

## The OSCE Advisory and Monitoring Group in Belarus

### *The Mandate*

### *Background*

On 20 July 1994, following democratic elections, Alexander Lukashenko took the oath of office as President of Belarus. This occurred on the basis of the constitution which had come into force shortly before and after a second ballot which, according to all international observers, was democratic. After bitter political disputes over the additional powers he demanded for the Presidency, he transformed the positive vote for his centrist proposal that resulted from a merely consultative constitutional referendum on 25 November 1996 - contrary to the law and to the status of political decision-making - into a decision binding on the organs of the state and promulgated a new constitution. Beyond that, he dissolved the Parliament - the 13th Supreme Soviet - which had been elected in 1995/1996, for the most part according to democratic principles, and named 110 loyal members of the old Parliament to the "Chamber of Deputies". Together with the Council of the Republic it constitutes the "National Assembly" (Parliament). The opposition was forced out of Parliament and deprived of power; oppositional forces were removed from state offices and courts. In addition to gaining full control over the state and society Lukashenko secured two important pillars of power by abrogating the separation of powers and emphasizing governmental control of the economy: these were the collective agricultural enterprises and the large state enterprises stemming from the Soviet period. He resumed production of those goods stemming from the Soviet period like tractors, refrigerators and other durable goods for the Russian market and succeeded in covering a major part of the country's annual energy bill through barter trade. However, by forgoing the kind of technical modernization that could only be achieved in co-operation with Western firms, Lukashenko led the Belarus economy into a state of ever greater economic, and hence also political, dependency on the Russian Federation. There is very close co-operation in the areas of external and internal security. This is also true of the armaments industry.

The constitutional coup eliminating those democratic structures already achieved in the course of the transition process, met with substantial resistance in Belarus - particularly from the Communists, the Belarus People's Front and the democratic forces of the centre and on the left wing of the political spectrum. Many governments in Europe as well as the United States and Canada also refused to recognize the results of the constitutional coup. They based this judgement on the objectives of the transition process in East-

ern Central Europe and the successor states of the Soviet Union as set forth in internationally agreed upon OSCE (formerly CSCE) documents. In early 1997 the European Union and the Council of Europe made a mediation attempt aimed at getting certain unconstitutional decisions rescinded, but failed. Subsequently the Council of Europe suspended Belarus's observer status in their meetings. The European Union put a stop to the ratification process on the Agreement on Partnership and Co-operation that had already been signed and ratified by a number of countries. The treaty also includes a trade agreement of the traditional kind but the partnership agreement as such, like the agreements with other countries in transition, is contingent on democratic process, the rule of law and respect for human rights in the partner country. With few exceptions the European Commission and the governments of EU member countries put an end to developmental co-operation (improvement of border-crossing arrangements, expiration of the democratization programme).

After difficult preliminary talks, agreement was reached in recent months on a small European programme valued at about five million Euros to promote the development of civil society. The fact that the government in Belarus agrees to the implementation of such programmes mitigates somewhat the exposed position of non-governmental organizations, which are generally speaking under substantial pressure from the government. The development of an open civil society has become, as it were, a constituent part of Belarusian social policy. That in itself represents an important step in the right direction.

In imposing sanctions on Belarus in 1997, the European Union and the governments of its member States conceded to re-establish a full political dialogue along with other important relations as soon as the government in Minsk resumed the process of democratic reform. That has not happened thus far. It might possibly occur in connection with the Parliamentary elections in 2000, which are stipulations of both constitutions.

Following the failure of mediation efforts, the Chairman-in-Office of the OSCE in 1997, the Danish Foreign Minister Niels Helveg Petersen, initiated a proposal in early summer to the Permanent Council of the OSCE that an Advisory and Monitoring Group be set up in Belarus. With the agreement of the Belarus government, the Permanent Council, through Decision No. 185 of 18 September 1997, decided to go ahead with this.<sup>1</sup> The group was given the task, without any time limit, of assisting the Belarusian authorities in promoting democratic institutions and monitoring their compliance with OSCE commitments. But it took several months of negotiations between the then Secretary General of the OSCE, Giancarlo Aragona, and the Belarusian Foreign Minister, Ivan Antonovich, before an agreement was reached, on 18 December 1997, on the diplomatic status and the rights of the Advisory and

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1 Cf. OSCE, Permanent Council, 129th Plenary Meeting of the Council, PC-Journal No. 129, Agenda item 1, Decision No. 185, PC.DEC/185, 18 September 1997.

