

Meeting of the OSCE observers with a delegation of the Vlaams Belang (8/6/2007)

BELGIUM AND THE RULES OF FAIR AND DEMOCRATIC ELECTIONS:

10 PROBLEMS

In this short note, we have compared current electoral practices in Belgium with what we understand to be the rules for fair and democratic elections, as outlined in the 2005 "Election Observation Handbook" (referred to below as "EOH") by the ODIHR.

We have found at least ten examples of possible or certain deviation from these rules.

Jurgen Ceder
Senator
Vlaams Belang

Other members of the delegation:

Frank Vanhecke (party president, MEP)

Gerolf Annemans (president of the VB group in the House of Representatives; member of the Council of Europe)

Karim Van Overmeire (President of the Committee on Foreign affairs of the Flemish parliament; member of the Council of Europe)

Marie-Rose Morel (member of the Flemish Parliament, head of the trade union cell)

1. Electronic voting without adequate certification procedures

EOH:

Where votes are cast by computer, the EOH calls for “*the establishment of inclusive and transparent certification procedures*” and “*Facilities that produce a permanent paper record with a manual audit capacity, and serious considerations to ensure a voter-verified auditable paper trail.*”

BELGIUM:

1. After casting his vote on the computer and depositing his electronic voting card in the voting box the voter does not receive a paper printout to deposit in a separate voting box. Hence he cannot verify how he has voted. A random count of the paper votes and a comparison of this with the results of electronic votes could augment the public's trust in electronic voting.

2. The automatic voting and supervision of the voting is carried out by a small group of experts. Neither the chairman of the voting office, his assistants, the witnesses nor the voters can effectively supervise the voting procedures. They have to rely on the correctness of the information technology and the supervision of the latter by a few technicians. Consequently, it is no longer so that “all the powers emanate from the nation” and the will of the people is not respected. I.e. electronic voting cannot be supervised by the citizens of this country. It is not transparent and leads to a lack of confidence among part of the electorate. The system of automatic voting can be opposed because supervision by people who are not familiar with information technology is no longer possible. A true democracy should be founded on a transparent electoral procedure which can easily be supervised by the citizens, while automatic voting relies solely on the trust of the electorate in the experts and the technology.

3. Prior to the elections, the source code is only given to experts appointed by Parliament and a number of information technology specialists appointed by the political parties (and their work is hampered by secrecy rules). The voter cannot consult the source codes until the day of the elections after all the voting booths have closed. This means that the people cannot check the validity of the elections beforehand, because the necessary keys to do so have not been divulged to the public. Moreover, the party information experts and the citizens only receive the source code of the software, but not the software which implements the lists. Democratic control of the voting procedures can only be guaranteed if the source codes of the voting software for the different automatic voting and vote registering procedures, and the software which implements the lists, are divulged on time among the public to allow verification and analysis.

4. The system of automatic voting in use for the elections of June 10th 2007 is completely outdated: the hardware (voting boxes, voting computers, etc.) are technologically outdated. This results in limitations, e.g. on the characters used, the performance capacity, the reliability of mechanical/magnetic carriers and the availability on the market of the employed media (discs, ZIP-discs) and in possible untraceable mistakes.

5. Since 2006 it has been decided on all levels (regional and federal) that the collected digital data may no longer be processed locally, not even on the level of the constituency. The data

have to be sent via unsupervisable electronic transmitters to the central agencies of the executive power, situated in Brussels. This is where all the data are processed. The constituencies then learn their results from these centralised agencies. To us this looks like a violation of the principle of the division of powers.

2. Discrimination in campaign financing

EOH:

“Regulations on campaign financing should not favour or discriminate against any party or candidate. ... Where the government may provide funds for campaigning, this should be done on a fair and equitable basis”.

BELGIUM:

In 1989, Belgium severely restricted the possibilities of private donations to political parties. The general idea was that political parties should not be dependent on gifts from private enterprises or suffer undue influences from economic interest groups. Individuals and enterprises are now restricted to donations to parties of 500 euro per year. To compensate for the loss of what was then still the major source of income for political parties, the parties get an annual subsidy from the state. The amount of the subsidy is dependent on the number of voters the party obtained in the last federal election. Some criticized this system at its adoption, arguing that it is hardly an improvement to have political parties dependent on the state, rather than on private enterprise.

