



HUMAN RIGHTS DEFENDERS FOR FREE ELECTIONS

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

Analytical weekly report on the results of observation:

October 28 - November 2

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

SUMMARY

- there were instances of bans on publishing the candidates' election programs and broadcasting their TV and radio addresses. In most cases, the bans referred to “violating Article 47 of the Electoral Code.” According to the campaign's experts, the content of this article is interpreted too broadly by the election commissions, which leads to restricting the candidates' right to freedom of speech and efficiently constitutes censorship;
- there were cases of abusing administrative resources for the purposes of election campaigning by the pro-government candidates, as well as creating obstacles to independent and opposition candidates in their campaigning events;
- the most active coverage of the campaign has been provided by the independent media, which reported on the pickets, warnings and cancellation of registration of opposition candidates, as well as bans on airing their recorded statements. The government-controlled media are limited mostly to official information;
- the local executive committees have not fully implemented the CEC's order to publish information on the allocation of funds from the special electoral accounts of candidates on the respective web pages devoted to the election campaign.

ELECTION CAMPAIGNING

The observers have documented facts of abusing administrative resources for the purposes of election campaigning by the pro-government candidates, as well as creating obstacles to the activities of independent and opposition candidates.

On October 30, school No. 8 in Slonim hosted an unannounced meeting with candidate Valiantsin Semianiaka running in electoral district No. 58. Viktor Svila, a pro-government candidate in the Smarhoń-based electoral district No. 59 and deputy chairman of the Astraviec district executive committee, met with voters in schools Nos. 1 and 7. Both meetings were held during academic hours.

On November 1, the building of the Dokšycy district executive committee hosted a meeting with Uladzimir Andreichanka, an incumbent MP and Speaker of the House of Representatives running in electoral district No. 22.

On October 31, more than 160 students of the Hrodna Chemical Technology College attended a meeting with Iryna Lukanskaya, a candidate in the electoral district No. 49, who is chief physician of the city children's clinic, member of the Regional Council and head of the city branch of the Belarusian Union of Women. The meeting was organized by the college administration. Volha Karpenka, deputy principal of the college, who is currently serving as chair of PEC No. 24, and other members of the PEC (college teachers and staff) reported the presence of students in special lists.

On November 1, a meeting was held in the Hrodna Construction College. Principal Alena Zhelezniakovich, who is also chair of PEC No. 26, together with other college employees (members of the same PEC), helped to organize the meeting and followed the attendance of students.

There were cases of creating obstacles to the activities of some candidates. In particular, Zhanna Hastsiayeva, a candidate of the Belarusian Party “The Greens” in the Hrodna-based electoral district No. 49, reported obstacles in meeting with voters in high school No. 20. The DEC did not inform the voters about the meeting on the website of the city executive committee or by other means. Incorrect information about the scheduled meeting, in particular, the address of the school, was indicated on the committee’s website, instead. In addition, school staff were not informed about the event.

OBSERVATION OF ELECTION CAMPAIGNING

The Central Election Commission has published information on the observers accredited with the central, regional, district, and precinct election commissions as of October 28¹. The bulk of the observers represent pro-government NGOs: trade unions, BRSM, “Belaya Rus” and the Belarusian Public Association of Veterans. As of October 31, the CEC accredited 459 international observers, including 367 CIS observers (about 80% of the total number of accredited international observers), 50 ODIHR observers, 28 observers of the Parliamentary Assembly of the Council of Europe and 14 observers of the electoral bodies of foreign states².

CANCELLATION OF CANDIDATES’ REGISTRATION

According to the CEC, as of October 31³, the number of candidates has reduced from 560 to 531, which is 29 less than the amount initially registered. Nine candidates had their registration cancelled due to violations of procedure for conducting election campaigning (Art. 47 of the Electoral Code prohibiting, among other things, calls for overthrowing the constitutional order, insulting top officials, and others). Twenty people withdrew their candidacies. The CEC warns that the facts of production and distribution by candidates and their proxies of unidentified printed products and pickets held in violation of the law will receive a proper legal assessment.

