

# **Dictatorship No More?**

**EU SANCTIONS LIFTED AT THE  
EXPENSE OF CIVIL AND POLITICAL  
RIGHTS IN BELARUS**

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## METHODOLOGY

In this report, Civil Rights Defenders analyses the human rights situation in Belarus one year after the EU lifted the majority of sanctions on 15 February 2016. The report is based on 20 interviews with Belarusian human rights defenders and a comprehensive survey covering 30 Belarusian human rights defenders conducted by Civil Rights Defenders between September and December 2016.

## SUMMARY

Alexander Lukashenka was elected president of Belarus in the 1994 election, which the international community deemed free and open. Shortly after entering into office, however, he started to reverse the country's short-lived journey toward democratisation by centralising power in his own hands. To accomplish this, his regime successfully introduced changes to the constitution in 1996 and 2004, fiercely repressing its critics.

Since then, Lukashenka's regime has significantly expanded presidential control over the nation's security services and the judicial branch, and tightened national legislation, including the criminal and administrative codes. In Belarus, the national laws are at odds with international human rights standards. Rather than serving justice, the judicial branch executes the orders of the regime that controls it. Time and again, the regime uses laws and state institutions to suppress democracy and violate its citizens human rights.

In the West, President Lukashenka's repressive policies have earned him an infamous nickname: "Europe's last dictator." This, however, has led the European Union and other regional institutions to sever ties with the authoritarian ruler only during certain periods. Relations between Minsk and the European capitals have fluctuated, depending on the prevailing political considerations at the time. Condemning voices have been followed by periods of thaw when Lukashenka has offered minor concessions.

Since 2004, the EU has on several occasions imposed sanctions against Belarus, mainly in the form of travel bans against officials suspected of severe human rights abuses. Following the brutal suppression of mass protests against the rigged December 2010 presidential vote and the imprisonment of opposition candidates and human rights defenders, the EU substantially expanded its list of sanctions. At most it included economic and arms embargoes, the freezing of assets, and travel bans

The report covers four human rights in focus:

1. The right to political rights;
2. The right to freedom of expression;
3. The right to freedom of assembly and association;
4. The right to a fair trial and an effective remedy.

The report demonstrates the difficulties human rights defenders face under the authoritarian regime in Belarus.

against more than a hundred high-level government officials as well as the businesses from which the regime benefited.

On 15 February 2016, the EU permanently lifted most of the sanctions. As a reason, Brussels cited the 2015 release of six political prisoners from Belarusian jails, and noted that the October 2015 presidential vote had been conducted in a peaceful manner and that Belarusian officials were willing to take part in various dialogues. Brussels changed its policies despite the fact that Lukashenka's regime continued to violate human rights, which had prompted the EU to impose sanctions in the first place.

A year later, the only punitive measures Lukashenka's regime is facing are limited EU restrictions against those deemed responsible for the disappearances of four opposition activists in 1999 and 2000, as well as an arms embargo. However, the EU is to reconsider these measures in February 2017.

In this report, Civil Rights Defenders demonstrates that no major human rights improvements were made in Belarus during the years prior to the lifting of sanctions, nor throughout the year immediately following.

Over the years, the EU's major demands have focused on:

- **Release of all political prisoners, their rehabilitation and full restoration of their civil and political rights**  
Outcome: partially fulfilled

Lukashenka released six political prisoners before the presidential elections in 2015, but did not expunge their criminal records. This makes them ineligible to run for office in any subsequent election and implies that they could be rearrested at any time. One year after the EU lifted its sanctions, three political prisoners still remain in Belarusian jails.

