rights and freedoms would need to be the central point.

One other key condition that depends on political will, rather than legislative reform, is the **replacement of the current election administration**, and primarily of the Central Election Commission (CEC). The level of public approval of the CEC is extremely low, as the Commission has been engaged in manipulating elections for over two decades. Incumbent CEC members would need to be replaced with competent and impartial people who enjoy the confidence of all stakeholders. There are lawful avenues for doing so, provided that political will for such a change in personnel is assured in negotiations.

With Belarus' past electoral patterns in mind, an **impartial and objective candidate registration process** is another essential condition for a free and fair presidential campaign. The disqualification of potential contestants based on extremely

onerous and rigid requirements for the collection of support signatures and the submission of declarations of property and income have been the most effective instruments used by the Belarusian authorities to exclude opposition candidates. Although the simplification of the signature collection requirements would, in the long term, require reform of the election law, the process could be corrected in the short term under the existing law, if election commissions were guided by principle of inclusiveness and abandoned the hyper-formalistic and biased approach to the verification of signatures. A change in attitudes and mindsets, and not a change in law, would also be enough to guarantee that potential candidates were not selectively disqualified for "inaccuracies" in their declarations. Only essential inaccuracies, as required by law, i.e., any deliberate and significant omissions capable of misleading voters, should be grounds for disqualification.

As the Belarusian election law grossly under-regulates **election day procedures** and fails to provide essential safeguards, the new CEC would need to enact regulations to fill in the gaps and guarantee procedural safeguards for voting (including early voting), the counting and tabulation of votes, and the announcement of results. Formulated properly, such regulations would be sufficient. They could be guided by good practice recommendations consistently made by ODIHR and Belarusian observers. Changes to the law would not be necessary.

Past abuses have created widespread mistrust in the practice of **early voting**, which has usually taken place over the space of many days and without legal safeguards for integrity and transparency. While the law provides for early voting, the period for this could be reduced to a few hours on the day before election day, in response to specific needs.

**Unhindered election observation** over the entire process, from candidate registration to the counting and tabulation / aggregation of votes, as well as the publication of results, would have to be among the most essential preconditions for the holding of a free and fair election. Given the efforts civil society can be expected to make to mobilize the public to take part in total scrutiny of the electoral process, the elimination of long-standing constraints on election observation would be as crucial as any other condition listed in this paper. The installation of video cameras and the online streaming of the electoral process might be an important, albeit not sole, arrangement to enhance election observation.

There is nothing in the current law that prohibits such practices.

Equal access for contestants to **the media** is a requirement in the current law so, again, all that is required for this is the necessary political will. State-owned and state-funded media outlets would need to provide balanced coverage of candidates' campaigns, and private media, individual journalists and bloggers would have to be protected from intimidation and harassment.

The same would be true in order to ensure the **impartial resolution of election disputes**, as the law provides for an independent election administration and judiciary, and nothing in the existing law warrants the political instructions to the courts that have long been the pattern in Belarus. Thus, the authorities would need to refrain from instructing either election commissions or courts about the resolution of election disputes.

## I. RESPECT FOR FUNDAMENTAL RIGHTS

### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

All elections in Belarus over the last two decades have been marred by wide-scale violations of fundamental rights, as has been extensively reported by the OSCE/ODIHR and domestic observer groups. Multiple restrictions on the holding of rallies, including burdensome procedures for obtaining prior permission to hold an assembly, sanctions and the fear of persecution or pressure for participation in an unauthorized event, have significantly limited the ability of opposition candidates to campaign, thus significantly tilting the playing field. Restrictions on the freedom of assembly have impaired candidates' opportunities to disseminate their campaign promises and platforms, to attract supporters and appeal to voters.

The authorities enjoy broad discretion in denying the registration of political parties, as well as of other public associations, thus creating impediments for politically active groups and individual candidates to officially consolidating their efforts and resources, to qualifying for institutional funding, and to becoming eligible to participate in the political process. Currently, there are numerous political associations that have been denied the right to form a party. There are disproportionate sanctions for defamation and insult and the fear of prosecution significantly impairs the

right to freedom of expression, as well as the ability to publicly disseminate information.

