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## Urgent need for electoral reform in Belarus

### Report<sup>1</sup>

Committee on Political Affairs and Democracy

Rapporteur: Lord David BLENCATHRA, United Kingdom, European Conservatives Group and Democratic Alliance

### Summary

Elections in Belarus have never met international standards of freedom and fairness. In the aftermath of the presidential election of 9 August 2020 which, once again, was neither free nor fair, the country has fallen into a deep crisis, characterised by an unprecedented wave of violence against political opponents, human rights defenders, journalists, media workers and citizens of Belarus.

The report stems from the Assembly's willingness and readiness to support a peaceful and democratic national political process in Belarus, should it take place. Based on the premise that fundamental reforms will pave the way for a new Belarus that is based on human rights, democracy and rule of law, the report calls for a comprehensive electoral reform, which would contribute to the long-term stability of the country as well as its rapprochement – and ultimately its accession – to the Council of Europe on the basis of the Organisation's values and principles. To this end, it identifies the major areas of concern which must be addressed as a matter of priority so that the electoral system can become transparent, accountable and ultimately "credible", and the Belarusian citizens can regain confidence in the electoral process.

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1. Reference to committee: [Doc. 15131](#), Reference 4528 of 15 September 2020.



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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly stresses that free and fair elections constitute the very foundation of democratic government and a cornerstone of representative democracy. It deeply regrets that elections in Belarus have never met international standards of freedom and fairness and that this failed electoral system has been a driving factor behind the current political, economic and human rights crisis affecting the country since the presidential election of 9 August 2020.

2. For more than two decades, the Assembly, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), the European Commission for Democracy through Law (Venice Commission), as well as the civil society in Belarus have been pointing to the systemic problems in the electoral system and recommending, to no avail, that the electoral legislation and practice be amended.

3. The Assembly recalls that, for reasons beyond its control, it had to decline the invitation to observe the presidential election of 9 August 2020. However, based on the evaluation of independent local observers who concluded that gross violations of international standards for democratic elections had taken place and knowing that the electoral system which has earned Belarus criticism in the past remains unchanged, the Assembly also concludes that the 2020 presidential election was neither free nor fair.

4. The Assembly firmly believes that a fully-fledged electoral reform, geared towards implementing all previous Assembly, OSCE/ODIHR and Venice Commission recommendations, remains essential for setting the basis for future democratic, free and fair elections which can meaningfully reflect the will of the people of Belarus and allow them to regain confidence in the electoral process. Not only a reform of the legal framework but also the implementation of the legislation in good faith, by an independent and impartial election administration that enjoys public trust, are paramount in this context.

5. In light of the above, the Assembly urges the Belarusian authorities to conduct a comprehensive reform of the electoral system taking into account the full set of recommendations of the Assembly, the OSCE/ODIHR, and the Venice Commission, in close consultation with all relevant stakeholders, in particular the civil society. In this context, it urges them to bring the electoral law and practice in conformity with international standards for democratic elections, and in particular to:

5.1. guarantee the independence and impartiality of the electoral administration by making it adequately representative and setting the basis for a politically balanced membership of election commissions at all levels, starting by the Central Election Commission (CEC), including by:

5.1.1. introducing a requirement for the CEC to include representatives nominated by key political stakeholders, including different political parties and civil society representatives, with full voting rights;

5.1.2. establishing clear rules governing the process by which members of elections commissions below the CEC level are appointed by the local authorities, including a requirement to include commission members nominated by all contestants;

5.2. create a publicly available national voter list with a view to increasing the transparency and accountability of the voter registration process;

5.3. regulate early voting in a comprehensive way by introducing measures to guarantee its integrity, transparency and exceptional nature, including by:

5.3.1. specifying in detail clear mechanisms for ensuring the safety and security of the ballot boxes through early voting;

5.3.2. limiting the number of polling stations for early voting;

5.3.3. authorising early voting only in specific cases and to those voters who can prove that they cannot be present at the place of residence on the election day;

5.4. take measures to ensure the transparency of the vote counting, including by introducing a requirement that each ballot paper as well as the results of the election in each polling station be announced publicly and displayed;

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2. Draft resolution adopted by the committee on 30 March 2021.

5.5. allow national and international observers to carry out their work effectively and without impediment, including by clearly authorising them to:

5.5.1. approach members of the polling station to verify electoral rolls and signatures, and to observe the counting of the votes in a direct and effective way, including through direct and visual access to ballot papers;

5.5.2. be present during the verification of signatures submitted for the nomination of candidates;

5.5.3. have access to storage of ballots and ballot boxes during early voting, including outside working hours;

5.6. subject the registration of candidates to clear, comprehensive and transparent criteria and less restrictive conditions;

5.7. subject any decision of electoral commissions, including election results, to review, including a possibility of a judicial review of all administrative decisions.

