

Overall Score:

66 - Weak

Legal Framework Score:

81 - Strong

Actual Implementation Score:

48 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷¹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Civil society organizations (CSOs) can be founded by Republic of Belarus citizens who are 18 years of age and older. For youth associations and unions, the minimum age is 16 years old and the group should include at least ten individuals or legal entities (Article 8 of The Law on Public Associations).

An important step in the founding process is the general meeting/conference of the founders.

For creating a local or republican CSO, there must be at least 10 founders (Articles 2, 8). The state cannot interfere in their activities (Article 6).

The aims of the public association should be clearly stated in the organization's charter (Article 8).

The CSO is considered as existing only upon its registration as a legal entity with the state (Article 47 of the Civil Code of the Republic of Belarus, as of July 1, 1999).

CSOs with goals related to a violent change of the constitutional system, undermining the security of the state, or inciting social, racial, national, religious hatred are prohibited (Article 8).

References:

The Law on Public Associations, #3254-XII (1994, amended in 2005)

Civil Code

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | **NO**

Comments:

International technical assistance can be provided only by donors — officially registered international organizations or foreign countries.

Technical assistance can be used only for purposes defined in the legislation — supporting economic and social reform, ecology, liquidation of the consequences of the Chernobyl nuclear accident, or infrastructure development.

Foreign funding for CSOs is recognized by law. But if the foreign funding is in the form of a grant, it must be registered with the Department of Humanitarian Activities of the Presidential Administration of the Republic of Belarus.

Technical assistance cannot be approved if it is aimed at criticizing or overthrowing the current political or economic situation in Belarus.

References:

Presidential Edict #460 on International Technical Assistance Provided to the Republic of Belarus (Oct. 22, 2003)

Presidential Edict #382 on Amendments and Additions to Presidential Edict #460 on Oct. 22, 2003 (Aug. 17, 2005)

Decree of the President of the Republic of Belarus #411 on Receiving and Use of Foreign Grants (Nov. 28, 2003)

Resolution of the Council of Ministries #1027 on Measures for Realization of the Presidential Edict #382 on Aug. 17, 2005 (Sept. 15, 2005)

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Technical assistance must be declared and receive governmental approval (Department of Humanitarian Assistance in the Presidential Administration, Council of Ministries).

References:

Presidential Edict #460 on International Technical Assistance Provided to the Republic of Belarus (Oct. 22, 2003)

Presidential Edict #382 on Amendments and Additions to Presidential Edict #460 on Oct. 22, 2003 (Aug. 17, 2005)

Resolution of the Council of Ministries #1027 on Measures for Realization of the Presidential Edict #382 on Aug. 17, 2005 (Sept. 15, 2005)

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

42

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Legislation on technical assistance is very strict, so legal possibilities of accepting international donors' assistance are rather minimal. Meanwhile, local business is also banned from providing any sources of income for CSOs. All projects, researchers and organizations which dare to criticize the current situation in Belarus (including state corruption) meet governmental interference and so these projects are not realistic to approve.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Igor Pelipas, head of IPM Research Center (Minsk, Aug. 16, 2008).

Rakova E., Case Studies for Selected TA Projects: The Case of Belarus, WP D27 for the EU ENEPO Project (2008): <http://www.case.com.pl/plik-17999345.pdf?nlang=710>

Elena Tonkacheva, Liquidation of NGOs in Belarus: A Means of Maintaining Power (2006): <http://www.efc.be/cgi-bin/articlepublisher.pl?filename=ET-SE-01-04-1.html>

Information from the Ministry of Economy on Technical Assistance to Belarus in 2007:

<http://w3.main.gov.by/ministry/economy.nsf/519ff0db1052e74fc2256d750023d22e/34590318811d5608c22570440015d180?OpenDocument>

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Opposition parties and CSOs are outside the political process in Belarus. All branches of power are mainly appointed and regulated by President A. Lukashenko. For the last 10 years, there have been no opposition representatives in the Belarussian Parliament (on Sept. 28, 2008, there were new parliamentary elections).

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Igor Pelipas, head of IPM Research Center (Minsk, Aug. 16, 2008).

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

More than 100 CSOs have been shut down in recent years, so organizations are very careful now about following all governmental regulations. In principle, there is no CSO now studying governmental corruption, due to the prerogative of the government and state control organizations.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Igor Pelipas, head of IPM Research Center (Minsk, Aug. 16, 2008).

Elena Tonkacheva, Liquidation of NGOs in Belarus: A Means of Maintaining Power (2006):
<http://www.efc.be/cgi-bin/articlepublisher.pl?filename=ET-SE-01-04-1.html>

USAID Report: The NGO Sustainability Index 2006 for Belarus:
http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2006/belarus.pdf

International League for Human Rights, Belarus:
<http://ilhr.org/ilhr/regional/belarus/updates/BU-2003-PDF/Vol.6.No.2.Oct.29.2003.pdf>

Human Rights Overview, Belarus:
<http://www.hrw.org/english/docs/2005/01/13/belaru9878.htm>

Belarus: Lukashenko threatens NGO shut down (2007):
<http://beta.vita.it/news/view/69770/>

Civil Society Under Increasing Pressure in Belarus (2004):
<http://www.icnl.org/knowledge/news/2004/02-04.htm>

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

No one was arrested and imprisoned for anti-corruption activity. However, many people were in prison for political activity (elections, human rights, etc.).

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. Some activists from CSOs and members of the opposition were assaulted for their political activity. But it is clear politics (meetings and demonstrations without governmental permission), like enterprenurs agains new tax policy, opposition meetings, etc. It is not about corruption.

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There were no documented cases of CSO activists being killed because of their work covering corruption during the study period.

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

50

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Citizens have a right to organize into trade unions (Article 2).

Belarus ratified International Labor Organization (ILO) Convention No. 87, which recognizes the right of workers freely to form or join trade unions.

References:

The Law on Professional Unions (Trade Unions) (1992, 2000)

Labor Code

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Currently, few independent trade unions operate in Belarus.

Independent trade unions are under threat in Belarus. The only remaining independent trade union federation, the Belarussian Congress of Democratic Trade Unions (BKPD) and its affiliates, faces a constant threat of denial of registration or closure. The activities of unregistered unions are effectively illegal.

BKPD union members risk dismissal and imprisonment, and pressure to join state-controlled unions.

Many independent trade unions were closed during 2005-06. Many activists and members experienced governmental interference and pressure from secret services. A few years ago, the International Labor Organization (ILO) started to investigate the situation with trade unions in Belarus and prepared a few reports on the poor situation with the country's trade unions. Consequently, the European Union imposed some economic sanctions on Belarus — such as exclusion from the General Preferences System in trading with the EU countries — in 2007.

References:

Interview with Kiril Haiduk, economist of Belarussian Institute for Strategic Studies (Minsk, Aug. 20, 2008).

Belarus trade sanctions (July 14, 2005):

<http://www.data.minsk.by/belarusnews/072005/45.html>

International Labor Organization, Belarus: the Untold Story of Anti-Union Repression:

<http://www.ilo.org/public/english/dialogue/actrav/new/wg/belarus.htm>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The law reflects basic aims of a press law common throughout the world, such as:

To define rules regulating press, publishing industry, and electronic media;
To reinforce inadmissibility of censorship and to include basic provisions on freedom of information, activity to seek, obtain, produce, and disseminate information;
To determine rights and responsibilities of journalists.

The law guarantees the freedom of opinions (Articles 4 and 5) and bans censorship (Article 7).

References:

The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

Constitution of the Republic of Belarus

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

Constitution of the Republic of Belarus

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

56

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Print press in Belarus includes both privately held and state-owned newspapers. State-owned newspapers make up about 85 percent of total circulation. The newspaper with the highest circulation is state-owned, the Sovetskaya Belarussia-Belarus Segodnya, with a circulation of 500,000. Other newspapers include Svaboda, Komsomolskaya Pravda v. Belarusi, private newspaper Intex-press, Hantsavitski Chais, Brestskiy Kuryer, Inform-progulka, with a circulation of 7,000. There is also Rehijanalnaya Hazeta, the Respublika, a daily newspaper published by the Cabinet of Ministers, and Beloruskaya Gazeta and Sovetskaya Belarussia.

There are approximately 30 privately owned political papers operating in Belarus. According to the Belarussian Association of Journalists, about half of these non-state-supported periodicals are excluded from state-backed means of distribution, i.e. via kiosks and subscription.

There is a difference between the circulation and distribution of state and non-state media in Belarus. This is because state-run newspapers have the advantage of administrative support and financing, which increases every year. Non-state media face the challenge of strict supervision from local executive bodies.

The government also uses economic means to limit the operation of non-state media. The administration routinely pressures heads of state companies to advertise only in government-loyal newspapers. Other means include ordering banks to deny deposits from readers to independent newspaper accounts and ensuring that printing presses deny contracts from non-state media.

So, in practice it is rather impossible to create a new independent newspaper devoted to political and economic issues due to difficult registration procedures (compared with the relative ease of opening newspapers with crosswords and romantic or detective stories). During the last few years, many newspapers were closed when real facts and articles were considered by officials as insulting to and untrue about Belarussian authorities.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Violetta Vutsans, Censorship and Media: What it means for Belarus (2000), Junior Librarian, Open Society Archives / Library, Budapest, Hungary:

<http://www.ifla.org/faife/papers/riga/vutsans.htm>.

Media Landscape – Belarus (2008) European Journalist Center:

http://www.ejc.net/media_landscape/article/belarus/

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES

NO

Comments:

Media can appeal to the court if the Ministry of Information denies a license (Article 13 of The Law on the Press and Other Forms

of Mass Media).

A firm can complain and appeal for refusal to acquire, prolong or make amendments to its license in a court (Presidential Decree #17).

References:

The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

Presidential Decree #17 on Licensing Some Kinds of Activity (July 14, 2003)

Presidential Decree #7 on Some Changes and Additions to Presidential Decree #17 on Licensing Some Kinds of Activity on July 14, 2003 (Nov. 26, 2006)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

All licenses should be issued within a month, however, it could take more time.

In practice it is difficult, if not impossible, to obtain a license for opening a newspaper devoted to politics and the economy.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

http://www.cjes.ru/bulletin/files/month/2008/month_cis_6_rus.doc

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A license costs about 300 euros (US\$384), a minimal cost. Licenses cannot be obtained online or via postal services.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

http://www.cjes.ru/bulletin/files/month/2008/month_cis_6_rus.doc

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

50

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Of the 216 media outlets operating in Belarus, 183 are state-owned. The remaining 53 are non-state media outlets. All broadcasters are required not to go outside the boundaries of their operating licenses.

The National State TV and Radio Company dominates the broadcast market. According to estimates from the Belarussian Association of Journalists (BAJ), there are 31 FM radio stations running in Belarus. Fifteen of these broadcast from Minsk.

The license needed for television broadcasting is available from the Republican Commission on Television and Radio Broadcasting. The chair of this group is the Belarussian Minister of Information. In order to start broadcasting, groups have to meet high criteria. Non-resident foreign nationals or stateless persons are not allowed to set up a television or radio broadcaster. The only producer of broadcast news is the Belarussian Television and Radio Company (BT). The BT runs 27 television channels.

The authority to give out licenses to own a radio broadcaster lies with the Republican Commission on Television and Radio Broadcasting.

All national television stations and most radio stations in Belarus are controlled by the state. Independent radio broadcasts are limited to non-political music and advertising. Citizens do not receive objective information from the state-controlled media. Re-broadcasted Russian television programs are often manipulated through the insertion of Belarussian footage presented as part of the Russian program.

References:

Media Landscape – Belarus (2008):

http://www.ejc.net/media_landscapes/article/belarus/

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

Comments:

Media can appeal to the court if the Ministry of Information denies a license (Article 13).