Pressure on and the intimidation of voters, especially those who are civil servants or employees of state-owned or state-funded organizations and enterprises, teachers and students, to get them to attend the campaign events or to vote for the incumbent have been widespread. These practices violate the fundamental rights that underpin free and fair elections.

### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

While the human rights safeguards provided in the Constitution and the laws of Belarus fail to meet international standards in many respects, the government grossly oversteps even the existing safeguards to repress protest and dissent. Clearly, there is nothing in the Constitution or legislation that provides a mandate for the mass arrest and detention of opposition members, activists and bloggers, or for everyday violence against protesters. In other words, the political will to stop the current practice of harassment and oppression, and to guarantee the protection of fundamental political rights and freedoms, is the primary requirement to create the proper environment for elections.

While prior permission is required for the holding of rallies, the authorities could implement this requirement in good faith, and abstain from denying permission for peaceful assemblies, save for any proportional restrictions pursuing a legitimate aim in a free and democratic society. No one should be subject to sanction for participating in a peaceful rally or for expressing opinions or disseminating information of a political nature.

### RECOMMENDATIONS

1. **For a competitive, pluralistic election to take place, the authorities will need to ensure the necessary conditions for people to exercise their right to freedom of assembly, to engage in campaigning without undue impediments, to form or be involved in associations in support of a specific candidate or platform, and to be free to express and disseminate ideas and thoughts on political issues, without fear of retribution or persecution.**
2. **The authorities need to refrain from putting pressure on or intimidating voters, especially those in public or civil service and the employees of state-owned or**

**state-funded organizations and enterprises, as well as students, to make them attend campaign events of and/or cast their vote in support of a particular candidate.**

## II. IMPARTIAL ELECTION ADMINISTRATION

### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

The lack of impartiality in election administration, and particularly on the part of the Central Electoral Commission (CEC), has been the most consistent characteristic of Belarusian elections. The significant mistrust of this institution, a consequence of over two decades of undemocratic elections, would undermine perceptions of the electoral integrity of any future election. For the Belarusian public, the current CEC personnel epitomize election fraud. International and domestic observers have regularly noted that the manner in which the CEC is composed – six of its members are appointed by the President and the other six by the Council of the Republic (the upper chamber of the parliament), with no opposition representation among its members – clearly means, given the Belarusian context, that the CEC is not independent.

### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

While some analysts believe that the composition of election commissions, and of the CEC in particular, is not of key importance; assuming that election commissions implement the will of the political leadership, and if that political will shifts towards fair elections, then the same commissions will administer the election accordingly. Most experts and stakeholders agree, nevertheless, that the current twelve members of the CEC must be replaced. This has also been among the key demands by the opposition in the wake of the August 2020 election.

Although the substitution of the entire election administration staff at all levels below the CEC would make sense, given that election fraud on a “Belarusian scale” required the participation of election commission at all levels, such a total restructuring on short notice would be unrealistic, and could result in a malfunction of the system. Also, it is important to

distinguish the heads of election commissions from ordinary members of such commissions in terms of complicity in past election fraud.

The key change to be made is at the top. Under the election law, CEC members are appointed for five-year terms (the current members were appointed in December 2016), and their tenure can only be terminated early if they resign, lose Belarusian citizenship, are convicted of a crime, or fail to perform their duties. The resignation of the current CEC or, alternatively, the criminal prosecution of its members based on the evidence of past election fraud may be a necessary precondition for political dialogue.