Monitoring Group. The Russian government had urged the Belarusian government to accept the agreement (Memorandum of Understanding).<sup>2</sup> The Advisory and Monitoring Group, under the direction of Ambassador Hans-Georg Wieck (Germany), has diplomatic status, access to all facilities of the country, and can be visited by everyone. There are, along with the Director, four additional seconded members and an unlimited number of in-country co-workers working in the "Mission". On 18 December 1997, Foreign Minister Petersen listed the following points to define the group's responsibilities:<sup>3</sup>

- providing expert assistance in the preparation of legislation related to democracy and the development of the rule of law;
- monitoring and advice on the application of Belarusian laws;
- assisting with organizing human rights education for officials and non-officials in the field of human rights; and
- consultative assistance in the establishment and organization of democratic institutions, such as the office of an Ombudsman, a body to arbitrate disputes between citizens and state authorities.

After an initial conversation with President Lukashenko at a New Year's reception in Minsk on 13 January 1998, the group began work at the beginning of February. Its office is located in the Conference and Hotel Centre on the edge of the city which was built a number of years ago by the "International Meeting and Training Centre" of Dortmund. Several diplomatic missions and business enterprises, along with non-governmental organizations, conduct conferences and training projects there to further democratic transition and civil society in Belarus. On 27 February 1998 the Chairman-in-Office of the OSCE in 1998, the Polish Foreign Minister Bronisław Geremek, visited Minsk in the company of representatives of the other two Troika States, Denmark and Norway. In conversations with Foreign Minister Antonovich and at a conference in the offices of the Advisory Group, Geremek emphasized that Belarus is basically an integral part of the family of European states and democracies. He hoped that it would once again be able to take its appropriate place in Europe as a democratically constituted nation. Geremek criticized the persecution of the political opposition in the country.

#### *The Attitude of the Political Opposition towards the OSCE Advisory and Monitoring Group in Belarus*

The country's political opposition, which after all has no access to mass media and is not represented in the Parliamentary institutions of the state, wel-

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2 Cf. Memorandum of Understanding between the Government of Belarus and the Organization for Security and Co-operation in Europe on the OSCE Advisory and Monitoring Group in Belarus, Copenhagen, 18 December 1997.

3 Cf. Document CIO.INF/26/97 of 18 December 1997.

comed the dispatch of the OSCE Advisory and Monitoring Group but expressed doubts as to whether they would make it possible to return to the constitution of 1994 and to the development of democracy and the rule of law. As opposition circles saw it, the OSCE Group in Minsk would be misused by the government as a kind of "fig leaf" to create, nationally and internationally, an impression of democracy and to misrepresent the institutions of the autocratic state as democratic.

*The OSCE - Caught between an Authoritarian Regime and Defenders of the Democratic Constitution of 1994*

*OSCE - Symbol of the Peaceful Settlement of Disputes*

The range of strategies and instruments at the disposal of the Organization for Security and Co-operation in Europe for solving internal or cross-border problems of security, protecting minorities, as well as working out the dilemmas of democracy and human rights, is limited to peaceful means. The use of military force is ruled out. With regard to Belarus this means trying to find a way to reach an understanding and achieve a new political consensus between hostile political forces - the Lukashenko camp on the one side and the camp of his opponents, the members of the 13th Supreme Soviet and the oppositional political parties, on the other. This would have to be an understanding bringing political peace to the country and enabling it to return to the ranks of European democracies - an internal peace which can only thrive on the basis of

- the rule of law,
- a democratic order with separation of powers and a democratically legitimized President,
- a democratic Parliament emerging from free and internationally recognized elections, and
- the protection of individual human rights.