These critics now seem to have been proven right. Confronted with the electoral rise of a party with a definite “anti-state” platform (Vlaams Belang advocates the independence of Flanders from Belgium), the state wants to stop the subsidies for the Vlaams Belang party. This is a serious step, because the loss of state subsidies does not return the right to seek private financing. This means that the Vlaams Belang would lose its major source of income by far, without the means of compensating for this loss. The result would be a party that is, in the best case, no longer able to campaign on the level of other parties, or, in the worst case, forced to disband as financial losses accumulate.

The pending court case is clearly another attempt to destroy the Vlaams Belang by legal, rather than by electoral means. After the Vlaams Blok was banned in 2004, an appeal to the Supreme Court (Hof van Cassatie) still gave the party the chance to participate in the regional elections of the same year under its own name. The landslide victory of the party in that election and the following transformation to "Vlaams Belang", showed the other parties the limitations of using the law on racism against the dissident party. They therefore switched their attention to the law on party financing.

Where previously only formal conditions were set for party financing, a new article was introduced to the law: a party that shows itself "hostile to the European Convention on Human Rights" will lose its right to party financing. It was all too clear that this exception was meant for the Vlaams Belang.

At the same time, the ruling parties made sure that the procedure can never be used against them: one third of the members of a special House/Senate committee are needed to support

complaints. In this way, the Vlaams Belang will never be able to lodge a complaint against them.

In 2006, all the French-speaking parties, supported by the Flemish socialists (though not by liberals and christian-democrats) lodged a complaint based on the new law on party financing. The case is now pending. It has been suspended for the election period, but will resume shortly after the elections.

The plaintiffs argue that some aspects of the Vlaams Belang platform are opposed to the European Convention on Human Rights and that such a party is undeserving of state subsidies.

They will not have to substantiate these charges (nor would they be able to: nothing in the Vlaams Belang program goes against human rights), as the court that will have to decide on the question, the Raad van State (Council of State), consists completely of political appointees. Members of the Court are chosen by the Senate. In theory they are assigned by secret ballot. In practice, each time there is a vote for a new appointment, one of the candidates "miraculously" obtains all the votes (except those of the VB senators). This happens because, behind the scenes, the Council of State is actually composed of judges directly supported by the ruling parties (its composition is proportional to the size of the parties). It goes without saying that the Vlaams Belang is excluded from appointing judges in this court. No-one seriously denies that all judges in the Council of State are political appointees. Moreover, a majority of them are political appointees of the parties that have lodged the complaint. And, finally, one must add that half of the judges are French speakers, who have little sympathy for Flemish aspirations towards autonomy.

The Vlaams Belang lawyers recused most of them (14 of the 22 currently on the bench), clearly demonstrating the political connections of these judges. "Justice must not only be done, it must also seem to be done", the lawyers argued. However, their protests were to no avail. The judges have refused to recuse themselves or even to answer the allegations made by the Vlaams Belang defence team. Only two of them were finally recused by the Council of State itself, because the evidence of bias was too overwhelming for even the Council to deny.

It is clear that the trial against the Vlaams Belang can in no way be considered "fair". There is little doubt about the outcome.

The ruling by the Council of State is final. The option of appeal to the Supreme Court (Hof van Cassatie) was conveniently taken out of the law, shortly before the complaint was lodged. The political parties that are acting as plaintiffs in this case, would also rather not have the European Court of Human Rights review the outcome of the trial: they are already arguing, incorrectly, that this case is about "political rights", whilst the ECHR would only be competent on questions of "civil rights".

3. Candidates and political parties do not have access to the media on a non-discriminatory basis.

EOH:

“Candidates and political parties should have unimpeded access to the media on a non-discriminatory basis. ... OSCE commitments, as agreed by all OSCE participating States, call for unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process. The media, taken as a whole, have a responsibility to provide sufficient and balanced information to enable voters to make a well-informed choice. ... Possible problems to be aware of: Defamation of candidates or distortion of candidate messages by the media. ...”

BELGIUM:

The Vlaams Belang's access to the media is limited. This is apparent in the state media (see below), but the situation is not much better in the private media. There are few exact numbers on this situation, but it is clear to even the most casual observer that the Vlaams Belang gets a lot less coverage than other parties of similar or even much smaller electoral support. Where coverage does exist, it is often hostile and intended to discourage support for the party. The hostility of all newspapers against the Vlaams Belang is clearly demonstrated by their collective refusal to accept political advertising by this party during this election.