6. Calling for caution as regards the holding of snap elections on the basis of the current electoral system, the Assembly stresses that such elections could be deemed reasonably free and fair, only if a genuinely independent and impartial CEC can ensure, through the use of regulations, ordinances, circulars or instructions, that the requirements listed above are fulfilled to the greatest extent possible, and national and international observers can properly monitor the entire electoral process.

7. The Assembly stresses that democratic elections are not possible without respect for human rights, in particular freedom of expression, freedom of assembly and association. It condemns in strongest terms the unprecedented wave of violence, mass arrests, intimidation and prosecution of political opponents, human rights defenders, journalists, media workers, independent election observers and citizens of Belarus following the 2020 presidential election.

8. This violent repression is not only an outright disregard for the core values upheld by the Council of Europe but also a major obstacle to any meaningful reform in the country, including an electoral reform. Referring to its Resolution ... (2021) "Human rights violations in Belarus require an international investigation", the Assembly urges the Belarusian authorities to put an immediate halt on all violence.

9. Recalling that the integration of Belarus to the Council of Europe on the basis of the Organisation's values and principles remains a strategic objective, the Assembly calls on the Belarusian authorities and all relevant stakeholders to urgently initiate a broad-based and inclusive national dialogue to ensure a peaceful way out of the current crisis and opening the door for necessary reforms benefiting all Belarusian citizens. The Assembly – together with the Venice Commission – reiterates its readiness to offer practical and technical guidance to Belarusian authorities with a view to an electoral reform. It firmly believes that this and other necessary reforms will pave the way for a new Belarus that is based on human rights, democracy and rule of law.

## B. Draft recommendation<sup>3</sup>

1. The Parliamentary Assembly refers to its [Resolution ... \(2021\)](#) “Urgent need for electoral reform in Belarus”. It invites the Committee of Ministers to:
  - 1.1. continue to closely follow the situation in Belarus;
  - 1.2. adopt measures to complement the [Council of Europe Action Plan for Belarus 2019-2021](#) with targeted action of primary importance for constructing transparent and democratic institutions in Belarus, including an electoral reform with a view to putting the electoral legislation in line with European and international electoral standards, with the involvement of the Venice Commission and the Assembly;
  - 1.3. implement the above-mentioned measures as soon as it becomes feasible following a clear commitment of the Belarusian authorities to engage in a democratic transition process.

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3. Draft recommendation adopted by the committee on 30 March 2021.

## C. Explanatory memorandum by Lord Blencathra, rapporteur

### 1. Introduction

#### 1.1. Background and origin of the report

1. On 15 July 2020, the respective Chairpersons of the House of Representatives and the Council of Republic of the National Assembly of the Republic of Belarus invited a delegation from the Parliamentary Assembly to observe the presidential election in Belarus on 9 August 2020. On 20 July 2020, the President of the Assembly had to decline this invitation given the limited amount of time available before the election, the absence of the Assembly's usual partner organisations,<sup>4</sup> particularly the electoral observation mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR),<sup>5</sup> the continuously evolving sanitary situation related to Covid-19 and consequent travel restrictions for members of the Assembly.

2. The presidential election was held on 9 August 2020, as scheduled, with early voting starting on 4 August 2020. A total of five candidates were allowed to run. According to the official results, the incumbent President Alexander Lukashenko secured 80.10% of the votes thus winning a sixth consecutive term in office. Ms Svetlana Tikhanovskaya who was considered as his key rival, came in second with 10.12% of the votes. Following the announcement of the official results, mass protests broke out in the country, which have been met with a violent crackdown by security forces.

3. The President of the Parliamentary Assembly, Rik Daems, was the first representative of the Council of Europe to react on 10 August 2020, condemning violence and calling on the authorities to respect human rights and rule of law standards. In a statement on 13 August 2020, the Chairperson of the Committee on Political Affairs and Democracy (hereafter "the committee") stressed that violence was not a way forward in the democratic political process and expressed her hope that the Belarusian authorities would engage in an inclusive dialogue with society.

4. On 26 August 2020, the Chairman of the Committee of Ministers, the President of the Assembly and the Secretary General of the Council of Europe published a joint statement. The three leaders called on the Belarusian authorities and all relevant stakeholders "to urgently initiate a broad-based and inclusive national dialogue, fully involving civil society, to ensure a peaceful way out of the current crisis and opening the door for necessary reforms benefiting all Belarusian citizens". They also recalled that legitimacy comes not from oppression but "an electoral process that is free, fair and based on the rule of law".<sup>6</sup> At the time of the finalisation of this report, the protests were entering their seventh month, against the background of massive human rights violations.<sup>7</sup>

5. On 1 September 2020, upon my initiative, several members of the Assembly tabled a motion for a resolution on "Urgent need for electoral reform in Belarus".<sup>8</sup> In reaction to protests by the Belarus people massively challenging the results of the presidential election, and in the light of the systemic problems regarding the electoral process in Belarus which have not been rectified over the years, the motion stresses the urgency of supporting all stakeholders to engage in a comprehensive reform of the electoral system, in line with the Assembly's previous recommendations and in co-operation with the Venice Commission, to which Belarus is an associate member. On 15 September 2020, the motion was referred to our committee for report.