The dispatch of the OSCE Mission was viewed by the opposition with mixed feelings. The five-headed Presidium of the 13th Supreme Soviet elected in 1995/1996, under the chairmanship of Semyon Sharetsky, concluded from the illegal procedure in which Lukashenko used a controversial referendum to strengthen his power base and to outmanoeuvre the opposition, pushing them to the margins of the political stage, that only a return to the constitution of 1994 could bring about significant political change. They call for the recognition of the 13th Supreme Soviet by the OSCE Parliamentary Assembly as democratically elected body. Belarus is still represented in the Assembly by the 13th Supreme Soviet, whose legislative period runs out at the end

of 2000. The Council of Europe has suspended Belarus's observer status in their meetings. The demand by the European Union and the Council of Europe that Belarus return to democracy, i.e. to the constitution of 1994, has made an international crisis out of a domestic political one, without any prospect for a satisfactory solution of the conflict through the application of international economic and political pressure. Indeed, the contrary seems to be the case.

The Russian Federation came to terms with the new constitutional situation in Belarus and strengthened its relations in the fields of internal and external security policy. Lukashenko returned to the policies of a mobilization economy. Policies such as subsidized credits, administratively set production goals, and prices independent of the market situation and actual cost structure of production and trade were familiar from the Soviet period. After he had reinstated these policies, it proved possible to negotiate for privileged conditions for the indispensable deliveries of oil and natural gas with the Russian Federation. Under currently prevailing contracts, 70 per cent of the annual deliveries of ten million tons of oil - or equivalent deliveries of natural gas - are to be paid in merchandise deliveries and 30 per cent in hard currency. In actual fact, the hard currency payments are far below this level and at the present time account for about eight per cent of overall costs. Arrangements for debt servicing - there are now arrears of about 500 million US-Dollars - become necessary again and again. The titles to Belarusian firms are being transferred to Russian creditors.

What strategy should the OSCE use to deal with a situation of this kind - to assist the country, through effective counselling, in resuming the process of transition towards democratic institutions and restoring legal security?

#### *Legislation that Meets European Standards*

In advising government authorities, an attempt was made to bring about legislation which met European standards: for elections, the office of an Ombudsman, and the penal system as well as standards encouraging opening the electronic mass media to the opposition. Experts were brought in from many parts of Europe and the United States. Hundreds of pages of law texts and legal commentaries were translated from Russian into English and from German, English and French into Russian. At innumerable meetings with those responsible for the preparation of new laws, texts were compared and concepts underlying laws with European standards were discussed. At the end of the day, the President or the presidential administration rejected texts that fulfilled European standards. In January 1999 the Advisory and Monitoring Group ascertained, in its commentary on the law on municipal and regional elections recently passed, that this law did not meet OSCE criteria (Copenhagen Document, June 1990). It is deficient as it fails to provide adequately for the independence and representative composition of election commissions as

well as ensuring against election manipulation by an omnipotent and omnipresent state. The opportunity for manipulation can be seen, for example, in the long period of time in which citizens may cast their votes before the actual Election Day. In summer of 1999 this critical commentary had to be repeated with regard to the new draft law to govern the Parliamentary elections for the year 2000.