## RECOMMENDATIONS

- 3. The replacement of the incumbent CEC members and formation of a new, impartial Commission from among representatives of different political parties and civil society organizations who enjoy public confidence and have professional qualifications in electoral processes could be among the key preconditions for a snap presidential election.**
- 4. As election commissions at all levels have consistently implemented illegal instructions from higher commissions or the country’s political leadership, consideration should also be given to requiring that no person who has regularly served in the past as a chair of a commission at the oblast (city),<sup>2</sup> district or precinct level can be involved in the election administration during the snap election.**

## III. IMPARTIAL AND OBJECTIVE CANDIDATE REGISTRATION

### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

The disqualification of potential contestants based on extremely strict registration criteria, usually applied selectively, has been one of the most effective instruments at the hands of Belarusian authorities for excluding opposition candidates. This practice, employed in many post-Soviet states in much

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<sup>2</sup> From the perspective of public administration some cities have a status of an oblast, hence oblast/city refers to the same level of election commissions.

the same way, has given political exclusion a veneer of formal legality.

The law requires presidential candidates to collect 100,000 support signatures, which is a highly disproportionate requirement. The election law provides for a detailed procedure for the collection and verification of signatures, permitting the CEC to deny the registration of a potential candidate if 15 per cent of signatures in a selected sample are considered invalid. Any minor mistake in the process (for example, if the date on which the signature was collected was not personally filled in by the signatory or if any personal information on the list, such as the name of the signatory, is misspelled) has served as grounds for disqualifying signatures, signature lists and, ultimately, potential candidates. Candidates do not enjoy equal treatment in the process, which also lacks transparency and objectivity.

Given the large number of signatures required for a candidate to become eligible, it is important that they have a meaningful opportunity to “run a campaign”, so that a sufficient number of supporters/signatories can be attracted. The CEC, however, has interpreted the law to mean that campaigning, strictly speaking, is allowed only after candidates have been formally registered. In practice, while canvassing on the street is allowed for the purposes of signature collection, no banners, booklets, symbols or campaign programmes are allowed to be used during the canvassing, essentially restricting a candidate from providing any information about their campaign platform. This may limit a candidate’s chances to collect the necessary number of support signatures.

Candidates are also required to submit declarations of income and assets, and these are similarly subject to scrutiny by the CEC, which requests the relevant state bodies to verify the accuracy of the information included. While the law provides that only “essential” inaccuracies in declarations can serve as grounds for non-registration and that candidates are allowed to make corrections to their declarations, the CEC has regularly denied registration to opposition candidates based on “inaccuracies” in declarations, in a process has been assessed as biased and non-transparent by both Belarusian observers and the OSCE/ODIHR.

### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

While the permanent simplification of the signature collection process would require significant changes to the election law, the process could be corrected in the short term even under

the existing legal framework if election commissions are guided by principles of inclusiveness and abandon the past hyper-formalistic approach to the verification of signatures. As stressed in the **Ten Principles**, the election commission involved in verifying signatures should adopt a different attitude towards the process, not looking to find mistakes in order to exclude candidates. Rather, the commission should work to confirm genuine support for a potential candidate and to ensure inclusiveness. This does not mean that the commissions should disregard essential problems with signature lists; it just means that the purpose of signature verification should be to verify the authenticity of support in order to safeguard against falsification. Hence, the commissions should exclude only those signatures that have essential defects or are technically impossible to verify, rather than those that have only minor technical defects and where the fact of support for the candidate is beyond a reasonable doubt.

Unlike the case of signatures, the law does not specify the procedure for verification of the declarations of income and assets, and it indicates that only “essential mistakes” in declarations can serve as grounds for non-registration. This means that a change in attitude and an approach ensuring equal treatment should rectify the past negative patterns and provide for inclusive candidate participation in the election. The CEC and relevant authorities should interpret the term “essential mistakes” very narrowly and adopt a standard whereby an inaccuracy in a declaration may serve as grounds for non-registration only if it has been verified and considered as “essential” by a court.