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4. According to the "Guidelines for the observation of elections by the Parliamentary Assembly", "in case the OSCE/ODIHR long term observation mission is prevented from being deployed, the Assembly should abstain from sending its own mission" (paragraph 28).

5. On 15 July 2020, ODIHR Director announced that "the lack of a timely invitation more than two months after the announcement of the election (on 8 May 2020) has prevented ODIHR from observing key aspects of the electoral process" and that ODIHR therefore was not in the position to send an election observation mission to monitor the election.

6. For the full text of these and other statements regarding Belarus, see Compendium of statements, document [AS/Pol/Inf\(2020\)09](#).

7. See the report of the Committee on Legal Affairs and Human Rights, [Doc. 15256](#) "Human rights violations in Belarus require an international investigation". See also the [Joint statement by the Chairman of the Committee of Ministers, the President of the Assembly and the Secretary General of the Council of Europe](#) issued on 13 October 2020 and [OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#).

8. [Doc. 15131](#).

6. In parallel, another motion entitled “Call for an inclusive national political process in Belarus” was initiated by the chairperson of the committee, Dame Cheryl Gillan, and tabled by several Assembly members.<sup>9</sup> This motion reaffirms the Assembly’s readiness to engage in an inclusive and constructive dialogue with the Belarusian authorities, all political stakeholders and civil society, with a view to supporting – both politically and in terms of expertise – a peaceful and democratic national political process in the country leading to fundamental reforms, starting with the Constitution, and paving the way for ultimately integrating Belarus into the European family where it belongs. This initiative, which envisages a long-term co-operation with all Belarusian stakeholders, was also referred to our committee for report. Mr Kimmo Kiljunen (Finland, SOC) was appointed rapporteur.

## 1.2. Procedure

7. On 8 September 2020, the committee held an exchange of views on “The situation in Belarus following the presidential election on 9 August 2020”, with the participation of the President of the Assembly; Ms Svetlana Tikhanovskaya, former Belarusian presidential candidate; and Mr Andrei Savinykh, Chairperson of the Standing Commission on International Affairs of the National Assembly of Belarus.<sup>10</sup> During the exchange of views, committee members showed strong support for an inclusive dialogue to overcome the ongoing crisis and a keen interest in involving the Assembly to support this dialogue. The need for an electoral reform has been stressed and it was felt that there was readiness from the part of Belarusian authorities for a possible dialogue with international partners, which could focus on adjustments notably to the Constitution and the Electoral Code. The Assembly and the Venice Commission’s possible support have been clearly mentioned in this context. The exchange of views has attracted important international coverage.

8. On 15 September 2020, the Standing Committee held a current affairs debate on Belarus and adopted a declaration strongly regretting that the presidential election of 9 August 2020 was far from being free and fair, calling on Belarus to launch a democratic, broad-based and inclusive national political process, as a first step towards a peaceful way out of the current crisis and to open the door for the necessary reforms, starting from the constitutional and electoral reforms. The declaration also reiterated the Assembly’s readiness to support this process, in close co-operation with the Council of Europe advisory bodies, in particular the Venice Commission.<sup>11</sup>

9. At its meeting held on 23 September 2020, the Committee appointed me rapporteur on “Urgent need for electoral reform in Belarus” and held an exchange of views with Mr Gianni Buquicchio, President of the Venice Commission. Based on the experience of the Venice Commission on Belarus, Mr Buquicchio underlined the importance of the reform of the Electoral Code with a view to ensuring free and fair elections in the country. This, however, should go hand in hand with a constitutional reform which should put in place the “enabling conditions” for the exercise of political freedoms.

10. Following my appointment as rapporteur, I prepared a questionnaire with a view to collecting first-hand information about the electoral framework in Belarus, and in particular about specific measures that Belarusian authorities might have taken to develop the electoral system in line with international standards for democratic and fair elections since the last time the Assembly observed the elections in November 2019. Because the Assembly had to decline the invitation to observe the presidential election of 9 August 2020, I also included in the questionnaire a request for relevant information about the presidential election.<sup>12</sup>

11. On 29 October 2020, the questionnaire was sent for the attention of the Chairperson of the House of Representatives of the National Assembly of Belarus, Mr Vladimir Andreichenko, with a request to be transmitted to the relevant authorities. The letter transmitting the questionnaire also clearly stated my readiness and willingness to interact directly with the authorities, including through an exchange of views on the issue of electoral reform. Regrettably, we have not received replies to the questionnaire in an attempt to have the Belarusian authorities’ views heard, not even to the letter of transmission signed by the chairperson of the committee and addressed to the chairperson of the House of Representatives. The authorities did not come back to the proposal for an exchange of views with me either, which is also to be regretted.

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9. [Doc. 15130](#).

10. The statements made during the exchange of views are available on the Assembly website, including a video recording of the exchange of views.