#### *Developing a Capability for Dialogue between Political Opponents*

In view of poor prospects for a substantial improvement in the draft laws on matters relevant to democracy (elections, Ombudsman, the media) which had been discussed with the authorities, the Advisory Group opened a second field of consultation. The thought was to use international seminars to implant the notion of dialogue, as a way of overcoming domestic political conflict situations, in the consciousness of those who participate in the processes of opinion- and decision-making in Belarus. The objective was to promote the peaceful settlement of disputes and a balancing of interests between the various forces in the country struggling for power through democratic means. An initial conference, held in early 1998, was concerned with the meaning of "Free and Fair Election" for Belarus. A second, in September of the same year, dealt with the relationship between the "Market Economy, Social Security and Pluralistic Democracy". The Advisory and Monitoring Group placed its efforts on behalf of freedom of the press under the motto "Free Speech - without Fear". Finally, a conference was held on the "Modern Information Society". Training courses for public defenders and instruction in human rights at police academies are part of the routine. The Advisory and Monitoring Group has established a legal aid office on its own premises to which innumerable citizens of the country come. The Group visits court proceedings, prisons with prisoners awaiting trial and penal institutions as well as prisoners and convicts. The families of political prisoners are also cared for. In specific cases, the Group calls the attention of courts and ministries to violations of penal legislation and of the code of criminal procedure.

The dialogue with the opposition has turned out to be difficult. The opposition calls for an open debate with the Lukashenko government. Most of the opposition, for understandable reasons, boycotted the provincial and municipal elections in early 1999. Both of the competing Communist parties as well as the Liberal Democratic Party, which has transformed itself from a mere follower to an opposition party, took part in the local elections in April 1999 but had to put up with innumerable acts of discrimination. The democratic parties and non-governmental organizations participated on an individual basis in the elections in cities and communities with candidates who were well-respected locally.

In the struggle for a return to democracy or the development thereof, parts of the opposition take a different course than the OSCE - that of open confron-

tation. This is also the course chosen by most of the non-governmental organizations which can count on material support from the West. With a view to the expiration of the democratically sanctioned term of office of the President on 20 July 1999, the 13th Supreme Soviet, against the declared will of the country's leadership, decided on 10 January 1999 to carry out alternative Presidential elections on 16 May 1999. According to the new constitution, Presidential elections are not due until 2001. The Central Election Commission of the 13th Supreme Soviet, under the chairmanship of Victor Gonchar, organized the formal announcement of the elections and certain procedures - e.g. the selection of Presidential candidates under the difficult conditions created by the absence of personnel and administrative structures. The two candidates - Sianon Pazniak and Mikhail Chigir - succeeded in collecting the required 100,000 signatures for their candidacies but the balloting itself, on 16 May 1999, and developments in the period leading up to it turned into a disaster for the opposition. Chigir, formerly President Lukashenko's prime minister (1994-1996) was arrested at the end of March 1999 under suspicion of massive fraud and has been held ever since, without any charges having been brought to date. For many Belarusians, Chigir was and remains a great source of hope. He is an experienced administrator and well-versed in economic and financial issues. Pazniak, who lives abroad, is the controversial chairman of the Belarusian People's Front which was founded in the eighties. He accused Chigir of being politically too close to Russian interests and criticized Gonchar for massive electoral manipulation. The attempt, with the aid of election assistants, to activate almost eight million voters and go house-to-house to get them to vote, was a failure. Those citizens and political parties that support democracy were repudiated by the electoral fraud committed by the Election Commission under Gonchar. In the end Gonchar, who had counted on over 56 per cent voter participation, had to declare the election invalid - which was also a way of avoiding having to announce a winner. Pazniak had withdrawn his candidacy at the last minute to protest the manipulations. Had that been his intention from the beginning?

The confrontation strategy of the constitutionalists - i.e. the protagonists of the 13th Supreme Soviet - suffered its next setback with the attempt on 21 July 1999 to declare Lukashenko an illegal usurper and name Sharetsky - the Chairman of the 13th Supreme Soviet under the constitution of 1994 - the new head of state. Using the procedure of mandate review, a decision in this matter was postponed until the meeting of the 13th Supreme Soviet on 21 July 1999, which was attended by about 40 deputies. In somewhat obscure terms, Sharetsky indicated his willingness to enter into negotiations with the power-holder, Lukashenko, on free and fair elections. It is said these talks are to be presided over by the OSCE.