References:

The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is rather impossible to get a license for creating an independent broadcast medium.

The European Commission in 2006 funded a consortium of Polish, Lithuanian, German, Russian and Belarussian broadcasters in an aim to increase access to independent news via radio, TV and the Internet. The two-year project gave rise to the stations European Radio for Belarus and Radio Baltic Wave. These stations broadcast programs suited for youth.

Since 2008 Belsat — independent TV programming about Belarus — works in Poland but covers Belarus, it can only be received via satellite.

Due to complicated legislation, authorities deny giving licenses to set up broadcasts.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Media Landscape – Belarus (2008):

http://www.ejc.net/media_landscapes/article/belarus/

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are expensive, US\$3,000, but it is not necessarily prohibitive to the organization.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

63

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

During the past few years Internet penetration has increased enormously within Belarus. It increased from nearly no one using it in 2000 to more than half of the population using the medium in 2007.

There is freedom to use Internet. But the 2008 amendment to The Law on the Press and Other Forms of Mass Media equated Internet with print mass media. Starting in 2009, Internet sites registered in the by” zone must get state registration and will have to follow print media regulations.

“The new changes to the law further extend the government’s right to warn, suspend and close down media outlets,” said Miklos Haraszti, the OSCE Representative on Freedom of the Media. “A fuzzy requirement of ‘compliance with reality’ for media materials was also introduced. We found in the draft complicated, burdensome systems of media registration and journalist accreditation. The draft law does not offer sufficient measures to prevent monopolization of the media. It does not protect in practice journalists’ confidential sources. It opens the possibility for restrictive future regulations on Internet-based media.”

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

CIS: Dangerous Profession, monthly bulletin of events in mass media (June 2008):

http://www.cjes.ru/bulletin/files/month/2008/month_cis_6_rus.doc

Media Landscape – Belarus (2008):

http://www.ejc.net/media_landscape/article/belarus/

Press release: OSCE media freedom representative urges Belarus not to adopt restrictive media law:

http://www.osce.org/minsk/item_1_31898.html

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | **50** | 25 | 0

Comments:

The 2008 amendment to The Law on the Press and Other Forms of Mass Media equated Internet with print mass media, which would mean further difficulties in use of the Internet. The new law will force all media to undergo a new registration process, provide for stricter state control of online publications and simplify official closure of a medium.

Under the draft law, the list of violations for which an official warning could be issued for the editorial office is vague and unlimited. A newspaper can be closed even after one warning. A judge, a prosecutor or even an official of any district capital can issue a warning.

The use of the Internet is already restricted in Belarus. According to the OpenNet Initiative report on internet filtering in Belarus, most cybercafes require users to show identification and keep the logs of their online activity. In reaction to Lukashenko's comments, Belarussian activists from the online community Third Way have joined forces and launched the LuNet campaign to raise awareness about the threats to the online free speech that the new media law represents.

References:

<http://www.lenta.ru/news/2008/06/17/by/>

http://www.cjes.ru/bulletin/files/month/2008/month_cis_6_rus.doc

Reporters without Borders call upon Lukashenka to reject new draft law on mass media:

<http://www.charter97.org/en/news/2008/7/8/7995/>

Belarus: Give Lukashenko his LuNet:

<http://advocacy.globalvoicesonline.org/2007/10/01/belarus-give-lukashenko-his-lunet/>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

it is legal to report accurate news even if it damages the reputation of a public figure. However, if a court would prove it is a lie, a journalist can be arrested and take a term in a prison. Due to the fact that courts are not fair and free from political interference, journalists prefer not to rise such issues in mass media. Indeed, according to the law, journalists have this right.

References:

Articles 38 and 45, The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Journalists who criticize the government face prosecution.

Several independent newspapers were shut down in Belarus during 2000-04 and another two were shut down in 2005. Journalists with permanent residence — M. Podolyak, a Ukrainian, and V. Suzdalzcevand, a Russian — were deported to their countries from Belarus in 2005 and 2007.

Publishers take a personal risk to report on corruption and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

The government censors publications in the state mass media.

Private (independent) mass media are free to publish within the law, but independent mass media often practice self-censorship because publishing information on corruption among high level officials can provoke governmental interference or tax controls, or cause the newspaper to be shut down.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

50

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

A media outlet is required to post information about its publisher. Newspapers, especially the independent ones, have to be constantly ready to disclose all financial information to government-controlled tax and revenue police.

It is prohibited by law to receive financing from foreign organizations and citizens if they do not have permanent residence in Belarus, unless they are founders of print media companies or anonymous sources (Article 8).

References:

The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

It is prohibited by law to receive financing from foreign organizations and citizens if they do not have permanent residence in Belarus, unless they are founders of print media companies or anonymous sources (Article 8).

The share of foreign owners should be less than 30 percent.

A media outlet is required to post information about its publisher. Newspapers, especially the independent ones, have to be constantly ready to disclose all financial information to government-controlled tax and revenue police.

References:

The Law on the Press and Other Forms of Mass Media (1995 and amendments, including 2008).

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

Comments:

Journalists and editors in state mass media, print and TV, are famous for publishing unfair facts and information about their critics, including CSOs and activists. The journalists and editors of independent outlets are very careful and mainly fair as they could be immediately blamed for telling a lie” and be charged for moral damage (and courts are not free).

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

Comments:

State media usually describe only one candidate — A. Lukashenko — and only in a positive light, never daring to criticize him, while opposition candidates receive mainly critical views.

The March 19, 2006, presidential elections, in which Lukashenko won a third term, were neither free nor fair, and the OSCE declared that the voting did not meet democratic standards. State media coverage of the campaign was limited and biased.

The same is occurring with current parliamentary elections (Sept. 28, 2008).

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Freedom in the World 2008 – Belarus, Freedom House (2008):

<http://www.unhcr.org/refworld/country,,,,BLR,4562d8b62,487ca1f23b9,0.html>

The 2008 Parliamentary Election Coverage in the Belarussian Media, Bulletin #5 (Aug. 23 – Sept. 5, 2008):

<http://baj.by/index.php?module=p&tid=6>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The government routinely uses state-owned media to discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties, or higher rates may be charged.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Freedom in the World 2008 – Belarus, Freedom House (2008):

<http://www.unhcr.org/refworld/country,,,BLR,4562d8b62,487ca1f23b9,0.html>

The 2008 Parliamentary Election Coverage in the Belarussian Media, Bulletin #5 (Aug. 23 – Sept. 5, 2008):

<http://baj.by/index.php?module=p&tid=6>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There were no journalists imprisoned during the study period.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There were no documented cases of journalists being assaulted during the study period for their work covering corruption issues.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There were no documented cases during the study period of journalists being killed because of their work covering corruption-related issues.

References:

Interview with Alexander Koktysh, journalist for weekly newspaper Trud (Minsk, Aug. 24, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

67
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Mainly all regulations (laws, resolutions, decrees, edicts) are online or published in specialized issues. Many state organizations (ministries, committees, etc.) put on their websites additional information regarding their activities. So, in law, citizens have a right of access to government information and basic government records.

Secret information is banned from being published or distributed.

References:

The Law on State Services (2003)

The Law on State Secrets (1994, amended in 2003)

Constitution

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

Every citizen has a right to appeal to any state organization and demand a comprehensive response.

References:

The Law on Citizens' Appeals (1996, 2004).

Civil Code

Administrative Code

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Each ministry and local council has a special department which works with appeals of citizens. Officials must reply within one month to any registered appeal.

References:

The Law on Citizens' Appeals (1996, 2004).

Civil Code

Administrative Code

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

65

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

An appeal always should be answered, but some cases allow further excuses for not providing information. The line between state (commercial) secrets and public information is sometimes very narrow; in some cases even statistics on state companies operations are considered as a state secret.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Some information (which sometimes is considered as a secret) can be bought with an informal fee (present).

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Information is usually provided within a month or less. However, sometimes, after an initial refusal, one can engage into deeper communication with the bureaucracy (writing letters, making calls) and obtaining information can take more time.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeal mechanism is either free, or has a nominal fee paid to specialized lawyers. In other words, it is an affordable option to middle class citizens seeking to challenge a denial of access to information.

In some cases, one can buy closed (secret) information only by bribing an official. Or officials may refuse to provide such information, mentioning it is 'a secret', as legislation on state secrets is not clear and has numerous interpretation.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The reason for a denial for providing state information is always explained. Any denial should be reasoned. If a citizen does not agree, he can appeal to the prosecutor's office.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

The Law on Citizens' Appeals (1996).

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ~~61~~ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The right to vote is guaranteed to all citizens of the country over 18 years old.

Lists of citizens having the right to participate in elections, referendum or voting in recall of a deputy are presented for universal acquaintance 15 days prior to elections, referenda or voting in recall of a deputy.

Every citizen shall have the right and possibility to check his or her presence on the list and to check correctness of the details about himself or herself.

Every citizen shall have the right to appeal against non-inclusion, wrong inclusion or exclusion from the list, as well as against discrepancies found in the list concerning data on the citizen (Article 21).

References:

Electoral Code No. 370-Z (Feb. 11, 2000, amended Oct. 6, 2006).

Constitution

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The Central Commission arranges for election of the President of the Republic of Belarus (every 5 years), deputies of the House of Representatives and members of the Council of the Republic (every 4 years) and deputies of the local Councils of Deputies (every 4 years).

References:

Electoral Code

Constitution

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | **25** | 0

Comments:

Parliamentary elections in 2004, presidential elections of 2006 and local elections of 2007 were recognized by the OSCE and Western countries as non-transparent, unfair and heavily violated.

Among difficulties for independent observation, the early voting procedure is seen by observers as a way of manipulating polls. According to the OSCE, over 30 percent of voters cast their ballot during five days of early voting. Lack of security provisions for the ballot box increased the possibility of fraud. The mission also received a number of reports that managers and directors pressured staff to vote early.”

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Early voting under way in Belarus:

<http://news.bbc.co.uk/2/hi/europe/4804096.stm>

U.S. calls for new Belarus vote:

http://edition.cnn.com/2006/WORLD/europe/03/20/belarus.poll.results/index.html?section=edition_europe

Belarusian election severely flawed due to arbitrary use of state power and restrictions on basic rights:

<http://www.osce.org/item/18438.html>

Minimalist local elections (2007):

<http://en.belaruselections.info/archive/local2007/analytics/0041844/>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections are always held according to a regular schedule.

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civic Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

45

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Every citizen has a right to associate with others (Article 36 of the Constitution of the Republic of Belarus, as of Nov. 24, 1996). The Constitution also implies a provision on right of people to create political parties and be united in these parties without any compulsory membership (Articles 4 and 5 of the Constitution of the Republic of Belarus, as of Nov. 24, 1996).

There are standard limitations to the freedom of association envisaged in several constitutional provisions. Freedom of association can be limited during a state of emergency (Article 63 of the Constitution of the Republic of Belarus, as of Nov. 24, 1996). The limitation of freedom of association is envisaged also for representatives of the law enforcement agencies, judiciary, armed forces, security services — they cannot be members of political parties, NGOs or other public associations which pursue political goals (Article 36 of the Constitution of the Republic of Belarus, as of Nov. 24, 1996).

Belarus has 15 registered political parties, including: Agrarian Party (AP); Belarussian Communist Party (KPB); Green Party Belarussian Social and Sports Party; Belarussian Patriotic Movement (BPR); Belarussian Popular Front (BNF); Belarussian Social-Democrat Party (BSDP); Social-Democratic Hramada Party; Conservative Christian Party-BNF; United Civic Party (UCP); Liberal Democratic Party of Belarus (LDBP); Party of Communists Belarussian (PKB); Party of Popular Accord; Republican Party of Labor and Justice (RPPS); Social Democratic Party of Popular Accord (PPA). Other, unregistered parties are also active, such

as: Belarussian Christian Democracy, Belarussian Party of Labor, Women's Party Nadezhda, Christian Conservative Party, and Party of Freedom and Progress.