11. See [Declaration on an urgent need for a democratic, broad-based and inclusive political process in Belarus](#). Several other international actors, including the European Union, have also condemned the result of the presidential election which they considered to be neither free nor fair. Many international actors also called for new, free and fair elections to take place as soon as possible under international supervision.

12. For the questionnaire, see the appendix to the committee document AS/Pol(2020)13.

12. On 30 November 2020, I had an exchange of views with the representatives of the Belarusian Helsinki Committee and the Human Rights Centre Viasna. These two civil society organisations have a consolidated experience in the electoral field as they co-ordinate the “Human Rights Defenders for Free Elections” Campaign aimed at evaluating the elections in Belarus from the viewpoint of the Belarusian electoral legislation and international standards of free and democratic elections, as well as informing the Belarusian public and international community about the progress of the elections and results of observation.

13. Finally, on 1 December 2020, 10 February 2021 and on 16 March 2021 respectively, I exchanged with Mr Gianni Buquicchio, President of the Venice Commission, Mr Andrei Kazakevich, advisor at the Office of Svetlana Tikhanovskaya, political scientist and the Academic Director of the Institute of Political Studies Political Sphere (Minsk) and Mr Alexander Shlyk, the Special Representative of Svetlana Tikhanovskaya on Elections.

### **1.3. Aim and scope of the report**

14. As can be seen from different elements presented above, since the beginning of the political crisis in Belarus in the aftermath of the presidential election, the Assembly has been willing and ready to engage in an inclusive and constructive dialogue with all relevant stakeholders and to support a peaceful and democratic national political process in Belarus, with a view to fundamental reforms. The present report stems precisely from that willingness and readiness which is aimed at contributing to the long-term stability of the country as well as its rapprochement – and ultimately its accession – to the Council of Europe on the basis of the Organisation’s values and principles.<sup>13</sup>

15. The motion for a resolution at the origin of this report refers to “systemic problems” regarding the electoral process in Belarus. In fact, for more than twenty years, the Assembly, the OSCE/ODIHR, the Venice Commission as well as the civil society in Belarus have been consistently pointing to the same shortcomings in the electoral system, making recommendations to address them and asking for reform of the legal framework (see Chapter 2.1 below). Based on their findings and conclusions, this report aims at supporting an electoral reform in Belarus with a view to developing the electoral system in line with international standards for democratic and fair elections. Rather than providing an exhaustive list of issues which arise from the electoral legislation and practice in Belarus, it identifies the major areas of concern which must be addressed as a matter of priority, and provides a number of recommendations, with the ambition to set a sustainable and long-term basis for democratic, free and fair elections in Belarus. Knowing that the choice of political and electoral systems is the sovereign decision of Belarus, the report offers – does not dictate – a roadmap toward an electoral system which is conducive to genuinely free and fair elections and perceived by the world to be so, provided that this is what the people and authorities of Belarus want. Similarly, it stresses that the Venice Commission stands ready at any time to advise on technical and procedural changes to be made to the electoral legislation and practice, should there be a request in this direction.

## **2. Elections in Belarus: reality check**

### **2.1. An electoral system with systemic problems**

16. Since Belarus National Assembly has been granted special guest status in 1992,<sup>14</sup> the Assembly has observed one referendum (in 1996) and five elections in Belarus (three parliamentary elections (in 1995, 2016 and 2019) and two presidential elections (in 2001 and 2015)) out of a total of three referenda and thirteen elections<sup>15</sup> held during that period. This sporadic calendar put aside, the Assembly’s conclusions have been consistent in that, each time, they reiterated the same previously identified legal and practical shortcomings in the electoral process, including: unbalanced composition of election commissions strongly influenced by the executive; lack of a central register; the conduct of early voting procedures; severe obstacles to political parties’ and candidates’ registration as well as to observers’ rights; unbalanced media coverage of the election campaign.

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13. As stressed in the Committee of Ministers’ reply to the Assembly [Recommendation 1992 \(2012\)](#) “The situation in Belarus”, the integration of Belarus to the Council of Europe on the basis of the Organisation’s values and principles remains a strategic objective, see [Doc. 13025](#).

14. The special guest status was suspended in 1997 due to a lack of democratic progress.

15. Presidential and parliamentary elections combined.



17. The elections in Belarus have therefore never met international standards of freedom and fairness and the Assembly has consistently recommended Belarus to amend its electoral legislation and practice to address these systemic problems. According to the joint opinion by the Venice Commission and the OSCE/ODIHR, requested by our committee, the 2009 amendments to the Electoral Code – concerning the freedom to campaign and funding of election campaigns, the composition and appointment of electoral commissions, candidate registration, the integrity of early voting, appeal procedures and vote counting – were unlikely to resolve the underlying concern that the legislative framework for election in Belarus continued to fall short of providing a basis for genuinely democratic elections.<sup>16</sup>

18. Unfortunately, the Assembly delegation which observed the latest parliamentary elections in November 2019, which I was privileged to chair, has concluded that the above-mentioned problems remained unaddressed and confirmed the Assembly and the Venice Commission long-standing recommendations that Belarus electoral legislation and practice must be amended in order to address these problems.<sup>17</sup>

## **2.2. Presidential election of 9 August 2020**

19. Despite the absence of international observation missions on the ground from the Assembly and OSCE/ODIHR, local monitoring and observation initiatives<sup>18</sup> managed to compile a comprehensive account of widespread irregularities and political rights abuses concerning the presidential election of 9 August 2020.