4. The state media are clearly biased against one party

EOH:

“State-owned media, or public media, have a special responsibility to provide balanced and neutral information on the election and the contestants.”

BELGIUM:

Although the VRT (Flemish public television and radio) is bound by law to provide objective and neutral news coverage, it systematically discriminates against the Vlaams Belang.

- This discriminatory attitude was actually confirmed in an official memo by the VRT ("The VRT and Democratic Society"). In this memo, the management of the VRT stated *"that it is advised that representatives of the Vlaams Blok are excluded from certain political debates and political coverage - including coverage of activities in parliament."*

- Political parties used to have the right to regular party-political broadcasts on VRT television and radio. When it became apparent that the broadcasts by the Vlaams Belang were getting the highest ratings for this type of broadcast, the party-political broadcasts were abolished.

- The VB group in the Flemish parliament carried out research into the coverage of political parties in news programs of the VRT. The results were remarkable, though hardly surprising.

CD&V, VLD en SP.A got 30%, 29% and 29% respectively. Vlaams Belang, though the biggest political group in the Flemish parliament, got only 7% of coverage.

- The VRT has the habit of inviting political guests, not just in news programs, but also in entertainment programs. Representatives from all parties are regular guests in these programs. In its entire 30 year history, the Vlaams belang has NEVER been invited to such a show.

5. Paid political advertising in daily newspapers is available to all parties, except one.

EOH:

“If paid political advertising is permitted in the public or private media, then the costs and conditions should be reasonable and should be equally applied to all candidates.”

BELGIUM:

In the current election campaign, ALL daily newspapers have refused to accept paid political advertising by the Vlaams Belang.

In Belgium, this is a very serious handicap in campaigning. The law on party financing has put stringent limits on the methods of campaigning. Parties cannot advertise on radio or television. They cannot rent commercial billboards and cannot use any other type of outdoor advertising. They cannot distribute any "gadgets" or any objects that can be used for any other purpose than the distribution of a political message (e.g. no pens, balloons, etc.).

This leaves paid political advertising in newspapers as one of the last and most effective means for a party to get its message to the voting public. The Vlaams Belang is left with private billboarding and door-to-door flyers as its only methods of campaigning.

Typically in this context, there was also an attempt to exclude the Vlaams Blok from door-to-door flyer distribution and to limit the access of the Vlaams Belang to the Belgian postal services. A government decision has given a state agency (the Centre for Equal Rights and the Fight against Racism) the right to censure door-to-door distribution of political pamphlets. Only an appeal to the courts saved the Vlaams Belang from this type of censorship, but only during the election campaign. It is still applied outside the election campaign term.

6. One political party cannot hold a meeting in the capital

EOH:

“Fundamental freedoms such as the rights to freedom of expression, assembly, and association must be respected at all times. There should be no arbitrary or unreasonable restrictions on campaign activities, meetings, or rallies. If permits are required for public rallies or demonstrations, these should be freely and equally available to all contestants. The government is responsible for ensuring respect for these rights.”

BELGIUM:

In the current campaign, the Vlaams Belang has not been able to stage any meetings at all in Brussels, the capital of the country. Private owners of convention and meeting facilities have been put under considerable pressure not to rent out to the Vlaams Belang. This pressure was applied not only by militant action groups, but also by officials, like the mayors of Brussels. The Vlaams Belang finally managed to get a contract for the use of a meeting hall with RSC Anderlecht (the football team of Brussels). The mayor of Anderlecht intervened and the contract was consequently annulled. A protest march by the Vlaams Belang against this type of undemocratic practices was officially banned by the same mayor.

7. Intimidation of candidates

EOH:

“It is particularly important that campaigning should be free from violence or intimidation. There should be no disruptions of campaign meetings. Citizens should not fear retribution, such as loss of employment, for their campaign activities.” From the guidelines for LTO's of the OSCE: *“A related issue critical to a democratic election is freedom from **intimidation**. LTOs should be alert to, and report any indications of, undue pressure on candidates, parties, or voters.”*

BELGIUM:

Election candidates of the Vlaams Belang are systematically expelled from the three official trade unions (Socialist, Christian-democrat and Liberal). These three unions have strong ties with the corresponding political parties.

Since the 2006 municipal elections, already 500 candidates of the Vlaams Belang have been expelled from the trade unions and the process continues.