References:

Constitution

The Law on Political Parties (as of Oct. 5, 1994).

The Civil Code of the Republic of Belarus (as of July 1, 1999).

The Decree of the President of the Republic of Belarus on Some Measures for Regulating the Activities of Political Parties, Trade Unions and Other Public Associations (as of March 26, 2002).

The Regulation on State Registration (re-registration) of Political Parties, Trade Unions and Other Public Associations (as of March 26, 2002).

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Elections of the President of the Republic of Belarus, Deputies of the Chamber of Representatives, Deputies of Local Councils of Deputies and referenda are universal: the right to elect or to participate in the referendum belongs to citizens of the Republic of Belarus who have reached 18 years of age.

Citizens recognized incapable by the court, persons kept by court decisions in places of deprivation of liberty do not participate in elections or referenda (Article 4).

References:

Constitution

Electoral Code (2000, amended in 2006)

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

There are 15 registered parties and a few unregistered. In practice, during the last 10 years no political party was registered. For example, the Party of Freedom and Progress was refused in registration three times and Belarusian Christian Democracy was refused two times. The authorities used inappropriate reasons for denying registration.

A few parties were shut down during last few years.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

The ministry of justice again refused in registration of the Party of freedom and progress:

<http://www.charter97.org/rus/news/2005/10/07/snova>

Juri Chausov, The season for hunting on political parties (2008):

<http://www.nmnby.org/pub/0802/06m.html>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

In the presidential election of 2006, parliamentary elections of 2004 and local elections of 2007 many opposition candidates were refused registration to run for political office.

For example, in the parliamentary elections of 2008, among 149 opposition representatives, 99 people were registered (66.5 percent). In the parliamentary elections of 2004, among 227 opposition representatives, 126 people were registered as candidates for members of parliament (55 percent).

References:

OSCE Office for Democratic Institutions and Human Rights – Elections in Belarus:
<http://www.osce.org/odihr-elections/14398.html>

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Belarussian Helsinki Committee, The results of registration of candidates to Parliament (2008) :
http://www.belhelcom.org/index.php?option=com_content&task=view&id=1194&Itemid=2

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There are no opposition party representatives in Parliament (although this could change after elections on Sept. 28, 2008).

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Belarussian election severely flawed due to arbitrary use of state power and restrictions on basic rights:
<http://www.osce.org/item/18438.html>

OSCE Office for Democratic Institutions and Human Rights – Elections in Belarus:
<http://www.osce.org/odihr-elections/14398.html>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

75

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Central Election Commission sums up the results of election or referendum and publishes an appropriate report in the mass media; registers the elected deputies of the House of Representatives and publishes their lists in the mass media; calls the first post-election session of the House of Representatives, i.e. serves as a monitoring agency.

References:

Electoral Code (2000, amended in 2006).

<http://www.legislationline.org/legislation.php?tid=57&lid=7494&less=false>

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The president appoints the head and representatives of the Central Electoral Commission, which makes it heavily influenced by politics; in local commissions opposition represents less than 1 percent of all people; the members of local commissions are usually the employees of state enterprises which are easily manipulated.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Central Electoral Commission has some regular staff, while others work in part-time only during election campaigns. In general, the staff is sufficient to fulfill its basic mandate.

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

<http://www.rec.gov.by/english.html>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Reports are released to the public on a predictable schedule, without exceptions.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

When violations of rules are discovered, the Central Electoral Commission is usually aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders. However, the Commission could be slow or reluctant in penalizing pro-presidential candidates.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

42

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost^o voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Citizens can contest election results in court.

References:

Electoral Code (2000, amended in 2006).

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Belarussian elections are recognized as unfair by international society. The candidates can protest and try to contest the results, but have never succeeded.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Military security is not active during elections, while secret services (KGB) and police are widely active, frightening opposition activists, arresting them, etc.

For more information on elections in Belarus see OSCE reports.

From the Human Rights House Network Annual Report (2006): The Lukashenka regime took extensive measures to intimidate its political opponents. One of the most commonly used methods is that of the KGB and police officers searching private apartments. In 2006, more than 1,000 activists were detained as a result of this activity. The law enforcement services confiscated compact discs, external drives and other hardware designed for the transmission of information, computer equipment, printed leaflets, newspapers, and documents.”

References:

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

OSCE Office for Democratic Institutions and Human Rights – Elections Report, 2006 Presidential Election:
<http://www.osce.org/odihr-elections/17955.html>

OSCE Office for Democratic Institutions and Human Rights – Elections Report, 2004 Parliament Election:
<http://www.osce.org/odihr-elections/14353.html>

Human Rights House Network Annual Report (2006):
<http://www.humanrightshouse.org/assets/1000Annual%20Report%202006.pdf>

NORDEM Report, Belarus Presidential Election (Oct. 2006):
<http://www.humanrights.uio.no/forskning/publ/nr/2006/1006.pdf>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | **NO**

Comments:

The Central Commission shall accredit foreign (international) observers. The term of authority of a foreign (international) observer shall begin from the day of his or her accreditation and shall end at the day of publication of results of the election, referendum or recall of Deputy or Member of the Council of the Republic.

Foreign (international) observers shall execute observation in the order stipulated by the part 4 of the present Article. Foreign (international) observers shall also have rights to meet candidates, proxies of candidates, as well as after the day of holding of election to express his or her opinion about the legislation of the Republic of Belarus on elections, referendum or recall of Deputy or Member of the Council of the Republic, hold press conferences and refer to mass media.

A foreign (international) observer shall not have a right to use his or her status for performing activity having no connection with observation for preparation and holding of election, referendum or recall of Deputies or Member of the Council of the Republic.

The Central Commission shall have a right to deprive a foreign (international) observer of accreditation in the case he or she violates the legislation of the Republic of Belarus or universal principles and norms of the International Law.

An observer has the right to:

- be present at the meetings of relevant commissions;
- be present at the meetings of deputies of local Councils of Deputies of the basic level of Oblast, deputies of Minsk City Council of Deputies on electing the members of the Council of Republic, and also on recall of the member of the Council of Republic;
- be present at sealing of the ballot boxes;
- be present on the day of voting in buildings for voting from the moment of sealing of ballot boxes until the end of sizing up the results of voting;
- be present at pre-term voting or voting in place of citizens whereabouts;
- observe the issue of ballots, course of voting, observance of voting procedure established by the present Code;
- turn to the head of the district or counting commission or his deputy with proposals and comments on questions of organization of voting;
- receive information on results of the voting counting and drawing up the protocols of the relevant commissions on the results of elections, referendum or voting on recall of the deputy;
- familiarize with the protocols of district commissions on the results of voting and protocols of the relevant commissions on the results of elections, referendum or voting on recall of the deputy, signed and directed to superior commission in accordance with the present Code;
- to make a copy of the protocol of the district commission on results of voting on their own and by their own means;
- familiarize with the decision of the meetings of the deputies of local Council of Deputies of the basic level of Oblast, deputies of Minsk City Council of Deputies on elections of the members of the Council of Republic and also on the recall of the member of the Council of Republic.

An observer has no right:

- to agitate in any form;
- to render to the candidates to presidency, candidates to deputies of the Chamber of Representatives, to the members of the Council of Republic or in deputies of local Council of Deputies any informational, methodological, financial or other assistance;
- to create obstacles in holding the voting;
- to take measures violating the secret of voting;
- to carry out the surveys of citizens who have come for voting and who have voted;
- to fill in the ballot for a citizen under his request;
- to create obstacles for normal work of commissions, meetings of deputies of local Council of Deputies of basic level of Oblast, deputies of Minsk City Council of Deputies and holding the voting;
- to be at the tables of ballot issue, at the cabins and ballot boxes;
- to interfere with the work of commissions, meetings of deputies of local Councils of Deputies of oblast basic levels or deputies of Minsk City Council of Deputies.

Foreign (international) observers from foreign states and international organizations are invited to the Republic of Belarus by the President of the Republic of Belarus, Chamber of Representatives, Council of Republic, Council of Ministers of the Republic of Belarus, Ministry of Foreign Affairs of the Republic of Belarus and Central Commission.

Foreign (international) observers are accredited by the Central Commission. The term of powers of foreign (international) observers starts from the day of his or her accreditation and ends on the day of publishing the results of elections, referendum or recall of deputy or member of the Council of Republic.

Foreign (international) observers observe in order provided by part four of the present article. Foreign (international) observers have also the right to meet the candidates, authorized persons of candidates, and after the day of voting to express their opinion on legislation of the Republic of Belarus on elections, referendum, recall of deputy or member of the Council of Republic, to hold press-conferences and to turn to mass media.

Foreign (international) observers have no right to use their status to carry out the activity not connected with observing the preparation and holding the elections, referendum, recall of deputy or member of the Council of Republic.

The Central Commission has the right to deprive a foreign (international) observer the accreditation in case of his or her violation of legislation of the Republic of Belarus or generally recognized principles and rules of international law.

References:

Article 13, Electoral Code (2000, amended in 2006).

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Election observers (foreign and local) are significantly limited by state regulations and informal bans. For example, international observers are obliged to stand 15 meters and more from a table where the local commission counts ballots; independent local observers usually are not registered as observers for some reasons; activists from CSOs who are going to organize observation are arrested.

According to an OSCE report: The vote count proved highly problematic, with observers assessing it negatively in a large number of counts witnessed. In a number of instances, the results were completed in pencil, and the majority of observers were prevented from standing close enough to see the marks on the ballot.”

On Feb. 21, 2006, four leaders of the Partnerstvo (Partnership) initiative, a CSO, were arrested. Partnerstvo’s aim was to organize and conduct independent observation of the presidential elections. The arrested leaders were later convicted and sentenced to imprisonment — from six months up to two years — in accordance with criminal code provisions concerning unlawful activities of unregistered organizations. Dmitri Dashkevish, leader of the Young Front organization, was sentenced to one and a half years imprisonment under the same article.

References:

OSCE Office for Democratic Institutions and Human Rights – Elections Report, 2006 Presidential Election:
<http://www.osce.org/odhr-elections/17955.html>

OSCE Office for Democratic Institutions and Human Rights – Elections Report, 2004 Parliament Election:
<http://www.osce.org/odhr-elections/14353.html>

Human Rights House Network Annual Report (2006):
<http://www.humanrightshouse.org/assets/1000Annual%20Report%202006.pdf>

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

<http://www.osce.org/item/18438.html>

<http://www.fco.gov.uk/en/about-the-fco/country-profiles/europe/belarus?profile=history&pg=3>

NORDEM Report, Belarus Presidential Election (Oct. 2006):
<http://www.humanrights.uio.no/forskning/publ/nr/2006/1006.pdf>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Central Commission organizes, within the limits of its authorities, holding of elections of the President of the Republic of Belarus, Deputies of the Chamber of Representatives, Members of the Council of the Republic, Deputies of local Councils of Deputies and other persons elected to state positions by the people, holding of Republican referenda, solves problems connected with organization of recall of Deputies of the Chamber of Representatives and Members of the Council of the Republic, as well as executes control over the whole territory of the Republic of Belarus over fulfillment of the legislation on elections, referendum, recall of Deputies and Members of the Council of the Republic.

The Central Commission heads the system of electoral commissions and commissions on referendum operational during preparation and holding of elections and Republican referenda.

The Central Commission consists of 12 members of whom six are appointed by the President and another six are elected by the Council of the Republic. The Chairperson of the Central Commission is appointed by the Head of the State from among the commissioners with the consent of the Council of the Republic. The Vice-Chairperson and Secretary are elected from among the commissioners at the first meeting. Normally, the Central Commission is formed of members with higher juridical education and experience in the arrangement and conduct of elections and referenda. The Central Commission term of office is five years.