### RECOMMENDATIONS

- 5. An impartial and objective candidate registration process requires a fundamental change in the mindset of the election administration with respect to the verification of collected signatures and declarations of assets and income, from a restrictive approach intended to disqualify candidates to an inclusive one intended to provide a diverse pool of candidates and choices. The fundamental right to stand would need to be given a priority over considerations of technical perfection during the signature verification process, and only deliberate and significant omissions and mistakes in signature lists and candidate declarations should be viewed as grounds for non-registration.**

6. **Potential candidates would need to be allowed to campaign – i.e., to disseminate information on their programmes and platforms, deliver booklets and exhibit banners and other symbols – before formal candidate registration, so that they have a genuine opportunity to attract supporters and collect the necessary number of signatures.**
7. **The process of signature verification needs to be open to public scrutiny, and observers should be given full and meaningful access in order to monitor the process.**
8. **The CEC and relevant authorities would need to interpret “essential mistakes” in declarations of assets and income very narrowly, and to adopt a standard whereby an inaccuracy in a declaration may serve as grounds for non-registration only if it has been verified and assessed to be “essential” by a court.**

#### IV. BASIC SAFEGUARDS FOR ELECTION DAY PROCEDURES

##### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

Belarus' election law grossly under-regulates basic election day procedures, including those for early voting, vote counting and tabulation; the law often provides only limited, if any, safeguards against potential fraud during these processes. For example, the counting process is void of conventional safeguards. There is no initial reconciliation of the total number of valid or spoiled ballots, absentee ballots, ballots from homebound voting, etc., with the number of signatures on voter lists; votes are not announced publicly and ballots are not clearly shown to the commission members or observers; piles of ballots with votes in support of specific candidates are not recounted or verified by a second commission member; and results on protocols are changed “arbitrarily”, without scrutiny by commission members or observers. The entire election day process is void of any meaningful observation, as observers are regularly denied being within a reasonable distance from the ballot box or

counting table. Instances of fraud, including of inflated official turnout data, ballot box stuffing and multiple voting have been reported on a recurrent basis.

##### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

While the law lacks the necessary basic safeguards against election fraud during counting and tabulation, the gap can be filled by a CEC regulation, and additional safeguards can be introduced to the precinct commission practice through a training programme. Good international practice can be applied to improve the process:

- As this is also flagged in the **Ten Principles** and consistently in past recommendations by domestic observer groups, each ballot should be displayed to all those entitled to following the process (including candidates, their proxies and observers) and counted/announced out loud;
- Everyone following the process should be entitled to request a recount of the separate piles with votes in support of specific candidates;
- Results protocols should be made public, and everyone following the process should be entitled to a copy; and
- Result protocols should be released and published without delay.

The **Ten Principles** suggest limitations to early voting. The election law is ambiguous as to whether early voting can be limited in time; it provides that voters who have no opportunity to vote on the election day can cast an early vote, but not earlier than five days before the election day (see Art. 53).<sup>3</sup>

Election observation reports, both international and domestic, indicate that the main issues with early voting are not related to the fact that this stretches over so many days but, instead, to the absence of safeguards to ensure the integrity of the process.<sup>4</sup> The OSCE/ODIHR has provided a series of recommendations in this respect, including requirements to properly seal ballot boxes throughout the process of early voting, to conduct each day of early voting without breaks, to publish daily turnout data for each polling station, and to increase the number of commission members conducting

<sup>3</sup> Legislationline.org, “Election Code of the Republic of Belarus”, p.39, <[https://www.legislationline.org/download/id/4193/file/Belarus%20Electoral%20Code%20consolidated\\_am\\_2011\\_eng.pdf](https://www.legislationline.org/download/id/4193/file/Belarus%20Electoral%20Code%20consolidated_am_2011_eng.pdf)>.

<sup>4</sup> See: Human Rights Defenders for Free elections (HRDFE), “Republic of Belarus. Presidential Election. August 9, 2020: Final Report on Election Observation”, pp. 5-6 and 27-28, <<http://elections2020.spring96.org/en/news/100928>>. HRDFE is a coalition of Belarusian election observation organizations.

early voting.<sup>5</sup> None of these recommendations would require amendment of the law. In view of the vague language in the law, a simple solution would be to greatly reduce the time for early voting (for example, to a few hours on the day before election day) to reduce the scope for possible abuse.