- **Moratorium on the death penalty**

Outcome: not fulfilled

Between February 2016 and January 2017, four people were executed in Belarus. Another four were awaiting execution at the beginning of January 2017. The Minsk Regional Court sentenced Siarhei Khmialeuski to death on the very same day that the EU permanently lifted most of its sanctions against Belarus. On 5 November 2016, just days before representatives from the EU's Political and Security Committee were due to visit Belarus, three prisoners<sup>1</sup> were executed in Minsk.<sup>2</sup>

Approximately 400 people have been executed in Belarus since the country gained independence in 1991. Court cases continue to be heard behind closed doors, independent and impartial observers impeded from attending. Execution dates are classified; relatives of the convicted often only find out about their deaths weeks after the execution has taken place.

- **Democratic elections**

Outcome: not fulfilled

Since Lukashenka assumed power, no election in Belarus has been recognised as free or fair by international observers. The EU has recognised that attempts to make progress in this area have been minor and insufficient.<sup>3</sup>

- **Abolition of Article 193.1 of the Criminal Code**

Outcome: not fulfilled

Article 193.1 of the Criminal Code criminalises the activity of unregistered organisations. Obtaining mandatory registration is often a "mission impossible" for political parties and organisations that are critical of the government, according to numerous accounts gleaned from the human rights defenders' survey in Belarus. Those working for unregistered organisations risk two years in prison for their activities.

- **Respect for press freedom**

Outcome: not fulfilled

Authorities continue to employ a wide array of tactics to suppress independent media, from distribution

bans to politicised prosecution. Individual reporters often face harassment, threats and large fines.

- **Termination of the prosecution of political opponents, civil society activists and human rights defenders**

Outcome: not fulfilled

A number of opposition leaders and activists have faced administrative charges and been sentenced to disproportionately high fines in retaliation for the public rallies they organised or participated in. Instead of fully complying with the EU's demands, Belarusian authorities have substituted their critics' arrests with exorbitant fines. Civil Rights Defenders' research shows that in 2016 critics of the regime were fined on average seven times more than in previous years. Human Rights Centre Viasna documented 484 cases in 2016.

- **Investigation of cases of enforced disappearance**

Outcome: not fulfilled

The EU first imposed sanctions against Belarus in connection with the disappearances of four opposition activists in 1999 and 2000. These cases remain unsolved. Although the sanctions are still in place at the beginning of 2017, the EU is scheduled to review them in February 2017.

As these examples show, Belarus has failed to meet the EU's demands. The country's human rights record remains dire. In other words, the EU's February 2016 move to lift sanctions can hardly be justified by significant human rights improvements. On the contrary, most Belarusian human rights defenders interviewed for this report suggested that the EU's decision was based on geopolitical considerations. The ongoing armed conflict in neighbouring Ukraine was named as one of the reasons; Lukashenka has been hosting peace talks in Minsk since mid-2014. In January 2017, it was also made public that Belarus has signed an agreement with the EU to build facilities for refugees seeking asylum in Europe.

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1 Ivan Kulesh, Siarhei Khmialeuski and Henadz Yakavitski

2 The Guardian, "Belarus resumes executions after EU sanctions dropped", 12 October 2016, <https://www.theguardian.com/world/2016/oct/12/belarus-resumes-executions-after-eu-sanctions-dropped>.

3 European Parliament, "Joint motion for a resolution on the situation in Belarus (2016/2934(RSP))", 16 November 2016, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2016-1237+0+DOC+XML+V0//EN>.

Under these circumstances, **Civil Rights Defenders urges the European Union to:**

- Put immediate pressure on Belarus to fully implement the International Covenant on Civil and Political Rights (ICCPR);
- Demand that Belarus ratifies and takes immediate steps to implement the ICCPR Optional Protocol II on the abolition of the death penalty;
- Include civil society representatives in the human

rights dialogue between the EU and Belarus. If Belarus does not agree to this requirement, the EU should refrain from the human rights dialogue and focus on bringing up human rights concerns in all other contacts with the regime;

- Prolong the arms embargo and sanctions against the four members of Lukashenka's security service deemed responsible for the disappearances of four regime critics in 1999 and 2000.