The Central Commission activity is regulated by the Law of the Republic of Belarus on Central Commission of the Republic of Belarus for Elections and Nation-Wide Referenda, the Electoral Code of the Republic of Belarus and the Commission's Rules of Procedure.

Subject to the law, the Central Commission:

- arranges for election of the President of the Republic of Belarus, deputies of the House of Representatives and members of the Council of the Republic, deputies of the local Councils of Deputies and other persons elected to government offices by public, and for the conduct of nationwide referenda; exercises control over the observance of legislation on elections, referenda, recall of deputies and members of the Council of the Republic throughout the republic, and explains the legislation provisions to ensure its uniform application;
- exercises guidance in the activity of electoral commissions and commissions for referenda;
- establishes constituencies for election to the House of Representatives and the average number of electors per constituency in the country;
- registers initiative groups of citizens for election of the President of the Republic of Belarus , and nationwide referenda;
- establishes the state mass media usage procedure for pre-election campaign;
- draws up and approves expense budgets for elections, nationwide referenda, recall of any deputy of the House of Representatives within the limits allocated from the republican budget; creates an extra-budgetary fund for elections and nationwide referenda whereto organizations, public associations and individuals may remit their voluntary donations;
- determines the forms of ballot-papers and other documents for elections and referenda;
- sums up the results of election or referendum and publishes an appropriate report in mass media; registers the elected deputies of the House of Representatives and publishes their lists in mass media; calls the first post-election session of the House of Representatives;
- considers applications and complaints associated with resolutions and actions of electoral commissions, referendum commissions, deputy-recall voting commissions, and passes the appropriate decisions;

– examines and summarizes the practices on application of legislation on elections and referenda, advances proposals aiming to the improvement of legislation on elections and referenda to the bodies that have the right of legislative initiative;

– exercises other powers under the Electoral Code and other legislative acts of the Republic of Belarus .

The Central Commission is a stand-alone state body. The Commission is not bound with resolutions of political parties and other public associations. Members of the Central Commission who are members of political parties shall suspend their membership with the party and may not take part in party activities or carry out any missions for the time of their office as commissioner.

References:

Electoral Code (2000, amended in 2006).

<http://www.legislationline.org/legislation.php?tid=57&lid=7494&less=false>

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

72 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

43

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law bans financing of parties by foreign countries and foreign organizations, as well as by Belarussian companies registered less than one year before the donation date.

References:

Article 24, The Law on Political Parties in Belarus (1994).

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | **NO**

Comments:

Foreign citizens, as well as Belarussians under age 18 and anonymous donors are banned from making donations to political parties in Belarus. For Belarussian citizens, there are no limits on individual donations to political parties.

References:

Article 24, The Law on Political Parties in Belarus (1994).

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | **NO**

Comments:

A Belarussian company is not allowed make donations to, or finance, political parties if the company has been registered less than one year before the donation date. According to the law, outside of this small limitation, there are no limits on corporate donations to political parties.

References:

Article 24, The Law on Political Parties in Belarus (1994).

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

There are no formal limitations to the size of political party expenditures.

References:

Article 21, The Law on Political Parties in Belarus (1994).

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

Every party (or NGO) must disclose and declare any financial contributions to their finances.

References:

Articles 24 and 28, The Law on Political Parties in Belarus (1994).

Legislation on technical assistance:

Presidential Edict #460 on International Technical Assistance Provided to the Republic of Belarus (Oct. 22, 2003).

Presidential Edict #382 on Amendments and Additions to Presidential Edict #460 on Oct. 22, 2003 (Aug. 17, 2005).

Resolution of the Council of Ministries #1027 on Measures for Realization of the Presidential Edict #382 on Aug. 17, 2005 (Sept. 15, 2005).

Resolutions of the Council of Ministries #1522 (Nov. 21, 2003).

Resolutions of the Council of Ministries #246 on (Dec. 19, 2003).

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

There are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures.

References:

The Law on Political Parties in Belarus (1994).

The Law on Audit in Belarus (2007).

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The Ministry of Justice, Presidential Administration (Department for Humanitarian Assistance) and the Ministry of Taxes monitor the financing of political parties.

References:

Article 28, The Law on Political Parties in Belarus (1994).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

67

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Expenses on preparation and holding of elections of the President of the Republic of Belarus, Deputies of the Chamber of Representatives, Members of the Council of the Republic, Deputies of local Councils of Deputies, Republican referendum, recall of a Deputy of the Chamber of Representatives, or Members of the Council of the Republic are executed at the expense of the assets of the Republican budget. Expenses for these purposes may also be executed at the expense of assets of organizations, public associations and citizens of the Republic of Belarus, who may transfer their monetary assets to the extra-budgetary fund created by the Central Commission for additional financing of expenses on preparation and holding of elections of the President of the Republic of Belarus, Deputies of the Chamber of Representatives, Deputies of local Councils of Deputies, or Republican referendum.

The assets, assigned from the budget and extra-budgetary fund for holding of pre-electoral campaigns, are distributed equally between all candidates for President of the Republic of Belarus, for Deputies of the Chamber of Representatives, and Deputies of Local Councils of Deputies and are spent upon their demand in the order established by the Central Commission. On the size of assets assigned from the budget to candidates for their pre-electoral campaign, the Central Commission shall inform the public through mass media not later than three days after the termination of registration of candidates.

Political parties, other public associations, organizations, or citizens of the Republic of Belarus have no right to render other material aid at preparation and holding of elections or referenda, except for depositing monetary assets into the extra-budgetary fund, envisaged by clause one of the present Article.

Direct or indirect participation of foreign states, enterprises, organizations, foreign citizens, international organizations, enterprises of the Republic of Belarus with foreign investments in financing and other material aid at preparation and holding of elections, referenda, recall of a Deputy, or Member of the Council of the Republic, is forbidden.

References:

Article 48, Electoral Code (2000, amended in 2006).

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Contributions from foreign individuals are banned. Only contributions from Belarussian citizens are allowed. All contributions go to a special state non-budget fund, where they are shared between all candidates.

References:

Article 48, Electoral Code (2000, amended in 2006).

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Only contributions from Belarussian companies are allowed. All contributions go to a special state non-budget fund, where they are shared between all candidates.

References:

Article 48, Electoral Code (2000, amended in 2006).

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

Political candidates can be financed at the expense of assets of organizations, public associations and citizens of the Republic of Belarus (but not the organizations, financed from the state budget), who may transfer their monetary assets to the extra-budgetary fund created by the Central Commission for additional financing of expenses on preparation and holding of elections of the President of the Republic of Belarus, Deputies of the Chamber of Representatives, Deputies of local Councils of Deputies, or Republican referendum.

Direct or indirect participation of foreign states, enterprises, organizations, foreign citizens, international organizations, or enterprises of the Republic of Belarus with foreign investments in financing and other material aid at preparation and holding of elections, referenda, or recall of a Deputy or Member of the Council of the Republic, is forbidden.

Belarussian citizens or organizations can transfer their donations to special account of Central Electoral Commission only through Belarussian bank, which would require disclosure, i.e. demand passport, name of organization, etc.

So, according to the law, direct financing is forbidden, Belarussian money can only be openly transferred to CEC, which would evenly divide them to all participants.

References:

Article 48, Electoral Code (2000, amended in 2006).

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

Comments:

There are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures.

References:

Electoral Code (2000, amended in 2006).

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The Central Electoral Commission monitors the financing of individual political candidates' campaigns.

References:

Article 49, Electoral Code (2000, amended in 2006).

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

29

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Officially, the Department for Humanitarian Assistance registers only social and ecological grants, denying any international technical assistance in economic or political spheres.

But there are different ways of bypassing this strict legislation. Foreign organizations finance political parties or their candidates by supporting NGOs that are friendly to them or by giving money in cash or making transfers the bank accounts of NGOs (or even private persons) registered in friendly neighboring countries (Lithuania, Poland, Slovakia, Ukraine, etc.).

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Rodion Raskolnikov, Black cash for colored revolution is now regulated by the presidential edict. <http://belgazeta.by/20050822.33/020010672/>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no official limits.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There are no official limits. In practice, the majority of expenditures by opposition political parties are made outside of the formal limitation system.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The state agencies — Ministry of Justice or Ministry of Taxes — have limited effectiveness in monitoring the financing of political parties as the donations and expenditures made in cash are hard to check. However, if they find any violation of legislation, they would aggressively start investigations into allegations of wrongdoing with respect to the financing of political parties. A political party would then be closed.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Control of activities of political parties is made by the Ministry of Justice. In addition, the Ministry of taxes checks and monitors financial activities (political parties are legal entities).

Besides, there are other control organizations, which may impose investigation (Committee of State Control, Prosecutor's office, etc.).

If any of these state agencies or ministers discovers that a party is illegally financed, offenders would be aggressively penalized.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Alfer, the lawyer of United Civil Party (Minsk, December 9, 2008).

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are not audited.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

40

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

Political candidates can be financed by third parties outside of legal regulations.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

When the Central Electoral Commission or other state agency suspects that a political candidate uses external (not state) resources for financing his campaign, the agency starts an investigation (for which money, for example, leaflets were printed, etc.).

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

When rules violations are discovered, the Central Electoral Commission is aggressive in penalizing offenders. For example, during the 2004 parliament campaign 20 candidates were rejected registration due to violation of regulations.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

Institute for Democracy in Eastern Europe, Observers Report on Elections in 2004:
<http://www.idea.org/belarusinterimreport2004rus.html>

OSCE Report on Parliament Elections (2004):
http://www.osce.org/documents/odihr/2004/12/3951_ru.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The finances of individual candidates' campaigns are not audited.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties disclose their sources of funding and their expenditures every quarter in accordance with accounting legislation (as any legal entity they provide the tax agency with balance sheets).

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A party is a legal entity and its financial information is closed to the public (according to legislation, financial and tax information reported by a legal entity to tax or statistical agencies are closed and considered as a commercial secret).

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to legislation, records costs are prohibitive to citizens, journalists, or CSOs trying to access this information.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

17

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As any financing besides that of the state is prohibited, political candidates never publish their sources of funding or spending.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Every candidate has an equal amount of money for his campaign from the state budget; all other sources are illegal and it is impossible to get access to financial records of the candidates.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

Comments:

Officially, there are no revenues or expenditures except official state sources. the state (CEC) finances participation in elections: local, parliament and presidential – 5, 50 or 10,000 basic values (1 basic value – USD 16).

Within this sum CEC pays for printing materials of candidates (leaflets, etc.). That is the only costs which are legal. Access to radio and TV is also provided by state for free (very limited time).

All other costs are illegal (according to legislation).

If someone is interested how much a candidate paid for his printing materials (for example, it could be less than 50 basic values), he should make official request to a local or central commission, and it is up to them to reply (as there is no direct obligation to answer in the law).

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Alfer, the lawyer of United Civil Party (Minsk, December 9, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁵⁰ Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The president and prime-minister regularly give explanations of the policies they implement. However, in the case of critical or "hot" questions from journalists or opposition representatives, they could be dubious and partial. There is no regular or formalized process of communication. Issues of particular political sensitivity may be censored by government broadcasters.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Igor Pelipas, head of IPM Research Center (Minsk, Aug. 15, 2008).