## RECOMMENDATIONS

9. **Considering the importance of election-day procedures for the integrity of the electoral process, the procedures of counting and tabulation need to be supplemented by necessary safeguards, in accordance with good international practice. The counting process should be transparent and verifiable, and everyone entitled to follow the process should have the right to meaningfully observe the process, including each ballot, the piles thereof, or the tables of data reconciliation and results protocols.**
10. **Early voting would need to be limited to a few hours on the day before election day. Safeguards during early voting need to be strengthened, as recommended by the OSCE/ODIHR.**

## V. UNRESTRAINED ELECTION OBSERVATION AND ENGAGED PUBLIC SCRUTINY OF THE PROCESS

### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

The law provides for observation by domestic and international observers, and for an accreditation process for both. Observers are accredited to observe at specific commission levels, and are not allowed to observe at commissions of a different level.

While the accreditation of observers, including domestic observers, has sometimes been assessed to be inclusive the past (over 38,000 citizen observers – but many of them from pro-governmental institutions – were accredited as observers for the last parliamentary elections), it was severely restricted for the August 2020 vote, with the COVID-19 pandemic cited as the main reason for this.

The most essential problem facing observers is in the existing restrictions on the exercise of meaningful scrutiny of the process, as observers are forbidden by the law to be in the vicinity of ballot boxes and ballot papers. In practice, observers have been restricted from having a reasonable opportunity to observe key elements of the voting process, including the verification of signatures, signed voter lists, vote-counting and tabulation. These amount to significant limitations on observers' ability to monitor the process.

### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

Most problems with observation lie in the realm of application of the law, rather than the law itself. While the law provides that observers cannot be in the vicinity of the ballot box or the ballot papers, this provision has been interpreted narrowly, so as to prevent them from having a reasonable view of any important electoral procedure. The term "vicinity" in the law itself is broad enough and, under a proper interpretation, should never restrict the observer's view of the substance of the process, which undermines the whole purpose of observation.

Access to the process for observers is an essential safeguard for the integrity of an election, and guarantees for unobstructed observation of the entire process – from signature verification to vote-counting and tabulation – should be among key preconditions for a snap presidential election.<sup>6</sup> Such a requirement would be in line with the existing election law, so only a change in the election administration's mindset and practices, possibly partnered with a supplementary CEC regulation, would be needed to guarantee full and unrestricted scrutiny of the election.

It is important to mobilize the general public and civil society to be engaged in scrutiny of the electoral process. Meaningful monitoring of the process does not necessarily require formal observation and accreditation, though such procedures are useful. Generally, domestic observation would benefit greatly from an inflow of enthusiast observers; citizens can scrutinize the process while they vote and can file complaints on any irregularities observed. They can prevent, protest or report on attempts at irregularities at any other stage of the election

<sup>5</sup> See: OSCE/ODIHR, "Republic of Belarus, Early Parliamentary Elections, 17 November 2019: ODIHR Election Observation Final Report, <<https://www.osce.org/files/f/documents/6/4/447583.pdf>>.

<sup>6</sup> See also the HRDFE recommendation "to provide for the possibility to observe all aspects of the electoral process and to refrain from creating artificial obstacles to the work of observers", "Final Report on Election Observation", op. cit., note 3, p. 34.

campaign leading up to election day, such as pressure on voters, intimidation, vote buying or the abuse of state resources. It is essential that the authorities and the election administration feel they are under total public scrutiny and that they sense broad-based public demand for a fair election. The political opposition and society have an essential role in public mobilization.