## SANCTIONS: IMPOSED FOR HUMAN RIGHTS VIOLATIONS BUT LIFTED DESPITE LACK OF IMPROVEMENTS

According to EU policy, sanctions are one of the tools the EU uses to promote its Common Foreign and Security Policy objectives: peace, democracy and respect for the rule of law, human rights and international law.<sup>4</sup> It was in line with this policy – in response to grave human rights violations – that the EU used this tool against Belarus between 2004 and 2015. Most sanctions were permanently lifted in 2016 despite the lack of any major improvement in the human rights landscape of Belarus.

Over the years, the officials in Brussels reviewed their decisions<sup>5</sup>, and subsequently chose to either extend the list of Belarusian officials banned from traveling to the EU or lift the sanctions temporarily or permanently.<sup>6</sup> When imposing sanctions, the EU has cited a number of human rights concerns as reasons for its decision, including non-compliance with international human rights standards and the perpetuation of the death penalty.

According to a report by Rapporteur Christos Pourgourides<sup>7</sup> from the Group of the European People's Party, the EU first imposed sanctions<sup>8</sup> against Belarus in 2004, in response to the disappearances of four opposition activ-

ists in 1999 and 2000 and the authorities' failure to investigate their cases.<sup>9</sup>

Between 2004 and 2016, the European Parliament adopted more than 20 resolutions concerning the overall situation in Belarus, expressing concern regarding election procedures, human rights abuses, restrictions on political freedoms, the death penalty, conditions in prisons and detention facilities, freedom of expression in the country, and the functioning of civil society organisations.

In 2006, the EU extended its travel ban against President Lukashenka. During the crackdown after the 2010 presidential election, the regime's repression reached unprecedented levels. Subsequently, the EU further extended its sanctions to a total of 32 companies and 243 individuals.<sup>10</sup>

After the presidential election on 11 October 2015, the EU lifted most of the sanctions it had previously imposed against Belarus, citing the release of six political prisoners on 22 August of the same year as their justification. The EU also referred to the fact that

4 European Union External Action on "Sanctions Policy", 3 August 2016, [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/423/Sanctions%20policy](https://eeas.europa.eu/headquarters/headquarters-homepage_en/423/Sanctions%20policy).

5 Maya Lester & Michael O'Kane, "Initial Imposition of EU sanctions & Subsequent Amendments", <https://europeansanctions.com/eu-sanctions-in-force/belarus/>.

6 European Commission, "European Union restrictive measures (sanctions) in force", 7 July 2016, [http://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/measures_en.pdf).

7 Parliamentary Assembly of the Council of Europe Committees (Committee on Legal Affairs and Human Rights), "Disappeared Persons in Belarus", 4 February 2004, Doc. 10062, <http://www.refworld.org/docid/4162a4654.html>.

8 Travel bans against: Sivakov, Yury (YURIJ) Leonidovich, the Minister of Tourism and Sports for Belarus, born on 5 August 1946, in Sakhalin Region, former Russian Socialist Federative Soviet Republic; Sheyman (Sheiman), Victor Vladimirovich, Prosecutor General of Belarus, born on 26 May 1958, in Grodno region; Pavliuchenko (Pavliuchenko), Dmitri (Dmitry) Valeriyevich, Officer for the Special Forces of Belarus, born in 1966 in Vitebsk; Naumov, Vladimir Vladimirovich, Minister of the Interior, born in 1956.

9 Council Common Position 2004/661/CFSP of 24 September 2004 concerning restrictive measures against certain officials of Belarus, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004E0661>.