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Constitutional Court on the recommendations of the President of the Republic of Belarus, the House of Representatives, the Council of the Republic, the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus, the Cabinet of Ministers of the Republic of Belarus shall produce a ruling on:

– the conformity of laws, decrees and edicts of the President, international agreements and other obligations of the Republic of Belarus to the Constitution and other instruments of international law ratified by the Republic of Belarus;

– the conformity of instruments of interstate formations of which the Republic of Belarus is part, edicts of the President of the Republic of Belarus which are issued to the execution of the law, the Constitution, the laws, decrees and instruments of international law ratified by the Republic of Belarus;

– the conformity of the decisions of the Council of Ministers and orders of the Supreme Court, the Supreme Economic Court, Procurator-General to the Constitution, laws and instruments of international law ratified by the Republic of Belarus, laws,

decrees and edicts;

– the conformity of enactments of any other state body to the Constitution, laws and decrees as well as to the laws and instruments of international law ratified by the Republic of Belarus.

Enforceable enactments or their particular provisions which are considered unconstitutional shall be deemed invalid to the order determined by the law.

In instances specified by the Constitution, the Constitutional Court with regard to the proposal of the President shall give its conclusion on the presence of instances of systematic or flagrant violation of the Constitution of the Republic of Belarus by the chambers of Parliament.

References:

Crime Code

Article 116, Constitution (art. 116):

<http://www.legislationline.org/upload/legislations/36/64/831de9cf8a7ba0142b8a0f93d804.htm>

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

All judges are appointed by the president or other state organs. Therefore, the judiciary system is under complete presidential control and cannot effectively review executive policy.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The president, as the head of executive authorities, issues edicts and decrees, which could contradict the laws — and in a few cases with the Constitution — but they have the highest power among all kinds of legislation or regulations. The laws could be changed in order to meet presidential edicts and decrees.

The Council of Ministers and the Prime Minister issue resolutions. Such practice is very common. During one year there are often more than 500 new documents (resolutions, decrees, edicts) issued by the president and government.

Some governmental resolutions could contradict each other.

References:

Article 79, Constitution: The President of the Republic of Belarus shall be the Head of State.

Article 85. Constitution: The President shall issue decrees and orders on the basis and in accordance with the Constitution which are mandatory in the territory of the Republic of Belarus.

In instances determined by the Constitution, the President shall issue decrees which have the force of the law. The President shall ensure directly or through specially formed bodies the execution of the decrees, orders and instructions.

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The President may be removed from office for acts of state treason or other grave crimes. The decision to file a charge against the President must be supported by a majority of the full House of Representatives on behalf of no less than one-third of the number of deputies. The investigation of the charge shall be exercised by the Council of the Republic. The President shall be deemed to be removed from office if the decision is adopted by no less than two-thirds of the full composition of the Council of the Republic, and no less than two-thirds of the full House of Representatives (Article 88, Constitution).

People that committed a crime are equal in law and are to be prosecuted for the crimes they commit independently from race, gender, nationality, language, property and position, place of living and political considerations and other circumstances (Article 3, Crime Code).

Every person that has committed a crime is to be prosecuted.

References:

Article 88, Constitution.

Article 3, Crime Code (1999).

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

People that committed a crime are equal in law and are to be prosecuted for the crimes they commit independently from race, gender, nationality, language, property and position, place of living and political considerations and other circumstances (Article 3, Crime Code).

Every person that has committed a crime is to be prosecuted.

References:

Article 3, Crime Code (1999).

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

41

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

All civil servants, including the heads of state and government, are obliged annually declare their income and assets.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

The Law on Civil Service.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Civil servants are not allowed to accept gifts and hospitality that are not regulated by legislation and connected with fulfilling their duties, except souvenirs. All gifts shall be transferred to state income and be used according to legislation (Article 22, The Law on Civil Service).

References:

Article 22, The Law on Civil Service (2003).

Article 24, The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

There are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures. Fulfilling declarations is not the same as independent auditing. And when (if) these declarations are checked, they are checked by a state organization – the Ministry of Taxes, which is not an independent audit organization.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

A civil servant is banned from engaging in entrepreneurship (Article 22, The Law on Civil Service).

But any official can enter the private sector the day after leaving his position from civil service.

References:

Article 22, The Law on Civil Service (2003, 2007).

The Law on Entrepreneurial Activity (2004).

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no such regulations.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

In Transparency International's Corruption Perceptions Index, Belarus holds the 150th place in the world. The position of Belarus on the index has declined in recent years.

Business people regularly pay bribes to state officials related to their business activities (acquiring permits, reducing taxes, etc.).

As surveys show, ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

The richest people in the country are officials who openly buy expensive cars, visit expensive restaurants, hold expensive real estate, etc.

References:

Transparency International, 2007 Corruption Perceptions Index:

http://www.transparency.org/policy_research/surveys_indices/cpi/2007/regional_highlights_factsheets

IPM Research Center, Analytical report, Editors: Chubrik, A., Pelipas, I., Rakova, E., Business in Belarus 2007: Status, Trends, Perspectives:

<http://www.research.by/eng/belbusiness/>

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no such requirement.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

Although the form is filed, it is not available to the public as there is no asset disclosure for the head of state and government.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

In law, a citizen can write a petition on compensation of harm which was caused by actions or non-actions of state organs and officials.

References:

The Law on Citizens' Appeals (1996, amended in 2004).

Civil Code (1999).

Article 913, Administrative Code.

Order of consideration of citizens' appeals in prosecutor's office:

<http://prokuratura.gov.by/main.aspx?guid=10426>.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

100

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

There is no ruling political party. In Belarus, we have A. Lukashenko and his authoritarian state. He has no party. Therefore, the civil service is completely distinct from parties. In fact, there are 15 political parties, but they play a rather marginal role in political and executive systems. 95% or more of Parliament are 'independent' people, who do not belong to any political party. And even if there are a few members of pro-Lukashenko's communistic party, it has nothing to do with this question – Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

In the past this pro-Lukashenko communistic party (in belarus there are 2 communistic parties, one is in opposition, another supports Lukashenko), used to have free offices or rent was discounted. This is not the case anymore (at least officially).

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

83

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

Article 116. Supervision of the constitutionality of enforceable enactments of the state shall be exercised by the Constitutional Court of the Republic of Belarus.

The Constitutional Court of the Republic of Belarus shall be formed of 12 judges from among highly qualified specialists in the field of law, who as a rule have a scientific degree.

Six Judges of the Constitutional Court shall be appointed by the President of the Republic of Belarus and six elected by the Council of the Republic. The Chairperson of the Constitutional Court shall be appointed by the President with the consent of the Council of the Republic. The term of the members of the Constitutional Court shall be 11 years, and the permissible age limit shall be 70 years.

The Constitutional Court on the recommendations of the President of the Republic of Belarus, the House of Representatives, the Council of the Republic, the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus, the Cabinet of Ministers of the Republic of Belarus shall produce a ruling on:

– the conformity of laws, decrees and edicts of the President, international agreements and other obligations of the Republic of Belarus to the Constitution and other instruments of international law ratified by the Republic of Belarus;

– the conformity of instruments of interstate formations of which the Republic of Belarus is part, edicts of the President of the Republic of Belarus which are issued to the execution of the law, the Constitution, the laws, decrees and instruments of international law ratified by the Republic of Belarus;

– the conformity of the decisions of the Council of Ministers and orders of the Supreme Court, the Supreme Economic Court, Procurator-General to the Constitution, laws and instruments of international law ratified by the Republic of Belarus, laws, decrees and edicts;

– the conformity of enactments of any other state body to the Constitution, laws and decrees as well as to the laws and instruments of international law ratified by the Republic of Belarus.

References:

Constitution:

<http://www.legislationline.org/upload/legislations/36/64/831de9cf8a7ba0142b8a0f93d804.htm>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | **50** | 25 | 0

Comments:

The Constitutional Court can review the laws issued by Parliament or President, however, due to political reasons, the judges of the Constitutional Court hardly do this or do not see the violation of the constitution.

The Constitutional Court explains and sometimes reviews legislation, but only for minor questions. When serious issues are concerned — such as a new edition to The Law on Mass Media, the Electoral Code, The Law on CSOs, and the like — the Court does not see contradictions between the laws and the Constitution.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

http://ncpi.gov.by/constsud/rus/constit_doc2007.html

<http://ncpi.gov.by/constsud/eng/operinfo07.htm>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

People that committed a crime are equal in law and are to be prosecuted for the crimes they commit independent of race, gender, nationality, language, property and position, place of living or political considerations and other circumstances (Article 3, Crime Code).

Every person that has committed a crime is to be prosecuted.

References:

Article 3, Crime Code (1999).

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

39

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

By law, members of the national legislature are obliged annually to declare their income and assets. But these declarations are to be checked only by the Ministry of Taxes.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

A civil servant is banned from entrepreneurship while he holds a state position (Article 22, The Law on Civil Service).

But any official can enter the private sector the day after leaving his civil service position.

References:

Article 22, The Law on Civil Service (2003, 2007).

The Law on Entrepreneurial Activity (2004).

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Civil servants are not allowed to accept gifts and hospitality that are not regulated by legislation and connected with fulfilling their duties, except souvenirs (Article 22, The Law on Civil Service). All gifts shall be transferred to state income and be used according to legislation.

References:

Article 22, The Law on Civil Service (2003).

Article 24, The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

Although, the form is filed, it is not available to the public as there is no asset disclosure.

Candidates for Parliament have to open this info.

There are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no such regulations.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulation is mainly effective, however some legislators could accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

There is almost no practice of business interests lobbying Parliament.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no such requirement.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

Declarations are given to the Ministry of Taxes. Such info is closed to the public. Only during the electoral campaign must candidates for Parliament disclose their forms and that is when citizens can access the asset disclosure records.

References:

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Citizens can access asset disclosure forms only during elections; any forms filed after the campaign (the following year, for example), are closed to the public.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

During a campaign, information is freely available; but after that citizens do not have access.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

There is a general legal right to access records of legislative proceedings, including voting records. Most information (laws,

statements, documents) is available via the Internet. On the Internet a citizen can find information on planned legislative activities or passed laws. Much information is published in state newspapers as well.

Special rules apply to information deemed secret.

References:

The Law on Status of a Deputy of House of Representatives (Parliament) and Member of the Council of the Republic, Constitution:

<http://www.house.gov.by/>

<http://www.sovrep.gov.by/>

Central Electoral Commission, The Law on Central Electoral Commission on Elections and Referenda, Electoral Code (2006):

<http://www.rec.gov.by/>

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Records are available online, or records can be obtained within two weeks (depending on the type of information). Records are uniformly available; however, there could be delays for politically sensitive information.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Website of the Council of the Republic:

<http://www.sovrep.gov.by/>

Website of the House of Representatives:

<http://www.house.gov.by/>

Website of the Central Electoral Commission:

<http://www.rec.gov.by/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail or online.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Website of the Council of the Republic:

<http://www.sovrep.gov.by/>

Website of the House of Representatives:

<http://www.house.gov.by/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

51
III-3. Judicial Accountability

36. Are judges appointed fairly?

17

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | **NO**

Comments:

The Constitutional Court of the Republic of Belarus is formed of 12 judges from among highly qualified specialists in the field of law, who as a rule have a scientific degree.

Six Judges of the Constitutional Court shall be appointed by the President of the Republic of Belarus and six elected by the Council of the Republic (all members of which are appointed by the President). The Chairperson of the Constitutional Court shall be appointed by the President with the consent of the Council of the Republic. The term of the members of the Constitutional Court shall be 11 years, and the permissible age limit shall be 70 years of age.

Judges of the Supreme Court are appointed by the President.

References:

Article 116, Constitution.

Articles 19, 44 and 45, Code on Judiciary and Status of a Judge in Belarus.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

Judges who are selected have sufficient professional experience; however, most of appointments are made by the President (or with his approval), which reduces effectiveness and independence.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Most of the judges are appointed by the President.

References:

Code on Judiciary and Status of a Judge in Belarus.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

There is always a an explanation of decisions at any conclusion of any court.

References:

Constitution.