20. The final report on election observation of the “Human Rights Defenders for Free Elections” Campaign states that “the Belarusian authorities have not implemented a single recommendation by the OSCE, and national observers made following the previous elections”.<sup>19</sup> It thus turns out that the legal framework regulating the elections remains unchanged since the last time the Assembly has observed elections in 2015 (presidential) and in 2019 (parliamentary), and that the 2020 presidential election took place under the same legal framework which has earned Belarus criticism in the past. Consequently, it can be concluded that the 2020 presidential election was also fundamentally flawed and neither free nor fair.

21. The results of the assessment of the “Human Rights Defenders for Free Elections” Campaign confirm this finding and indicate that the presidential election cannot be considered free and fair due to a number of gross violations of international standards for democratic and fair elections. In particular, the lack of impartiality of the election administration at all levels has been widely observed. The composition of election commissions was completely unbalanced, with the vast majority of their members representing the five major pro-government public associations. Only two candidates from opposition parties were included in territorial election commissions and only six were included in the precinct election commissions, representing respectively 0.1% and 0.009% of these commissions’ memberships.

22. Nomination and registration of candidates were marred by violations of the standards of free and democratic elections. Popular candidates were excluded from the election race, while administrative resources were actively used in favour of the incumbent (for example the collection of signatures for his nomination was often carried out during working hours, on the territory of enterprises and institutions, with the direct participation of their administrations).

23. The phase of election campaigning took place in unequal conditions. There was unequal access to the media and opportunities to receive information about presidential candidates were severely limited, as local executive committees sharply reduced the number of locations for election campaigning. In many cases, these locations were unsuitable for campaign purposes (namely remote, with poor transport accessibility).

24. During early voting – 41.7% of voters took part in early voting, which is an all-time record for the presidential elections in Belarus – independent observers documented numerous facts of organised and forced voting of certain categories of voters (military personnel, employees of government institutions and government-owned companies), as well as numerous and widespread facts of inflating the voter turnout.

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16. See document [CDL-AD\(2010\)012](#). Further amendments were passed to the Electoral Code in 2013 and 2015, but they failed to address key Venice Commission and OSCE/ODIHR recommendations. See [Doc. 14333](#) “The situation in Belarus”, paragraph 22.

17. [Doc. 15012](#), “Observation of the early parliamentary elections in Belarus (17 November 2019)”, Election Observation Report, Parliamentary Assembly of the Council of Europe, paragraph 110.

18. These include the “Human Rights for Free Elections” Campaign and the “Right to Choose” Campaign of eight opposition parties.

19. Human Rights Defenders for Free Elections, Republic of Belarus, Presidential Election, 9 August 2020, [Final report on election observation](#).

25. Key electoral procedures were made completely opaque, including through restrictions by the Central Election Commission resolutions which led to the disruption of observation of all types of voting (early voting, voting on election day, and home voting) as well as the counting of votes.<sup>20</sup> Appeals and complaints during the various stages of the election did not have a noticeable impact on election procedures. None of the 3 000 complaints to various State bodies and higher elections commissions during the entire period of the election submitted by the observers of the “Human Rights Defenders for Free Elections” Campaign were granted.

### 3. Electoral reform: priority areas<sup>21</sup>

26. The elements presented below fundamentally call into question the independence of the electoral administration, the transparency and accountability of the electoral process, electoral integrity and ultimately the “credibility” of the whole electoral process. The latter is an element that has been sadly lacking in Belarus for more than twenty years of election practice and has led to a loss of public confidence in the election process and its outcome.

27. Indeed, according to a 2017 report by the “Human Rights Defenders for Free Elections” Campaign, a considerable part of society does not trust the election results, due to serious violations of electoral rights and freedoms, as well as the opaque procedure for vote counting. The authorities formed during the elections are often not recognised as democratically elected bodies, which affect their internal and external legitimacy.<sup>22</sup>

#### 3.1. Electoral administration

28. “Composition as well as the functioning of the electoral commissions (electoral administration) are crucial for the conduct of genuinely democratic elections”.<sup>23</sup> Independent and impartial election commissions should be established to ensure that elections are properly conducted. Alas, the lack of independence and impartiality of election commissions has been one of the most recurring issues about Belarus elections, mainly because of the rules regulating the appointment of their members.

29. Elections are administered by a hierarchy of election commissions comprising the Central Election Commission (CEC) and various levels of subordinate commissions down to precinct election commissions, with their hierarchy varying according to the type of election.<sup>24</sup> The main decision-making and supervising institution is the CEC, which is a permanent body with a five-year mandate and consists of six members appointed by the president (including the chairperson) and six members by the Council of the Republic (upper house of the National Assembly). Members of electoral commissions below the CEC level are appointed by local authorities. The Electoral Code requires that nominees of political parties and public associations comprise at least one-third of the total membership of these commissions, but there are no legal criteria for the selection of the members of these lower commissions.