On October 29, DEC No. 79 in Babrujsk overturned the decision on registration of candidate Arseniy Chyhir. The ground for the cancellation of registration was the candidate’s failure to submit to the DEC, within two days stipulated by the law, information on opening a special electoral account, as well as the presence of earlier warnings for “a violation of the procedure for

¹ <http://rec.gov.by/sites/default/files/pdf/2019/stat8.pdf>

² http://rec.gov.by/sites/default/files/pdf/2019/int_obs.pdf

³ <https://www.belta.by/politics/view/chislo-kandidatov-v-deputaty-v-belarusi-umenshilos-do-531-367643-2019>

suspension from office for participation in the campaign activities.” The decision was appealed to the Mahilioŭ TEC.

On November 1, the Brest-based DEC No. 4 ruled to cancel the registration of an independent candidate, environmental activist Uladzimir Maroz. Grounds for the cancellation of registration, according to the DEC chair, were numerous violations of the rules of election campaigning, in particular, flaws in separate documents submitted to the commission, use of statements “defaming the honor of public officials and the judiciary,” distribution of campaign materials without imprint and “calls to change the government.”

CENSORSHIP OF CANDIDATES’ SPEECHES

There were documented facts of refusals to publish election programs and broadcast candidates’ televised speeches. The official reason, as a rule, was “signs of violating Article 47 of the Electoral Code of Belarus.” In particular, the newspaper *Zviazda* refused to publish the electoral platform of Dzyyana Charnushyna, a candidate from the UCP running in the Minsk-based electoral district No. 101, finding there “insults and slander against officials of the Republic of Belarus.” On October 30, the TV channel “Belarus-3” failed to air a speech by Mikalai Maslouski, who is running for parliament in district No. 104. The press-service of the BCD informed about the facts of interference by a presenter of the Belarus 3 TV channel in the recording of the TV debates of candidates running in electoral district No. 96 in Minsk.

The TV and Radio Company “Hrodna” failed to broadcast a video address of the candidate from the UCP in electoral district No. 54 in Iŭje, Iryna Davidovich. On October 30, a meeting of the DEC addressed the issue of the candidate’s video posted in social networks. As a result, the DEC issued Davidovich a warning “in connection with a violation of the order of election campaigning.”

The TV channel “Belarus-3” took off the air a campaign speech by an activist of the European Belarus opposition group, a candidate of the BPF for electoral district No. 46 in Svietlahorsk, Dzmitry Savich.

A candidate from the United Civil Party, Mikalai Maslouski, reported violations by his opponent in electoral district No. 104, and the facts of provocation against the opposition candidate. However, these reports have not yet received proper evaluation by the district election commission.

According to the campaign’s experts, the content of Article 47 of the Electoral Code has been interpreted too broadly, which leads to restrictions on freedom of speech and constitutes censorship.

The election commissions clearly lack adequate legal knowledge for the application of Art. 47, which leads to arbitrary sanctions against certain candidates and cancellation of their registration. Even with the appeal mechanism in place, this practice excessively restricts the candidates’ right to conduct election campaigning, because appealing against the decision of the election commission does not suspend the decision to cancel the registration, nor does it allow to resume campaigning.

It will be recalled that according to Article 19 of the International Covenant on Civil and Political Rights, everyone has the right to freedom of expression. This right may be restricted in accordance with the law and only for the respect of the rights or reputations of others or to protect national security, public order, public health or morals.

On October 30, a meeting of the Supervisory Board on Election Campaigning in the Media considered three complaints of candidates, whose speeches were not allowed on the air. None of the appeals was satisfied. As noted in the CEC report, “the majority of the Board members rejected the complaints as unsubstantiated.”⁴ However, the CEC failed to provide any justification for the decision.

INFORMATION ABOUT THE CANDIDATES’ ELECTORAL FUNDS

According to paragraph 3.8 of the CEC ruling No. 27 of August 6, the section “Elections-2019” on the websites of local executive committees should publish, inter alia, information on the general amount of funds collected for the special election accounts of candidates and the total amount of funds used. This information should be placed on a weekly basis after receipt of the data from the banks by the district election commissions. An analysis of the specialized pages on the websites of local executive committees has shown that this requirement is not met in full.

The websites of the district administrations of Minsk do not apply a uniform approach to the placement of the information provided for in paragraph 3.8 of the CEC decision No. 27. In particular, the administration of the Lieninski district of Minsk has published only the messages about the opening of special electoral accounts of candidates, but failed to report on the receipt and expenditure of election funds.