Code on Judiciary and Status of a Judge in Belarus.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Judges are formally required to explain their judgments in detail, establishing a body of precedents. All judges comply with these requirements.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

There is a qualified collegium of judges who perform the role of a disciplinary agency.

References:

Article 114, Code on Judiciary and Status of a Judge in Belarus.

<http://www.justbel.info/2005-9/art5.htm>

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

According to the Code and Constitution, all judges and judicial disciplinary agency are protected from political interference. However, sure, one can argue that in an authoritarian state nothing is independent from political interference.

References:

Code on Judiciary and Status of a Judge in Belarus.
Constitution

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In 2007, there were disciplinary investigations concerning 82 judges, while in 2006 there were investigations of 83 judges and in 2005 investigations of 106 judges.

However, as all judges are under strong political influence and most of them are appointed by the President, it is difficult to talk about fully free and transparent investigations.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

<http://www.court.by/legal-documents/plenary-acts/f3864d5ca2a953dc.html>

<http://www.supcourt.by/cgi-bin/index.cgi?vm=d&vr=kolleg1&vd=8&at=0>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In 2007, 73 judges, of 82 investigated, were punished while 9 judges were absolved.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

<http://www.supcourt.by/cgi-bin/index.cgi?vm=d&vr=kolleg1&vd=8&at=0>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

36

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

All civil servants, including members of the national-level judiciary, are obliged to annually declare their income and assets. But these declarations are to be checked only by the Ministry of Taxes.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Civil servants are not allowed to accept gifts and hospitality which are not regulated by legislation and connected with fulfilling their duties, except souvenirs (Article 22, The Law on Civil Service). All gifts shall be transferred to state income and be used according to legislation.

References:

Article 22, The Law on Civil Service (2003).

Article 24, The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

The forms are to be fulfilled and sent to the Ministry of Taxes. But this ministry is not an independent audit organization; secondly, these forms are not to be disclosed to the public and only for internal state consumption (control).

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

A civil servant is banned from engaging in entrepreneurship (Article 22, The Law on Civil Service).

But any official can enter the private sector the day after leaving a civil service position.

References:

Article 22, The Law on Civil Service (2003, amended in 2007).

The Law on Entrepreneurial Activity (2004).

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no such regulations.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly

lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations in general are effective, however, there are ways to avoid them and accept the gifts and hospitality. Some business people and ordinary people complain that courts are not fair and are corrupted.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

According to legislation, national-level judiciary asset disclosures are not audited, however, judges must fulfill declarations of their incomes and assets. The Ministry of Taxes annually takes this information, however, they are neither disclosed, not audited.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

Comments:

Similar to asset disclosure forms filed by members of other branches of government, the form is sent to the Ministry of Treasury. Although the form is filed, it is not available to the public as there is no independent auditing.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

Comments:

Although the form is filed, it is not available to the public as there is no asset disclosure. Citizens can not access judicial asset disclosure records within any time period as the forms are banned from public access.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

Tax Code.

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

Comments:

Although the form is filed, it is not available to the public as there is no asset disclosure.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

Parliament and the Council of the Republic of Belarus approve the budget and any governmental changes to it.

References:

The Law on Budget (adopted annually).

The Law on National Assembly of the Republic of Belarus (Parliament) – House of Representatives.

The Law on National Assembly of the Republic of Belarus – Council of the Republic of Belarus.

Articles 19 through 22, The Law on Budget System of Belarus and State Budget Funds.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

According to The Law on Budget, all significant public expenditures require legislative approval.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | **25** | 0

Comments:

In practice, legislators have little staff and limited skills for proper monitoring of the budget process. Besides, Parliament, in practice, plays a minor role in the economic and political life of the country, and automatically approves all government initiatives (expenditures).

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There is hardly any formal access for the public to participate in budget hearings. Independent journalists meet difficulties in getting accreditation in Parliament.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | **25** | 0

Comments:

Citizens hardly can access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency. There are some budget statistics, but the information is hard to obtain and it is highly aggregated.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

17

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | **50** | 25 | 0

Comments:

The Ministry of Finance regularly submits reports to the Commission on Budget, Finance and Tax Policy, but these reports may be inconsistently delivered or lack important details.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

As there are no free and fair Parliamentary elections in Belarus, all legislators are generally appointed by President A. Lukashenko (new elections on Sept. 28, 2008). The Commission on Budget, Finance and Tax Policy consists of people who are 100 percent loyal to the President, who is the head of executive power. There are no opposition parties in Parliament.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Budget, Finance and Tax Policy is loyal to the government (President); it does not effectively investigate financial irregularities and approves most of the initiatives of the Ministry of Finance.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

Within Parliament there is a special Commission on Budget, Finance and Tax Policy, which legally is to provide oversight of public funds.

References:

Structure of the State bodies in Belarus: House of Representatives (Parliament):
<http://house.gov.by/index.php/2126,,,0,0,0.html>

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁶⁹ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Article 22, The Law on Civil Service (2003).

Article 24, The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

An applicant for civil service could be rejected in the case of close family relation with other civil servants (parents, spouses, children, brothers and sisters, as well as parents, children, brothers and sisters of spouses) if their civil services would be directly connected with subordination to or governance of one of them.

References:

Article 22, The Law on Civil Service (2003).

Article 24, The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

Comments:

A civil servant has a right to investigate his services and deny (disapproving) data which defame his honor and dignity (Article 20, The Law on Civil Service). A civil servant has a right to appeal to his supervisors and/or to the court for solving the issues, connected with his service, including the issues of his employment, providing service, violation of his rights, transfer to another service, disciplinary or material responsibility, disregard of his legal and social protection, firing and other issues.

References:

Constitution

The Law on Citizens' Appeals (1996, 2004).

Article 20, The Law on Civil Service (2003).

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

In the case of any police record, a state organ has the right to reject an applicant for civil service employment. For perpetrated crimes, a court may impose a punishment such as a ban on accepting any position in civil service during some time period.

References:

Articles 20, 21 and 23, The Law on Civil Service (2003).

Criminal Code.

Constitution

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

58

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In general, all civil servants are influenced by the political situation and can be appointed only if they do not participate in any opposition activities and are personally loyal to the President.

Civil servants are banned from publicly criticizing authorities and current economic (political, foreign) policies.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments and professional assessments are often based on political considerations.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism, cronyism, and patronage are commonly accepted principles in the hiring, firing and promoting of civil servants. Many relatives of high-level officials have positions in the civil service. Officials defend the current situation stating that relatives' activities are not subordinated (the law bans only direct subordination and governance).

The information on concrete examples are not widely publicly available, but it is a well-known fact that the eldest son of President A. Lukashenko works as his primary assistant in the Presidential administration and he is a member of the state Security Council. His second son is head of a Presidential sport club.

There are children and relatives of civil servants in all state bodies.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

http://naviny.by/rubrics/politic/2007/01/10/ic_articles_112_149289/

<http://www.charter97.org/rus/news/2005/02/08/mid>

<http://21.by/news?id=289579>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants have formal job descriptions, establishing levels of seniority, assigned functions and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and basic pay.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Governmental Instructions

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Salaries and some bonuses represent the income of civil servants. However, due to corruption the true income of many civil servants is much higher.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government publishes such a list but it is sometimes delayed or incomplete. In general, it is easy to know who is in which position, however information on vacancies is not always available.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

The civil service redress mechanism sometimes relies on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to conduct.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In the past year, no civil servants or any employees from the budgeted sphere have been paid late. In 2008, there were 956 cases of the government not paying on time but they only refer to enterprises (mainly private).

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk,

Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

<http://www.afn.by/news/i/102196>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | **50** | 25 | 0

Comments:

In practice, civil servants convicted of corruption are prohibited from future government employment.

As for the recent case of Konoplev and other top-officials, they were not officially convicted for any crime (corruption). Actually, it was not even in court, just some gossip. So, if a person is officially convicted in corruption, after a prison sentence, there are limitations on their further work as civil servants. The problem of Belarus is that many top-officials lose their jobs (currently or permanent) or change positions without open public hearings or investigation on corruption.

References:

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

All civil servants are obliged to annually declare their incomes and assets. But these declarations are to be checked only by the Ministry of Taxes.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

There are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

References:

The Law on Civil Service in the Republic of Belarus (2003).

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

A civil servant is banned from engaging in entrepreneurship (Article 22, The Law on Civil Service).

But any official can enter the private sector the day after leaving a civil service position.

References:

Article 22, The Law on Civil Service (2003, amended in 2007).

The Law on Entrepreneurial Activity (2004).

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

Civil servants are not allowed to accept gifts and hospitality that are not regulated by legislation and connected with fulfilling their duties, except souvenirs (Article 22, The Law on Civil Service). All gifts shall be transferred to state income and be used according to legislation.

References:

Article 22, The Law on Civil Service (2003).

Article 24, The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

Officials are obliged just to declare their assets and income. Although the form is filed, it is not available to the public as there is no asset disclosure.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

Comments:

Most enterprise owners and top-level officials regularly give bribes to Belarussian officials.

Transparency International reports a worsening of the problem, placing Belarus below Russia with respect to corruption.

References:

IPM Research Center Report, Business in Belarus 2007: Status, Trends, Perspectives:

<http://research.by/eng/belbusiness/>

Transparency International Survey, 2006-2008.

Interview with an owner of several cafes in Minsk:

<http://belarus.bel.biz/content/view/77/79/>

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

Comments:

Many civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | **0**

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Although the form is filed, it is not available to the public as there is no asset disclosure.

References:

Article 23, The Law on Civil Service (2003).

The Law on Declaring Income and Assets (2003, amended in 2007).

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Persecution or dismissal of civil servants for doing proper services is illegal. The same is relevant for any employee.

References:

Criminal Code (1999).

Labor Code (1999).

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Public sector whistleblowers often face substantial negative consequences, such as losing their job, relocation to a less prominent position, or some form of harassment.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Persecution or dismissal for performing proper services is illegal.

References:

Criminal Code (1999).

Labor Code (1999).

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Private sector whistleblowers could face substantial negative consequences, such as losing their job, relocation to a less prominent position, or some form of harassment.

References:

Interview with Dr. Elena Rakova, economist of the IPM Research Center (Minsk, 15.08.2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

100

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

All state bodies have staff sufficient to fulfill their basic mandate. Complaints via hot-lines and written complaints are either considered by professionals or sent to special agencies which have full-time professional staffs.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

State bodies have a predictable source of funding that is fairly consistent from year to year.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period. Citizens can expect a resolution within a month after registration the complaint in most cases.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

When irregularities are discovered, the state agencies are aggressive in investigating the government on corruption. The Prosecutor's Office and State Control Committee regularly start investigations and punish criminals.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

<http://prokuratura.gov.by/main.aspx?guid=18364>

<http://www.kgk.gov.by/>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Every ministry or state organ has a special hot-line (trust phone") which one can call and report (nameless, anonymously) cases of corruption or misuse of public funds.

One can appeal to the state organs that are responsible for fighting corruption — Prosecutor's office, the Ministry of Internal Affairs and KGB (Articles 6, 8 and 9, The Law on Fighting Corruption).

References:

Phone Hot-Line

Articles 6, 8 and 9, The Law on Fighting Corruption

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

88
IV-3. Procurement

51. Is the public procurement process effective?

45

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

All public procurement must be realized by the procedure of transparent tender and meet governmental agreement.

References:

Resolution of the Council of Ministries #1633 on Some Issues About Public Procurement of State and Unitary Enterprises (July 12, 2006).

Presidential Edict #529 on Public Procurement (Aug. 25, 2006).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

References:

There is no mandatory regular required training of public procurement officials.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

Comments:

The procurement procedure is not always transparent and often suppliers complain about discrimination. There are conflicts of interests with groups, some violations may not be enforced, or some officials may be exempt from regulations.