30. The role of the presidency in the appointment of CEC members and the potential influence it could exert over them have been repeatedly questioned by the Venice Commission, the Assembly and the OSCE/ODIHR. Since the CEC decides by a majority of the total membership, it is sufficient that one of the members appointed by the Council of the Republic votes with the “pro-presidential” members, to give the presidency the effective control of the CEC. In addition, in the absence of legal criteria for the selection of the members, local authorities have a de facto full discretion in the appointment process of lower-level commissions and have systematically used this against the opposition nominees, to exclude them from the composition of these commissions. In all elections that were observed, opposition representatives or independent candidates made

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20. Shortly before the election, the Central Election Commission adopted a resolution limiting the number of authorised observers at the polling stations, which was officially intended to stop the spread of Covid-19. However, it is reported that this made it almost impossible for independent observers to properly observe the voting process.

21. Elements presented in chapters 3 and 4 are based on Assembly reports (on election observation and on the situation in Belarus), joint opinions of the OSCE/ODIHR and Venice Commission and election observation reports of the OSCE/ODIHR, as well as election-related documents produced by the civil society in Belarus.

22. See “[Priority recommendations on reforming the electoral legislation of Belarus](#)”. The document identifies four key problems concerning the Belarusian electoral legislation: work of election commissions, early voting, vote count and electoral disputes.

23. Joint Opinion on the Electoral Legislation of the Republic of Belarus by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 18th meeting (12 October 2006) and the Venice Commission at its 68th plenary session (13-14 October 2006), [CDL-AD\(2006\)028](#), paragraph 30.

24. It is a three-tier system for presidential elections (CEC, territorial election commissions and precinct election commissions) and a four-tier system for parliamentary elections (CEC, oblast election commissions and the Minsk city election commission, district election commissions, and precinct election commissions).

up only a small fraction of the composition of election commissions. Consequently, there is a long-standing lack of trust in the election administration amongst the population, and in particular the CEC, which epitomises electoral fraud.

### **3.2. Lack of a central register**

31. Voter registration has been considered one of the major shortcomings of the electoral system in Belarus. There is no centralised voter list, and voters can be added to a list immediately prior to and on election day subject to presentation of a valid proof of identity with confirmation of residence within the constituency.

32. The absence of a centralised voter list excludes the possibility of cross-checking against duplicate registrations across localities. This, combined with the possibility of registering voters until election day do not protect against potential multiple voting.<sup>25</sup> Because the system does not allow for a public scrutiny and independent assessment of the voter lists (which are not publicly displayed), the latter can easily be manipulated and there is a huge risk for electoral fraud, including in particular inflated turnout.

### **3.3. Early voting<sup>26</sup>**

33. The opacity and the absence of safeguards to ensure the integrity of the early voting process (for example with a view to ensuring the inviolability of the election material) is one of the main objects of criticism by both international and national observers, and the participants of the electoral process. Early voting has been associated with numerous facts of abuse of administrative resources for the purpose of forcing the voters to take part in the vote, as well as numerous cases of inflated voter turnout at the polling stations, with a view to manipulating the outcome.

### **3.4. Counting of the votes**

34. The counting of the votes has been a major issue in Belarusian elections. The Electoral Code does not establish a clear procedure about the counting of the ballot papers in a transparent and properly observable manner, which makes the counting process opaque. In fact, the law contains a description of the different steps during the counting process, without specifying the exact way of counting the ballot papers. In practice, members of the precinct election commissions arrange a joint and simultaneous counting of the ballot papers: votes are not announced publicly, ballot papers are not demonstrated to the commission members or observers and the results of the election in each polling station are not announced publicly nor displayed either. This results in a lack of transparency for observers (as well as other commission members), who cannot follow the count and who thus have no means to correlate the results of observation with the data reflected in the protocol on the voting results. Instances of fraud, including of inflated turnout in official data, ballot box stuffing and multiple voting have been reported on a recurrent basis.

### **3.5. Rules governing the work of observers**

35. The participation of national and international observers in the entire process of elections is an important element for ensuring the transparency and accountability of the electoral process. To this end, observers should be given the widest opportunity to participate in the election observation exercise.

36. The Electoral Code provides that the elections are open to the public and observers and describes the rights and limitations of observers. Observers have, *inter alia*, the right to be present at meetings of election commissions,<sup>27</sup> polling stations and the counting of votes. However, they are explicitly forbidden by law to be in the “vicinity” of ballot boxes and ballot papers. In practice, a restrictive interpretation of this provision leads observers to be systematically prohibited from approaching the tables or members of the polling station to observe the counting of the votes or to verify the electoral rolls and signatures. This makes the entire voting process void of any meaningful observation.

