

# INDEX ON CENSORSHIP

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## Contribution to the Universal Periodic Review Mechanism Seventh session of the Working Group of the Universal Periodic Review

### A joint submission on the Republic of Belarus by International PEN\*, the International Publishers' Association\* and Index on Censorship<sup>i</sup>

\* NGO in Consultative Status with ECOSOC

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#### Introduction

Index on Censorship, on behalf of the submitters, welcomes the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the situation for freedom of expression in the Republic of Belarus, with which it has been concerned for a number of years.

Despite some recent symbolic and isolated gestures on the part of the authorities, Belarus continues to fall short of meeting international free media standards, and authorities still make use of a number of repressive provisions that can be used to silence critical, oppositional or alternative voices.

The Belarusian constitution formally guarantees freedom of expression and access to information. It does this under Article 33, which states that: 'everyone is guaranteed freedom of thoughts and beliefs and their free expression' and that there shall be 'no monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted'.

Article 34, which guarantees: 'the right to receive, store, and disseminate complete, reliable, and timely information on the activities of state bodies and public associations, on political, economic, and international life, and on the state of the environment', as well as for the right of citizens 'to familiarize themselves with material that affects their rights and legitimate interests'

However, these constitutional rights are not respected in reality, as numerous laws and ordinances severely restrict them, and the actions of the authorities also often hinder their realization.

Access to information is restricted, in particular because of the adoption and implementation of laws that limit journalists' right to information, or discriminate between state and non-state media in accessing information of public interest.

Existing legislation on defamation and extremism creates an environment of self-censorship, limits press freedom and is not in line with European and international standards on press freedom. Furthermore, the temperature of this environment is raised by the overt hostility of the Belarus government to the media.

In February 2008, President Aleksandr Lukashenko told journalism students that the ‘media hold a weapon of a most destructive power. They must be controlled by the state’.

The country’s new media law grants the state the authority to suspend or close news outlets if content is deemed to be ‘threatening the interests of the state or the public’. Already it is clear that the state tolerates violence by its police on journalists going about their daily business of reporting public events.

Media rights groups in Belarus and worldwide have called on the government to cooperate with a full and transparent investigation, preferably by an independent expert, into the circumstances of ORT TV cameraman Dzmitry Zavadski’s disappearance nine years ago, and the murder of Veranika Charkasava in 2004.

Credible inquiries into these two significant cases could reduce the very real fear among journalists that they can be attacked or even killed with impunity in Belarus.

The media in Belarus cannot under the present circumstances function fully in accordance with their role as ‘a watchdog of government in all its forms, promoting transparency in public life and public scrutiny of those with power through exposing corruption, maladministration and corporate wrongdoing.’<sup>1</sup>

### **Physical harassment and attacks on the media**

The Belarus authorities fail to abide by Council of Europe resolution 1636, adopted on 3 October 2008, which says that journalists ‘must be protected against physical threats or attacks because of their work’. It adds: ‘Prosecutors and courts must deal adequately and timely with cases where journalists have received threats or have been attacked.’

During peaceful demonstrations on 25 March 2008, *Nasha Niva* photographer Andrei Lankievich was beaten by riot police and arrested. At his trial the magistrate refused to accept his press card and employer’s word, and ordered him to provide ‘sufficient proof’ that he was working as a professional journalist during the demonstration.

Lankievich and colleague Siamion Piechanko were jailed for 15 days for organising and holding an illegal demonstration. Two journalists from Lithuanian National Radio & TV, Ruta Rybcheuskine and Jonas Grishkonis, were also beaten and briefly detained while trying to cover the demonstration<sup>2</sup>.

On 9 September 2009, police aggressively tried to prevent Belarus and foreign media covering a protest against Russian troops entering the country to participate in joint army manoeuvres<sup>3</sup>. Seven days later police blocked journalists from reporting a peaceful protest in Kastychnitskaya Square in Minsk, called to mark the tenth anniversary of the disappearance of politician Viktor Hanchar and businessman Anatol Krasouski. Their presumed killers and the forces behind them were never brought to justice<sup>4</sup>.