References:

http://naviny.by/rubrics/economic/2008/07/08/ic_articles_113_157941/

http://www.belta.by/ru/news/archive?date=13_06_2008&page=1&id=234075

http://www.government.by/ru/rus_dayevents20080708.html

<http://news.tut.by/world/43877.html>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

Some procurement officials as high-level civil servants annually declare their income and assets.

References:

Such a mandate does not exist.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

All procurements require competitive bidding. In addition, all procurement for totaling more than 280 million rubels (US\$135,000) must be agreed upon with a state body. If procurement is more than US\$3.5 million, there are two procedures of agreement with governmental bodies and confirmation of the deal must be obtained in the government. A procurement more than US\$8.5 million must meet all the above mentioned requirements and also get approval from the President.

References:

Resolution of the Council of Ministries #1633 on Some Issues About Public Procurement of State and Unitary Enterprises (July 12, 2006).

Resolution of the Council of Ministries #1894 on Some Issues About Public procurement (Dec. 29, 2007).

Presidential Edict #529 on Public Procurement (Aug. 25, 2006).

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

There are no such regulations.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

There is always a formal appeal process for unsuccessful bidders.

References:

<http://www.newsby.org/news/2008/05/28/text8659.htm>

Civil Code (1999).

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

A firm can appeal to the Prosecutor's Office according to general procedure. If there is any violation, the court will investigate the case.

References:

Civil Code

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | **NO**

Comments:

However, a firm which is guilty of major violations of procurement regulations (i.e. bribery) would likely be shut down for its crimes.

References:

No such process exists.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such system. But the Prosecutor's Office sometimes checks the procedures of procurement and investigates. If firms break the law, they can face legal punishment.

References:

<http://www.newsby.org/news/2008/05/28/text8659.htm>

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

92

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

All regulations on public procurement are published and citizens can find them on the Internet as well.

References:

Resolution of the Council of Ministries #1633 on Some Issues About Public Procurement of State and Unitary Enterprises (July 12, 2006).

Resolution of the Council of Ministries #1894 on Some Issues About Public Procurement (Dec. 29, 2007).

Presidential Edict #529 on Public Procurement (Aug. 25, 2006).

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

The Commission on Holding a Tender on Public Procurement publicly announces future tenders and their results.

References:

Resolution of the Council of Ministries #1894 on Some Issues About Public Procurement (Dec. 29, 2007).

Presidential Edict #529 on Public Procurement (Aug. 25, 2006).

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are printed in special issues and available online at specialized websites.

References:

<http://news.tut.by/it/112464.html>

http://www.government.by/ru/rus_dayevents20080708.html

Interview with Sergey Balykin, lawyer (Minsk, Sept. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free to all citizens or available for the cost of photocopying.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | **50** | 25 | 0

Comments:

Sometimes procurements are not properly advertised, a foreign supplier cannot find information on place and time of a tender. Often foreign (and Russian) suppliers complain that by hiding information, Belarus discriminates against them in favor of Belarussian suppliers (protectionism). The time between advertisements and bidding is sometimes too short to allow for full participation.

References:

http://naviny.by/rubrics/economic/2008/07/08/ic_articles_113_157941/

http://www.belta.by/ru/news/archive?date=13_06_2008&page=1&id=234075

<http://news.tut.by/world/43877.html>

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Holding a Tender on Public Procurement publicly announces tenders and their results.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

The Law on Denationalization and Privatization of State Property in the Republic of Belarus (1993).

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

In law, civil servants are banned from participating in privatization. There are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials.

References:

The Law on Denationalization and Privatization of State Property in the Republic of Belarus (1993).

The Law on Civil Service (2003).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

Comments:

The President plays the major role in privatization, determining whom and what to sell.

President Lukashenko informally banned voucher privatization as he wants to sell enterprises only for money to foreign investors. Privatization in Belarus has a non-transparent nomenklatura” character.

Private Belarussian business does not participate in privatization. In general privatization is replaced by formal corporatization, after which the state is still the main or single stakeholder.

References:

<http://www.pravo.by/win/text.asp?RN=v19302103>

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Rakova E., Privatization in Belarus: Legislation and Real Practices, BISS SA 1/2008-PRIV (2008):

http://www.belinstitute.eu/index.php?option=com_content&task=blogsection&id=0&Itemid=81&limit=9&limitstart=18

Rakoba E., Privatization in Belarus: Monitoring of Main Changes, BISS SA 3/2008-PRIV (2008):

http://www.belinstitute.eu/index.php?option=com_content&task=view&id=191&Itemid=81

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

70

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Privatization legislation is generally open to the public; many offers (enterprises and objects to be privatized) are available on the site of the Ministry of Economy. However, some privatization details (deals) are kept secret from public and issued by Presidential Edicts.

References:

The Law on Privatization

http://www.belinstitute.eu/index.php?option=com_frontpage&Itemid=1&limit=9&limitstart=9

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The State Property Fund has a website which advertises privatization and provides information on all kinds of transactions.

However, privatization is often determined by Presidential Edicts.

So, there is no formal process of advertising privatization — a few deals of 2007 had a closed, non-transparent nature. In the case of profitable enterprises, they are sold without open tender.

References:

Rakova E., Privatization in Belarus: Legislation and Real Practices, BISS SA 1/2008-PRIV (2008):

http://www.belinstitute.eu/index.php?option=com_content&task=blogsection&id=0&Itemid=81&limit=9&limitstart=18

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The government announces the results of privatization through contacts with mass media, official statements or press conferences.

References:

The Law on Denationalization and Privatization of State Property in the Republic of Belarus (1993).

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The results and conditions of some privatization deals can take more than one month to obtain. In some cases, the results and regulations can be available sooner, but in other cases privatization is non-transparent and has a "nomenklatura" nature.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Rakova E., Privatization in Belarus: Legislation and Real Practices, BISS SA 1/2008-PRIV (2008):
http://www.belinstitute.eu/index.php?option=com_content&task=blogsection&id=0&Itemid=81&limit=9&limitstart=18

Rakoba E., Privatization in Belarus: Monitoring of Main Changes, BISS SA 3/2008-PRIV (2008):
http://www.belinstitute.eu/index.php?option=com_content&task=view&id=191&Itemid=81

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Legislation is mainly available online, however, in some cases privatization deals are regulated by special Presidential Edicts, prepared in advance for a non-transparently chosen foreign investor.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Rakova E., Privatization in Belarus: Legislation and Real Practices, BISS SA 1/2008-PRIV (2008):
http://www.belinstitute.eu/index.php?option=com_content&task=blogsection&id=0&Itemid=81&limit=9&limitstart=18

Rakoba E., Privatization in Belarus: Monitoring of Main Changes, BISS SA 3/2008-PRIV (2008):
http://www.belinstitute.eu/index.php?option=com_content&task=view&id=191&Itemid=81

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. National Ombudsman

56. Is the national ombudsman effective?

0

56a. In law, the ombudsman is protected from political interference.

YES | **NO**

References:

There is no such institution.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

0

57a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such institution.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | **NO**

References:

This function is a secondary concern of a larger body, such as the legislature.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

47

59a. In law, the supreme audit institution is protected from political interference.

YES | **NO**

Comments:

The Audit Chamber is under the governance of the Ministry of Finance.

References:

The Law on Audit in Belarus (2007).

Resolution of Council of Ministries #1862 on Improving in Belarus State Regulation and Control of Audit (Nov. 30, 1999).

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | **0**

Comments:

The director of the agency can be removed at the will of the political leadership.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Chamber has sufficient staff to fulfill its basic mandate.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Chamber has a predictable source of funding that is fairly consistent from year to year.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Chamber makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work. All annual obliged audit conclusions (for companies which must have an annual audit) are publicly available.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

Comments:

In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

The supreme audit institution generally decides itself what to investigate, and when, but it is subject to pressure from the executive or legislature on politically sensitive issues.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

33

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

All annual obliged audit conclusions (for companies which must have an annual audit) are publicly available.

References:

The Law on Audit in Belarus (2007).

Resolution of Council of Ministries #1862 on Improving in Belarus State Regulation and Control of Audit (Nov. 30, 1999).

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

Comments:

Audit information, according to The Law on Audit in Belarus, is considered as confidential. Therefore, no one except the courts have access to it. Even in the case of obliged audit, the information is closed to public and even shareholders have a limited access to it (access only to the financial report which corporations publish).

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Irina Lukjanova, independent auditor (Minsk, Sept. 15, 2008).

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

Comments:

Audit information is considered confidential and legally cannot be acquired at any cost.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Irina Lukjanova, independent auditor (Minsk, Sept. 15, 2008).

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

An Audit Chamber was created by the Resolution of Council of Ministries #1862 on Improving in Belarus State Regulation and Control of Audit (Nov. 30,1999).

However, the Audit Chamber has the following main functions: ensuring state regulation and control of audit firms, elaboration of methodologies, search on market of audit service in Belarus.

The function of covering the entire public sector is a secondary concern of a larger body, such as the executive (Ministry of Finance).

References:

The Law on Audit in Belarus (2007).

Resolution of Council of Ministries #1862 on Improving in Belarus State Regulation and Control of Audit (Nov. 30, 1999).

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

60
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has sufficient staff to fulfill its basic mandate.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

<http://nalog.by/institution/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry, Committee and its Inspection units have sufficient staff to fulfill its basic mandate.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

<http://nalog.by/institution/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All ministries and state organs in Belarus are financed fully and on time from the Republican budget.

References:

<http://nalog.by/institution/>

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

The Ministry for Taxes and Levies.

<http://nalog.by/>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

100

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax laws are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

References:

Interview with Alexander Chubrik, economist for IPM Research Center (Minsk, Sept. 12, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Customs are collected by the State Custom Committee.

References:

The Law on State Tax Inspection of the Republic of Belarus (1994).

Resolution of the Council of Ministries #1591 on The Statement of the Ministry of taxes and levies in the Republic of Belarus (Oct. 31, 2001).

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

100

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Gleb Shymanovich, economist for IPM Research Center (Minsk, Sept. 12, 2008).

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

75

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The ministries and concerns are part of the government and have no formal independence from the government and President.

References:

<http://www.president.gov.by/en/press23538.html>

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The ministries and state concerns have full-time professional staff sufficient to fulfill their mandate.

References:

Website of the Ministry of Economy:

<http://w3.economy.gov.by/ministry/economy.nsf/all/7559DC978EB96D01C22569B6002A7245?OpenDocument>

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Dr. Vitaliy Silizki, head of the Belarussian Institute for Strategic Studies (Minsk, Aug. 21, 2008).

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All ministries in Belarus receive predictable and sufficient funding according to the annually adopted Law on Budget.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Sept. 9, 2008).

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ministries and concerns oversee their enterprises, however, such function is primarily performed by inspection organs — State Control Committee, State Security Agency (KGB), Ministry of Internal Affairs. However, in some cases, due to political or other (corruption) reasons, these agencies could be slow in starting an investigation or unwilling to initiate such an investigation of big state enterprises.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

Comments:

The state oversight agencies — State Control Committee (within their Department of Financial Monitoring and Department of Financial Investigations), KGB and the Prosecutor's Office are aggressive in punishment when violations are discovered. For example, the head of a state concern, Belneftehim A. Borovski, was arrested and put in prison for unfair oil purchases deals with Belarussian refineries.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Website of the State Control Committee, materials on investigations and penalties:

<http://www.kgk.gov.by/news/fd2d65edc5698473.html>

Select media reports on the process of the Borovski case" — court under the head of the state concern Belneftehim:

<http://www.charter97.org/be/news/2008/2/18/3926/>

<http://imperiya.by/news.html?id=846>

J. Romanchuk, "Nerves on the Property Use," Material based on the results of State Control Committee activity in 2007 (2008):

<http://allminsk.biz/content/view/1981/116/>

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

0

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

The financial records of state-owned companies (as well as private) are closed to the public. Personal records of enterprises are considered commercial information. The Ministry of Statistics aggregates the data and then distributes aggregate indicators. State bodies are required to keep all financial information as tax secrets (Article 82, Tax Code).