Similar flaws are observed on the site of administration of the Saviecki district of Minsk. All the six candidates running in electoral district No. 106 are reported to have opened special accounts. In district No. 107 — five out of seven. Meanwhile, the authorities have failed to publish information about the flow of the candidates’ funds.

The website of the administration of the Frunzienski district has published information selectively. The district has four electoral districts. There is no information about the election funds of candidates running in district No. 103. At the same time, in districts Nos. 102, 104 and 107, there is information about both the opening of special electoral accounts and the flow of funds.

The website of the Smarhoń district executive committee forwards to a page on the Belarusbank site, with information about the special election accounts of candidates across the country. The website does not report on the allocation of funds from the candidates’ election funds. The same situation is on the website of the Viciebsk city executive committee, Dokšycy district, Hlybokaje district executive committees and others.

The websites of the Svietlahorsk, Babrujsk, Mazyr, Orša, and Salihorsk district executive committees only contain information about the opening of the candidates’ electoral accounts, while information about the flow of funds missing.

REVIEW OF ELECTORAL DISPUTES AND APPEALS

On October 31, the CEC considered an appeal by Uladzislau Sys, a candidate in the Brest-based electoral district No. 3, against decision No. 15 by the DEC of October 21, which revoked the candidate’s registration. The decision stemmed from an inspection of the registration documents conducted by the Brest regional election commission. As noted in the decision, “when deciding on the registration, the district election commission failed to take into account the fact that Uladzislau Sys does not reside permanently in the Republic of Belarus, being a full-time student of the University of Warsaw, in connection with which he lives in Warsaw (Poland). The fact of

⁴ <http://rec.gov.by/ru/novosti/30-10-2019-zasedanie-nablyudatel'nogo-sovet>

living outside Belarus is also confirmed by Sys's explanations in an interview with euroradio.fm.”⁵

Having considered the complaint, the CEC left it unsatisfied. The CEC found that Sys could not be registered as a candidate, since he does not meet the requirements of Part 2, Art. 57 of the Electoral Code, which provides that only citizens aged 21 and residents of the Republic of Belarus can be elected members of the House of Representatives of the Republic of Belarus.

At the meeting of the CEC, head of the department of legal, analytical and methodical work Halina Mkrтчan noted that in determining of the fact of permanent residence one should be guided by Art. 19 of the Civil Code. According to it, a citizen's place of residence is the place (address) of premises, the right of ownership, disposition and (or) use of which arose from the grounds established by legislative acts, or a locality where the citizen lives permanently or primarily. But this rule, in our opinion, does not interfere with Uladzislau Sys's right to run in the elections as a candidate, as he has permanent registration in Belarus.

It should be noted that in 2001 the Constitutional Court, at the request of the Central Election Commission, adopted a decision “On the legal position of the Constitutional Court on the notion of “the citizen of the Republic of Belarus, permanently residing in the Republic of Belarus” used in Article 80 of the Constitution”. The said decision ruled that the determination of the place of residence should not only include the place of actual location of a person in a given period of time (in the Republic of Belarus or abroad), but also his or her intention to have this place as their place of permanent residence. The content of this concept is predetermined by the objectives of the person's exit from the Republic of Belarus: whether it is a temporary departure or permanent residence in another state. The temporary nature of a stay outside the Republic of Belarus and the preservation of the Republic of Belarus as a place of permanent residence, according to the Constitutional Court, are evidenced by such circumstances as the preservation of citizenship, lack of formalized departure for permanent residence in another state, or a request for asylum in a foreign country. Therefore, according to the analysts of the campaign “Human Rights Defenders for Free Elections”, in this case there was no reason to deny registration to Uladzislau Sys.

According to the CEC⁶, 62 appeals have been filed in the territorial election commissions against refusals to register candidates, of which only one has been satisfied (less than 2%), and 7 were left without consideration.

The courts received 27 appeals against decisions of the territorial commissions to dismiss the complaints on the registration of candidates, of which one was satisfied, two were left without a hearing, and one was rejected.

⁵ <http://brest-region.gov.by/attachments/article/10102/10102-9.pdf>

⁶ <http://rec.gov.by/sites/default/files/pdf/2019/stat35.pdf>