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25. In the explanatory report of the 2002 Venice Commission’s “Code of Good Practice in Electoral Matters”, it is recommended that “polling stations should not be permitted to register voters on election day itself” (chapter I, section 1.2, paragraph 7.iv).

26. Voters physically unable to vote in their electoral precinct on election day can do so up to five days beforehand.

27. However, in practice, observers do not get to monitor the verification of signatures submitted in support of the nomination of a candidate.

### **3.6. Candidates' registration**

37. Opposition candidates who want to run for president or member of parliament face major obstacles. The nomination process is characterised by restrictive legal provisions for the registration of candidates, including a signature system, which requires a certain number of signatures to be presented in order to be admitted to the election, as well as formalistic impediments. There are no clear rules about the verification of signatures – which is not public and not comprehensible – and a huge discretionary power is attributed to authorities to deny registration or to de-register candidates on minor technicalities (which has been used abundantly to disqualify potential contestants).

### **3.7. Electoral disputes**

38. The Electoral Code contains a limited number of cases subject to judicial review. In practice, a vast majority of complaints and appeals are rejected, without proper investigation of facts or on dubious grounds, undermining effective remedy and public confidence in election dispute resolution. The decision of the CEC on the establishment of the election results is not subject to judicial review, which leaves it unaccountable before the law on the matter of final results.

## **4. Recommendations**

39. A number of recommendations can be made with a view to addressing priority areas presented above. Properly implemented, these recommendations are believed to set a sustainable and long-term basis for free, fair and democratic elections in Belarus.

40. First and foremost, the independence and impartiality of the electoral administration should be guaranteed. To this end, the electoral administration should be made adequately representative and the legislation should set the basis for a balanced composition by:

- introducing a requirement for CEC to include representatives nominated by key political stakeholders, including different political parties and civil society representatives, with full voting rights;
- establishing clear rules governing the process by which members of elections commissions below the CEC level are appointed by the local authorities, including a requirement to include commission members nominated by all contestants.

41. For the sake of increasing the transparency and accountability of the voter registration process, a national voter list should be created. A complete general and country-wide register of all voters would allow a serious cross-checking of the different voter lists. Such a registry should be accessible not only to the authorities but also to citizens, as well as international observers. The possibility to register on the election day should be removed.

42. In view of the considerable number of early voters, early voting should be regulated in a comprehensive way. In fact, while granting possibilities to attend early voting is in principle compatible with international standards on democratic elections, the process for early voting becomes problematic when it lacks oversight, regulation and clear procedures. Therefore, the exceptional nature of the early voting should be guaranteed by introducing stricter requirements to qualify for it, and all necessary steps be taken to guarantee the transparency and integrity of early voting procedures. To this end, the legislation should:

- authorise voting only in specific cases and to those voters who can prove that they cannot be present at the place of residence on the election day (upon presentation of a document of proof);
- specify in detail clear mechanisms for ensuring the safety and security of the ballot boxes through early voting (for example use of single-use plastic seals for ballot boxes, prohibition of the presence of unauthorised persons in the voting premises in which ballot boxes, ballots and other election material are stored);
- limit the number of polling stations for early voting (namely dedicated polling stations for early voting).

43. Clear and transparent procedures for vote counting should be established and strictly implemented so that all observers present are able to verify that the results are counted genuinely and reported honestly. To this end, explicit provisions should be introduced in the legislation whereby each ballot paper as well as the results of the election in each polling station are announced publicly and displayed.

44. The legislation should be improved to enable international and national observers to carry out their work effectively. It should guarantee unrestricted access to observers throughout the electoral process, but in particular on polling day, without interfering in the operation of the electoral commissions. The legislation should clearly authorise observers to:

- approach members of the polling station to verify electoral rolls and signatures, to observe the counting of the votes in a direct and effective way (namely direct and effective visual access);
- be present during the verification of signatures submitted for the nomination of candidates;
- have access to storage of ballots and ballot boxes during early voting, including outside working hours.

45. The legislation should contain clear, comprehensive and transparent criteria for candidate registration. Restrictions on the right to be nominated for presidency and for parliament should be reviewed. It should also allow complaints and appeals to be filed in court against any decision of electoral commissions and other state bodies that relate to elections, including against election results.

## 5. Concluding remarks

46. Ideally, before new elections take place, a fully-fledged and proper electoral reform has to take place in Belarus, preceded by public consultations with relevant stakeholders, including in particular civil society (to allow them to provide input but also to acknowledge their long-lasting work in the field of elections), but also the Venice Commission (to work with them on detailed proposals which would be passed into law), knowing that any such reform can take place only after the situation on the ground has been improved. A fully-fledged reform should be geared towards implementing all previous Assembly, OSCE/ODIHR and Venice Commission recommendations, a limited list of which – mostly of legislative nature – has been provided in this report.