References:

Articles 8 and 9, The Law on State Statistics (2004).

Resolution of Council of Ministries #670 on Commercial Secrets (Nov. 6, 1992).

Article 82, Tax Code (2004).

The Law on Accounting (2001).

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Financial data is not publicly available.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

There are private Belarussian audit companies, but international accounting standards are not applied in Belarus (there are some

plans to accept them in 2011). Some enterprises are obliged to go through an annual national audit (JSCs (joint stock companies), banks and non-banking financial organizations, insurance companies, stock exchanges, companies with foreign investments and foreign companies).

An enterprise may do an international audit voluntarily if it plans to get a credit from a foreign bank.

References:

The Law on Audit (2007).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, the records are mainly not available. However, sometimes some information could be published by the ministries for journalists (due to their investigations).

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are closed and could be acquired only if a ministry wants to publish the information or due to a journalist's investigation (whose tactics for obtaining this kind of information are kept private).

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Jaroslav Romanchuk, executive head of the United Civil Party and head of the Mises Center in Belarus (Minsk, Aug. 15, 2008).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

The state owned companies are overseen and managed by a set of ministries (Ministry of Industry, Ministry of Economy, Ministry of Communications, etc.) and state concerns (quasi-ministries) — Belneftehim (chemistry and oil refinery industries), Bellegprom (light industry), etc.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several

government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

58
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

Any firm can apply for to obtain a license if this activity fits to their statute (for example, an auditing company cannot apply for acquiring a license for retail sale).

References:

Presidential Decree #17 on Licensing Some Kinds of Activity (July 14, 2003).

Presidential Decree #7 on Some Changes and Additions to Presidential Decree #17 on Licensing Some Kinds of Activity on July 14, 2003 (Nov. 26, 2006).

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

There is always a formal process for citizens and enterprises to appeal the denial of a business licence.

A firm can complain and appeal for the refusal to acquire, prolong or make amendments in its license in a court (Presidential Decree #17 on Licensing Some Kinds of Activity).

References:

The Law on Citizens' Appeals (1996).

Article 354, Civil Code.

Administrative Code.

Presidential Decree #17 on Licensing Some Kinds of Activity (July 14, 2003).

Presidential Decree #7 on Some Changes and Additions to Presidential Decree #17 on Licensing Some Kinds of Activity on July 14, 2003 (Nov. 26, 2006).

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In most cases obtaining a license takes one month. However, often a firm needs some additional permits.

For example, according to the WB research Doing Business 2009, the time required to deal with construction permits — including obtaining a license — fell considerably, amounting to 140 days in 2008.

References:

<http://www.doingbusiness.org/Reformers/ECA2008.aspx>

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

A license, in most cases, costs between 100 euros and 300 euros (US\$128 and US\$383), which is not cheap for a small business (sometimes a firm needs many licenses and other permits). However, this sum is not a major financial burden to larger firms.

Licenses always require a visit to a specific office, sometimes in the region, sometimes in the country's capital.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

Basic business regulatory requirements for meeting public health standards are transparent and publicly available.

References:

The Law on Certification of Products and Services (1995).

State Committee for Standardization:
<http://gosstandart.gov.by/Celi.php>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

All procedures, requirements and standards are provided on the website of the State Committee for Standardization.

References:

The Law on Certification of Products and Services (1995).

State Committee for Standardization:
<http://gosstandart.gov.by/Celi.php>

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

All procedures, requirements and standards for meeting public safety standards are transparent and publicly available on the website of the State Committee for Standardization.

References:

The Law on Certification of Products and Services (1995).

State Committee for Standardization:
<http://gosstandart.gov.by/Celi.php>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

67

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Bribes are occasionally paid to extract favorable treatment or expedite processing. According to surveys and interviews with business people, they sometimes give bribes to the representatives who perform sanitary and fire inspections. This could lead to double standards in their procedures.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Authors: Chubrik, A., Fadeev, V., Glambotskaya, A., Kozarzewski, P., Rakova, E., Shymanovich, G., Editors: Chubrik, A., Pelipas, I., Rakova, E., Business in Belarus: Status, Trends Perspectives Analytical Report (2006, 2007):

<http://research.by/eng/belbusiness/>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Public environmental standards are described and given in a set of permits, norms, standards, etc. Therefore, business

inspections are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

Bribes are occasionally paid to extract favorable treatment or expedite processing. According to surveys and interviews with business people, they often give bribes to the representatives who perform sanitary and fire inspections.

Many such standards are to be determined by an official because in some cases there are no appropriate equivalents or exact standards.

References:

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Authors: Chubrik, A., Fadeev, V., Glambotskaya, A., Kozarzewski, P., Rakova, E., Shymanovich, G., Editors: Chubrik, A., Pelipas, I., Rakova, E.

Business in Belarus: Status, Trends Perspectives Analytical Report (2006, 2007):

<http://research.by/eng/belbusiness/>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁸⁷Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

Attempted or uncompleted criminal action is considered a crime.

References:

The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

Crime Code (1999).

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

In law, extortion is illegal.

References:

The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2005).

Crime Code.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2000, amended in 2005).

Crime Code.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2000, amended in 2005).

Crime Code.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Article 1, The Law on Fighting Corruption (2006).

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

The Law on Fighting Corruption (2006).

The Law on Entrepreneurial Activity (2004).

The Law on Civil Service (2003).

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

The Law on State Secrets.

The Law on Civil Service (2003).

The Law on Fighting Corruption (2006).

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2000, amended in 2005).

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

The Law on Fighting Corruption (2006).

The Law on Measures to Prevent Legalization of Income Acquired in an Illegal Way (2000, amended in 2005).

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

69

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

All agencies are legally separated.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

The state agencies are often influenced by political decisions. In fact, only the state itself (through its agencies) organizes anti-corruption investigations.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The President appoints all top officials and can remove them without a reasonable explanation.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments are usually based on professional qualifications (judicial education is obliged). However, all individuals appointed have clear presidential loyalty.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

All state agencies (ministries) have professional and sufficient staff to fulfill their basic mandates.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All state agencies receive sufficient funding.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The state anti-corruption agencies (Ministry of Internal Affairs, KGB or Prosecutor's Office) publish reports on their activities. However, the reports are sometimes delayed or incomplete.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Anti-corruption agencies aggressively start independent investigations, but later in the investigations they could meet political interference.

For example, a few KGB people were arrested in connection with a corruption investigation. The investigation was conducted by the Prosecutor's Office:

<http://telegraf.by/belarus/2007/06/11/prison/>

The Ministry of Internal Affairs is investigating a case of corruption and economic crime by an NGO, the Society of Disabled People of Belarus:

<http://www.afn.by/news/i/105941>

The Prosecutor's Office investigated the case of corruption by A. Borovski, formerhead of the state concern Belneftehim. He was sent to prison for five years:

http://new.sb.by/post/Byivshiy_rukovoditel/fontsize/9/; http://www.belta.by/ru/news/archive?date=13_02_2008&page=1&id=199881

More information on the Prosecutor's Office fighting corruption is on the agency website, including a case of corruption in the utility sector of the Vitebsk region, a bribe case in Mogilev region of Minsk, etc.:

<http://prokuratura.gov.by/main.aspx?guid=10143>

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All complaints by citizens are considered and replied to within a month.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

Whistleblowers are sometimes able to come forward without negative consequences. In other cases, whistleblowers are punished for disclosing information, either through official or unofficial means.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

There are a few agencies which fight corruption in Belarus. They are: Prosecutor's Office, State Control Committee, Ministry of Internal Affairs, and KGB.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

81
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

100

77a. In law, there is a general right of appeal.

YES | NO

Comments:

There is always a formal process and possibility to appeal. Where to appeal depends on the issue, sphere of activity and competence.

References:

Civil Code.

Administrative Code.

Criminal Code.

Tax Code.

The Law on Citizens' Appeals.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In general, an appeal is considered within a month after the day of registration with a state body, to which competence the complaint belongs. Often, a reply takes 15 days.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

The Law on Citizens' Appeals.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeal itself is free and if there is a need for an attorney, a fee is not a barrier to the appeal.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are usually enforced quickly, regardless of what is being decided or who is appearing before the court.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

75

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution

Code on Judiciary and Status of a Judge in Belarus.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

National-level judges are appointed by the President and, therefore, are commonly influenced by politics and personal biases or incentives.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Code on Judiciary and Status of a Judge in Belarus.

The Law on Supreme Court.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Generally, only the President can remove a judge. According to the law, removal must be related to abuse of power or other offenses related to job performance.

References:

Code on Judiciary and Status of a Judge in Belarus.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There were no documented cases during the study period of judges being assaulted because of their involvement with a corruption case.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There were no documented cases during the study period of judges being killed related to their involvement with a corruption case.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

100

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are not affected by racial or ethnic bias.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

During 2003-04, the share of women-judges was 49.8 percent. This number is an increase of 17 percent since 2002.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

I. Rogach, The Staffing of Courts in Belarus, Judiciary in Belarus, #3 (2004):

<http://www.justbel.info/2004-3/art10.htm>

I. Chutkova, Z. Uk, Encouragement and Protection of Women in the Republic of Belarus (2006):

http://evolutio.info/index.php?option=com_content&task=view&id=35&Itemid=38

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | **NO**

Comments:

The law guarantees to every citizen a right to have a free advocate. If a person cannot pay for a defense attorney, one will be appointed by state organs free of charge.

References:

Article 4, The Law on Advocateship (1993).

Crime Code.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

The state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Appointments are usually based on professional qualifications. Individuals appointed may have clear presidential loyalty, however.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

As all state bodies, law enforcement agencies have budgets sufficient to carry out their mandates.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The agencies are independent but sometimes investigations and court decisions can be influenced by political incentives. Some state officials can receive a small punishment or get legislative pardon by the President, while the political opposition and NGO leaders receive more pressure and harassment due to the political situation.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

79

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

There is always an appeal option in the complaint mechanism. One can complain to higher levels of the police, Prosecutor's Office, Presidential administration, etc.

References:

The Law on Citizens' Appeals.

Civil Code.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

The complaints usually receive a response to within a month. However, there could be some minor exceptions.

References:

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

One can always appeal to all these agencies with corruption issues.

References:

State Control Committee

Prosecutor's Office

Ministry of Internal Affairs

Presidential Administration

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

State organs start investigations, but they are limited in their effectiveness. The agencies may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce judgments.

References:

<http://mvd.gov.by/modules.php?name=News&file=article&sid=3248>

<http://www.charter97.org/ru/news/2008/6/2/7064/>

<http://pravo.by/showtext.asp?1164796212256>

http://naviny.by/rubrics/criminal/2008/02/29/ic_news_123_286664/

<http://www.prokuratura.gov.by/main.aspx?guid=10087&page=4&search=%D0%BA%D0%BE%D1%80%D1%80%D1%83%D0%BF%D1%86%D0%B8%D0%B5%D0%B9&statu>

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | **NO**

Comments:

In law, law enforcement officials are not immune from criminal proceedings.

References:

Constitution

Crime Court.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

Comments:

Law enforcement is generally subject to criminal investigation, but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

References:

Interview with Dr. Elena Rakova, economist for IPM Research Center (Minsk, Aug. 15, 2008).

Interview with Sergey Balykin, lawyer (Minsk, Aug. 25, 2008).

Interview with Vitaliy Braginez, lawyer and head of juridical company Braginez and Partners (Minsk, Aug. 26, 2008).

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