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<sup>1</sup> Media development indicators – a framework for assessing media development, UNESCO March 2008.

<sup>2</sup> IFJ: [http://www.ifex.org/belarus/2008/04/01/authorities\\_crack\\_down\\_on\\_independent/](http://www.ifex.org/belarus/2008/04/01/authorities_crack_down_on_independent/)

<sup>3</sup> <http://baj.by/m-p-viewpub-tid-1-pid-7350.html>

<sup>4</sup> BAJ: <http://baj.by/m-p-viewpub-tid-1-pid-7346.html>

In another grim anniversary, 7 July 2009 marked nine years since Belarusian journalist and ORT TV cameraman Dzmitry Zavadski was kidnapped on his way to Minsk airport. Valery Ihnatovich, a special riot police officer, Maksim Malik, a former Ministry of Interior Police Academy student and two other men, Alaksey Guz and Siarhei Savushkin, were jailed for kidnapping Zavadski, but not for murdering him. All had denied the charges in a trial held in closed session. Zavadski's body was never found. The men suspected of ordering his kidnapping and murder have not been publicly identified.

The government has also failed to find or prosecute the killers of opposition journalist Veranika Charkasava, stabbed to death in her apartment in Minsk in October 2004. Her body was discovered with over 40 stab wounds, most of them around the neck, and a knife blade stuck in her chest. Police did not link the killing to her work, despite the fact traces of blood were found in her address book<sup>5</sup>.

As Miklós Haraszti, the OSCE representative on freedom of the media has said, acts of violence and intimidation against media professionals must be thoroughly investigated in accordance with the rule of law and the perpetrators must be brought to justice. 'Those who commit violence against journalists must not be allowed to do so with impunity.'

## **The Law on the Media**

The Law on the Media was adopted in 2008 by the Belarus legislature without substantive discussion with the media community or civil society and came into force in February 2009, replacing the previous Law on the Press and Other Mass Media. The OSCE Representative on Freedom of the Media concluded that the majority of the provisions of the law 'are unnecessary for or detrimental to freedom of expression and freedom of the media in Belarus...'<sup>6</sup>

Articles 11 to 16 of the law deal with the registration and re-registration of media, due to continue until February 2010. Article 34, paragraph 2 considerably reduces journalists' legal and social guarantees<sup>7</sup>. Chapter 9 of the law outlines and reinforces the liability of media that violate the legislation.

Written warnings to editors can be made on several charges, from 'disseminating inaccurate information that might cause harm to state and public interests' to 'distribution of information not complying with reality' (Article 49). Publications deemed by the Ministry of Information to have failed to deliver satisfactory responses can be suspended for three months (Article 50) or shut down completely (Article 51) and its founders barred from opening a new outlet for three years (Article 10).

We note that the Ministry of Information has not yet used this increased authority. However, the possibility that it might be used in the future remains a threat and has a chilling effect on press freedom. Also, public prosecutors have issued official warnings to a number of journalists during 2009, particularly those working with foreign media.

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<sup>5</sup> <http://www.veronikacherkasova.org/>

<sup>6</sup> 'Comments on the Draft Law of the Republic of Belarus on the Mass Media' (Office of the OSCE Representative on Freedom of the Media, Page 2, June 2008)

<sup>7</sup> 'Belarus: New Media Law Adopted' (Andrei Richter, Media Law and Policy Centre, IRIS Legal Observations of the European Audiovisual Observatory. IRIS 2008-8:7/9)

## The Criminal Code

Four articles in the Criminal Code allow prosecution for criminal defamation. These are Article 367 dealing with ‘Calumny in relation to the President of the Republic of Belarus’, Article 368 dealing with insulting the President of the Republic of Belarus, Article 369 dealing with insulting official representatives, and Article 369–1 dealing with discrediting the Republic of Belarus.