47. However, such a reform will take time and the fact that it is needed should not be used by the authorities as an excuse for postponing elections or a referendum indefinitely. In addition, democratic elections in Belarus will require not only legislative changes, but also a change of mindset in their implementation, because “no legislation can guarantee elections in line with OSCE and Council of Europe commitments and other international standards, however good it may be. The quality of future elections in Belarus will depend not only on the quality of the legislation but also on its good faith implementation”.<sup>28</sup> Legislation will have to be interpreted and applied in such a way to ensure a level playing field for candidates, genuine competition, free expression of the will of voters and fairness in the electoral process.<sup>29</sup>

48. Some of the local and international actors calling for snap elections in Belarus argue that the Belarus electoral legislation in its current or existing form can be used for reasonably fair elections (for example, by way of CEC resolutions and a change in the official mindset about enforcement of applicable laws). I see the merit in looking at these non-legislative solutions via a reformed CEC, on the condition that a genuinely independent and impartial CEC is established, that its resolutions ensure, at minimum, the transparency of the vote counting and a balanced representation within the electoral administration,<sup>30</sup> do not go against the law and that domestic and international observers can properly monitor the entire electoral process. However, it is clear that this approach geared towards rapid and essential electoral changes without the full legislative process can only be an “interim solution”, in particular in view of the Belarusian context where free and competitive elections have not yet become the normal practice.

49. It should also not be forgotten that elections and human rights abuses are closely related to each other and that “democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties”.<sup>31</sup> In Belarus, these freedoms are restricted by various practices and legal provisions, which are repeatedly utilised to silence dissenting views, deny registration to political parties, and arbitrarily prohibit peaceful demonstrations. The whole system is designed to strictly regulate and limit the pluralism, political competition and independence of the media which are the essence of the electoral process.<sup>32</sup>

28. CDL-AD(2010)012, *op. cit.*, paragraph 13.

29. Human Rights Defenders for Free Elections, “Final report on election observation”, *op. cit.*

30. During the exchange of views with Mr Kazakevich (see paragraph 13), these two issues were presented as being key for improving the quality of elections.

31. See Section II.I.A of the “Code of Good Practice on Electoral Matters” of the Venice Commission.

32. In its Resolution 2141 (2017) “Attacks against journalist and media freedom in Europe”, the Assembly regretted that media pluralism and diversity were still absent in Belarus.

50. Today more than ever, political opponents, human rights defenders, journalists, media workers, independent election observers<sup>33</sup> and citizens of Belarus are under massive attack. The unprecedented wave of violence, mass arrests, intimidation and prosecution of these groups are totally unacceptable and cannot lead to a climate conducive to free and fair elections. While these issues are outside the scope of this report, it should be pointed out that in absolute terms, an electoral reform without the free exercise of political freedoms cannot be expected to bring a real change. Therefore, Belarus should bring its legislation and practice in the field of freedom of assembly and association, and freedom of expression and of the media, in line with international standards. This requires, *inter alia*, removing all obstacles to the creation of political parties including through a reform of the Law on Political Parties; abolishing criminal sanctions for defamation; and reforming the Law on Mass Media as well as the Law on Mass Events. As pointed out by the President of the Venice Commission (see paragraph 9), this also requires a constitutional reform, which should put in place the “enabling conditions” for the exercise of political freedoms. However, such reform – which could include, amongst others, balancing of powers between the president and the parliament, as well as between the two chambers of parliament – cannot substitute for electoral reform, knowing that a revised constitution does not make up for bad election laws. In this context, reports that Belarusian authorities may be looking at some elements of constitutional reform and suggesting that electoral law reform would not then be necessary, are very concerning. A constitutional reform should also be inclusive. In this connection, it is regrettable that no opposition voices were allowed to attend or contribute to the All-Belarusian People’s Assembly which took place on 11-12 February 2021.

51. I had hoped that the Belarusian authorities would stand ready for a possible dialogue with the Assembly and such readiness would materialise in the form of concrete action including through a positive reaction to the questionnaire I had sent them. Unfortunately, the authorities continue to refuse co-operation with the Assembly and show no openness or willingness to discuss the ongoing crisis and ways to put an end to it. That being said, I have been informed that on 18 March 2021, in the framework of the preparation of the Venice Commission opinion on the compatibility with European standards of certain criminal law provisions used to prosecute peaceful demonstrators and members of the Coordination Council (opinion requested by the Committee on Legal Affairs and Human Rights), the Belarusian authorities submitted comments.<sup>34</sup> I welcome this development and encourage the authorities to also engage with the other parts of the Council of Europe.

52. I would like to stress one more time that, the Assembly together with the Venice Commission, stands ready to offer practical and technical guidance to assist Belarusian authorities to make essential changes to its electoral framework, firmly convinced that this and other necessary reforms will pave the way for a new Belarus that is based on human rights, democracy and rule of law.

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33. On 16 February 2021, in Minsk and other Belarusian cities, the police searched offices of the Human Rights Centre Viasna and of the Belarusian Helsinki Committee, which co-ordinate the “Human Rights Defenders for Free Elections” Campaign (see paragraph 12 above).

34. [CDL-AD\(2021\)002](#), paragraph 4.