This expulsion is not without consequences for the people involved. In Belgium, the three official trade unions (the so-called "representative" unions) are not simply private associations. They have considerable rights and privileges, granted them by the state:

- The three official trade unions act as distributors of unemployment benefits (Belgium is the only country in Europe where such benefits are distributed by the trade unions, instead of by accountable government agencies)
- The three official trade unions have a monopoly on "social elections" (the election of representatives of the employees, which have protection, rights and several competences acknowledged by law). Non-members cannot stand in these elections.
- The three official trade unions have a monopoly on "collective labour agreements" (CAO) with the employers. These agreements are recognized by law and are binding for all employees of the sector concerned, including non-members of those unions.
- Members of the three official trade unions often receive social benefits which non-members do not receive, or to a lesser extent. These benefits are distributed by the Funds for Social Security (Fondsen voor bestaanszekerheid) which are financed by the employers and largely controlled by the official trade unions.
- It is impossible for new or small trade unions to receive the status of "official" ("representative") trade union. For that to happen, they would have to have at least 50.000 members (conveniently exactly the number of members of the smallest off the three) and be accepted into the National Labour Council (NAR), which everybody knows is impossible. As such, the official trade unions are assured of the absence of competition and the undisturbed enjoyment of all of their rights and privileges.

8. One party has been banned. Next step will be exclusion of certain candidates from the right to participate in elections.

EOH:

“All political forces and movements should be able to nominate and field candidates freely and on equal terms. Any arbitrary or discriminatory practices for the purpose of disqualifying or undermining certain candidates or political forces contravene OSCE commitments. .. There are certain reasonable restrictions that may be applied to individuals wishing to run for office. For example, it may be reasonable to exclude any person currently serving a prison sentence for having committed a serious crime. However, loss of candidate rights should be proportional to the crime committed, and candidate rights should be automatically reinstated once the sentence has been served.Possible problems to be aware of: Banning, suspension, or deregistration of parties or candidates; Restrictive or discriminatory policies with regard to the formation operation of political parties or civil society groups; Selective implementation of the law with respect to the registration of parties or candidates;”

BELGIUM:

In 2004, the Vlaams Blok party was banned. Mere membership of or cooperation with this party became an offence, punishable by law. The Vlaams Blok reacted to this ban by disbanding and founding a new party, the Vlaams Belang.

Shortly before the dissolution of the House and the Senate, earlier this year, the government introduced a bill. The effect of the bill would be that anyone convicted on the basis of the law on racism would automatically lose all their political rights, including the right to stand for elections, for a duration of ten years. Only lack of time and the dissolution of parliament for the elections, prevented the bill from being adopted. In all likelihood the bill will reappear and be voted after the elections. The severity of the offence involved is irrelevant. The loss of political rights will be automatic and will apply to even the least offence and the smallest of sanctions.

9. The number of representatives is not proportional to the size of the electorate

EOH:

“Equal suffrage implies that each citizen’s vote should have the same value. This means that, under proportional-representation systems, the number of representatives for each district should be proportional to the size of the electorate, ...”

BELGIUM:

Seats in the House of Representatives, expressed in the votes required, are considerably cheaper for French-speaking parties than for Flemish parties.

- In the 2003 federal election, a Flemish seat cost about 44.000 votes, a Walloon seat about 38.000.

- In that same election, just to cite one example, the Vlaams Belang obtained 761.407 votes but got only 18 seats. The Mouvement Réformateur obtained fewer votes (748.955) but got 24 seats.

10. Unconstitutional election

EOH:

“The legislative framework for an election includes not only the election law but also a range of legislation on related matters. Depending on the circumstances, the legal analyst, and possibly other members of an EOM, may also need to review constitutional provisions and other legislation relevant to the election, including the law on political parties, citizenship laws, voter-registration laws, campaign-financing laws, media laws, and possibly elements of the criminal code and administrative code.”

BELGIUM:

A ruling by the Constitutional Court (Arbitragehof - 26/5/2003) stated that the current electoral circumscription of Brussel-Halle-Vilvoorde is discriminatory and unconstitutional. The discrimination resides in the fact that the French-speaking parties can participate in elections on Flemish territory, while the opposite is not the case.

The government was given 4 years to remedy the situation, but it chose to ignore the ruling. The elections in Brussel-Halle-Vilvoorde are unconstitutional, but will be held nevertheless.