The Code’s articles 367, 368 and 369 are contrary to international standards of freedom of expression<sup>8</sup>, which expect public figures to tolerate greater levels of criticism than ordinary citizens. Moreover, the penalties provided by the code are disproportionate and the law does not allow a defence of reasonable publication. Similarly article 369-1 criminalizes defamation of the Belarusian state, contrary to the international view that, unlike individuals, public or state entities do not have a ‘reputation’ to protect<sup>9</sup>.

Three prosecutions for criminal defamation of the president were brought in 2002<sup>10</sup>. In June 2002, *Pabonia* journalists Pavel Mazheika and Mikola Markievich were sentenced to two and two and a half years of ‘restricted freedom’ for ‘false’ and ‘defamatory’ articles published during the 2001 presidential election campaign. In September 2002, Victar Ivashkevich of the newspaper *Rabochy* was sentenced to two years of corrective labour for his article ‘The Thief Must Go to Prison’<sup>11</sup>.

After a 2003 campaign by the Belarusian Association of Journalists (BAJ) in September 2003, the Constitutional Court proposed that the parliament amend Articles 367, 368 and 369. The Court’s recommendations were not taken up, and there no cases have been brought against journalists based on the Articles in recent years. However, the threat remains. Civil defamation provisions can be found in the civil and electoral code and in various presidential decrees. All of these defamation provisions provide for the imposition of disproportionate penalties, fail to establish adequate defences and are excessively vague<sup>12</sup>.

## The Law on Counteraction to Extremism

Belarus’s Law on Counteraction to Extremism is so loosely drafted, said one legal expert in Belarus, that almost anything said or described by a journalist could be construed under the 2007 law as ‘extremist’.

Examples of the use of this law include an attempt by the Belarus KGB in Brest to order the destruction of ten copies of the journal *Arche*, seized in October 2008 on the Belarus-Poland border. The KGB said the magazine contained ‘calls for extremist activity and propaganda of such activity’.<sup>13</sup> Other works considered extremist under the law include the Polish documentary film, *Lekcja Białoruskiego*, the book *2004 Chronicle of Human Rights Violations*, and CDs of songs produced by the group Solidarity with Belarus<sup>14</sup>.

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<sup>8</sup> Defamation Law and Practice in Belarus, Moldova and Ukraine’ (Article 19, London, June 2006).

<sup>9</sup> Ibid.

<sup>10</sup> The penalty for defamation of the President can be up to five years imprisonment, whilst defamation and insult of ordinary citizens can result in two years imprisonment.

<sup>11</sup> U.S. Government Statement on Trial of Victor Ivashkevich (September 30, 2002)

<sup>12</sup> ‘Defamation Law and Practice in Belarus, Moldova and Ukraine’ (Article 19, London, June 2006)

<sup>13</sup> ‘Real Media Freedom Still Long Way Off’ (Belapan, 28 November 2008).

<sup>14</sup> BIIM Monitoring Report on Development in Belarus: October 2008 to January 2009

## Recommendations:

- The following media related laws should be reformed to bring media policy in Belarus into line with international standards: Law on the Media; Law on Counteraction to Extremism; Law on Public Service; Criminal Code Articles 367, 368, 369 and 369–1.
- The Belarusian authorities should engage in a transparent and honest dialogue with the state and non-state media and civil society on media policy and related legislation, with a view to undertaking a broad reform process aimed at bringing media policy into line with international standards.
- The Belarus authorities should take concrete steps to ensure the rights of journalists and should not obstruct them from reporting on public events and demonstrations.
- Belarus should cooperate with a full and transparent investigation, preferably by an independent expert, into the circumstances of ORT TV cameraman Dzmitry Zavadski's disappearance nine years ago, as well as into Veranika Charkasava's murder.

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<sup>i</sup> This submission draws substantially from evidence collected by a joint mission of media rights groups, including Index on Censorship, to Belarus in September 2009. The mission report is published as *For Free and Fair Media in Belarus*, available at [http://www.ifex.org/belarus/2009/10/16/belarus\\_report.pdf](http://www.ifex.org/belarus/2009/10/16/belarus_report.pdf).