The installation of video cameras in all commissions and the live transmission of the entire process in all its stages may be another good way to increase the effectiveness of monitoring and public scrutiny. Although there has been criticism of this process, based on the argument that this alone cannot provide any guarantees against manipulation (citing experience in the Russian Federation and in Armenia, where video-recording has been introduced with no significant positive effect) and on the fact that this might equally become an instrument of voter intimidation, it is reasonable to expect that, combined with numerous other proposed observation measures and with increased public scrutiny and mobilization, video recording will become a practical instrument to support effective monitoring, a valuable means for collecting evidence of manipulation, and a practical way for keeping election commissions accountable.

## RECOMMENDATIONS

11. **Observers would need to be given full and unrestricted access in monitoring all stages of the electoral process. They need to be entitled to record the process – both by video and/or photos – subject only to reasonable restrictions to ensure the secrecy of the vote, and also need to be entitled to obtain certified copies of all official election documents, including results protocols.**
12. **The installation of video cameras in all commissions and a live transmission of the entire process should be considered as an effective instrument for enhancing observation and monitoring, a valuable means for collecting evidence of any manipulation, and a practical way for keeping election commissions accountable.**

## VI EQUAL ACCESS TO THE MEDIA

### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

Past elections have witnessed significant restrictions on freedom of speech and of the media, with the ability of candidates to access the media equally considerably distorted. The legislation contains severe sanctions, which hinder the exercise freedom of expression, and defamation and public insult are criminalized. Content and coverage on state-owned and state-funded media are aligned with government propaganda, while private media outlets face constant harassment by law enforcement. Access to the internet and specific websites is restricted regularly, and especially during electoral campaigns and protests.

### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

Equal access of contestants to the media is dependent on the political will to ensure this. State-owned and state-funded media outlets should provide balanced coverage of candidates' campaigns, and all media outlets, individual journalists and bloggers should be free from intimidation and harassment. These should be viewed as essential conditions for a snap presidential election.

## RECOMMENDATIONS

13. **State-owned and state-funded media outlets should be required to provide balanced coverage of campaign.**
14. **All media outlets, journalists and bloggers need to be free from harassment, persecution and intimidation.**

## VII. ELECTORAL DISPUTE RESOLUTION

### PAST PROBLEMS, AND HOW THEY HAVE AFFECTED THE ELECTORAL PROCESS

The responsibility for the resolution of election disputes is vested in election commissions and the courts, both of which lack independence and are controlled by the executive. Past election practice has demonstrated a total incapacity on the part of both the commissions and the courts to provide an effective remedy for election irregularities. In the last parliamentary elections, in 2019, more than 99 per cent (!) of all complaints filed with commissions or courts were either dismissed (more often than not on purely technical grounds) or denied.

According to the law, election results are not subject to appeal, and this leaves the CEC virtually unaccountable before the law on the matter of final results.

### HOW TO FIX THE PROBLEMS WITHOUT RESORTING TO LEGISLATIVE REFORM?

The problems with dispute resolution are predominantly in the realm of practice, and little relief is available through legal change. In this respect, the conditions are similar to those described above regarding the impartiality of election commissions.

Most judges in the country, including all judges of the Supreme Court and six of the twelve justices of the Constitutional Court, are appointed by the president. The Belarusian judiciary is infamously subservient to the executive.

### RECOMMENDATIONS

- 15. The authorities need to refrain from the infamous practice of “telephone justice” (judges handing down decision based on orders from above) and from instructing either election commissions or courts how to resolve election disputes.**

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The European Platform for Democratic Elections (EPDE) is a network of 15 independent European citizen election observation organizations. The aim of EPDE is to support citizen election observation and to contribute to democratic election processes throughout Europe. EPDE encourages, trains, and supports experts and citizens who stand up for transparent and equal suffrage wherever it is at risk in Europe – be it in the European Union’s member states, the Eastern Partnership countries, or the Russian Federation. EPDE is a signatory of the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observation. EPDE also is a member of the Global Network of Domestic Election Monitors (GNDEM).

*EPDE is financially supported by the European Union, the Federal Foreign Office of Germany as well as with German Federal Foreign Office’s funds by ifa (Institut für Auslandsbeziehungen), Funding programme zivik.*



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