*Co-operation between the OSCE Advisory and Monitoring Group in Belarus and the Belarus Working Group of the Parliamentary Assembly of the OSCE*

In setting up a Belarus Working Group under the chairmanship of the former Romanian Foreign Minister, Adrian Severin, in July 1998, the OSCE's Parliamentary Assembly took the initiative on its own to give the Advisory and Monitoring Group - the OSCE's governmental advisory group in Belarus, so to speak - support from the parliamentary side. This collaboration between the parliamentary and governmental arms of the OSCE has proved to be very effective. Following an informal meeting with the opposition, the non-governmental organizations and the official trade unions initiated by Severin, in the vicinity of Bucharest in June 1999, a follow-up visit to Minsk in July produced a procedural break-through in the search for free and fair - and also internationally recognized - Parliamentary elections in the year 2000. In conversations with the President, representatives of the official Parliamentary institutions, and the opposition (represented by the 13th Supreme Soviet and the political parties), along with non-governmental organizations, trade unions and the media, a pragmatic approach was agreed upon, in principle, for working out the basis of a law to govern free, fair and democratic Parliamentary elections in accordance with OSCE standards in the year 2000. The OSCE will preside over government and opposition negotiations on this with non-governmental organizations serving as advisers and experts without voting rights. In the case significant solutions are achieved, they could be adopted at a political "round-table" talk at the highest level.

This negotiating process is unlikely to go anywhere, however, unless two things are achieved: adequate access to the electronic mass media for the opposition which are now - in spite of a constitutional prohibition against monopoly - under the exclusive control of the government; and an end to the government's battle against the political opposition in the form of criminal trials, as in the case of the opposition candidate for the office of the President in the alternative elections organized by the opposition in the earlier part of the year, and in numerous other cases. This point is being heavily underlined in numerous statements by the opposition and on the international level. It involves creating at least a minimal level of trust on both sides. This ought to be clear enough to the government; after all an OSCE Summit Meeting with Lukashenko's participation is on the agenda for November 1999 in Istanbul.

*Isolation and Confidence-Building*

With the steps described here - negotiations on free, fair and internationally recognized elections, cessation of prosecutions stemming from political motivation, and the opening of the electronic media to the opposition - Belarus can surmount political isolation. These steps are also essential components in the improvement of Belarus's relations with Western countries introduced by

Lukashenko following his declaration of 3 July 1999. The results-oriented conversations in July gave an idea of the shape of a compromise in the interest of internal democratization and the restoration of a durable and substantial relationship with the European Union and the United States might take. There is no doubt that the renewal of the Belarusian industrial base - the main source of the country's income - will only be possible with Western technology, Western capital and Western entrepreneurial involvement. Its co-operation with the Russian Federation, with cheap energy supplies and lively barter trade, is barely sufficient to keep the country alive. The union between the Russian Federation and Belarus, when one has discounted the unrealistic and overly ambitious idea of a joint presidency with executive competences, is a form of planning that ought to have a sense of economic proportion.

The Advisory and Monitoring Group is increasingly using resources from the European Union and voluntary contributions from the governments of OSCE participating States to further democratization by strengthening civil society. Among the projects are ones for the European Humanistic University in Minsk and for training within the political parties with the objective of promoting a pluralistic political structure. The OSCE also organizes conferences in the country to strengthen the development of local self-administration and the legal arrangements needed for regional economic development through international, cross-border co-operation. In collaboration with the government of Belarus, the European Union has now been able to set up a programme for the development of civil society valued at five million Euros which will be administered through the office of TACIS (Technical Assistance for the Commonwealth of Independent States). This, too, is an example of the growing importance of the dialogue principle rather than the use of confrontational methods. Nevertheless, the policies of the European Union and its member States are also determined by the fact that progress depends on active steps by the government to build confidence and achieve a significant dialogue.

It has been a long time since anyone in Belarus has talked about confidence-building - one of the most important principles of the OSCE. The apparatus of power in the hands of President Lukashenko and those surrounding him, an apparatus which has been kept hidden from the public and is itself characterized by internal power struggles, does not instil confidence. The impending negotiations on the election law for the Parliamentary elections in 2000, along with related matters, can in themselves be an instrument of confidence-building - perhaps the most important in the history of Belarus.