10 Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:285:0001:0052:EN:PDF>.

the presidential election, following which Lukashenka remained in office for a fifth term, was conducted in a peaceful manner in contrast to the last election. On 15 February 2016, EU foreign ministers agreed to permanently end the assets freeze and travel ban against 170 individuals, including President Lukashenka and three defence companies with close ties to him.<sup>11</sup>

“*The release of Mykalai Statkevich, Mykalai Dziadok, Ihar Alinevich, Jury Rubstov, Euheny Vaskovich and Artyom Prakapenka, is a long-sought step forward. They are now free. Former presidential candidate Mykalai Statkevich stands out in particular as an example of the tireless work and commitment of many for a democratic Belarus. We now expect the authorities of Belarus to remove all restrictions on the enjoyment of full civil and political rights of the released. Today’s releases represent important progress in the efforts towards the improvement of relations between the EU and Belarus.*”

Statement by the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini and Commissioner for the European Neighbourhood Policy (ENP) and Enlargement Negotiations, Johannes Hahn, on the release of political prisoners in Belarus.

Source: European Union External Action: EEAS Statement 150822\_01\_en dated 22 August 2015

Officials in Brussels were quick to proclaim an improvement in EU-Belarus relations. But the events following the removal of sanctions showed that no major or long-lasting changes with regards to human rights and democracy had been achieved in Belarus. One year after the sanctions were lifted, Lukashenka’s regime has not met any of the EU’s objectives. The majority of those which the regime has ignored are conditional and instrumental to all EU resolutions on Belarus, including the one issued on 21 November 2016.

In the majority of resolutions the EU<sup>12</sup>:

- **Called on the government of Belarus to rehabilitate all of the political prisoners released and to fully restore their civil and political rights.**

Lukashenka released six political prisoners before the presidential election of 2015. However, their criminal

records were not expunged, which prevents them from running for any elected office. Nikolay Statkevich was refused registration ahead of the parliamentary election in 2016 due to his criminal record. Additionally, three political prisoners – Mikhail Zhamchuzhny, Vladimir Kondrus and Aliaksandr Lapitski – remain jailed one year after the sanctions were lifted.<sup>13</sup>

- **Urged Belarus to join a global moratorium on the execution of the death penalty as a first step towards its permanent abolition.**  
“Steps taken by Belarus to respect universal fundamental freedoms, rule of law and human rights, including on the death penalty, will remain key for the shaping of the EU’s future policy towards Belarus.”<sup>14</sup> Belarus has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aimed at the abolition of the death penalty.
- **Called on the Belarusian authorities to resume work without delay on a comprehensive electoral reform as part of the broader democratisation process and in cooperation with international partners.**  
Belarus has failed to introduce a number of reforms to the Electoral Code, especially ones related to transparency. So far, no elections in Belarus after Lukashenka’s victory in 1994 have been deemed free and fair by the international community, nor conform to international standards.

Based on recommendations from independent international observers, the EU has recognised that attempts to make progress in this area have been minor and insufficient,<sup>15</sup> insisting that Belarus work on electoral reforms in cooperation with international partners.

- **Called on the Belarusian Government to repeal without delay Article 193.1 of the Criminal Code.**  
Article 193.1 of the Criminal Code criminalises the activities of unregistered associations, foundations, political parties and religious organisations. The majority of human rights defenders surveyed by Civil Rights Defenders described the process of obtaining the mandatory registration as a “mission impossible” for human rights organisations and political parties in the opposition. For example, the Belarusian Christian Democracy Party was refused registration for the sixth

11 Council of the European Union, “Council conclusions on Belarus”, 15 February 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-belarus-conclusions/>.

12 European Parliament, “Joint motion for a resolution on the situation in Belarus (2016/2934(RSP))”, 21 November 2016, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2016-1232+0+DOC+XML+V0//EN>.

13 Правозащитный центр Вясна, “Список политических заключенных”, 1 декабря 2015, <http://spring96.org/ru/news/49513>.

14 European Parliament, “Motion for a Resolution on the Situation in Belarus (2016/2934(RSP))”, 16 November 2016, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2016-1237+0+DOC+XML+V0//EN>.

15 European Parliament, “Motion for a resolution on the situation in Belarus (2016/2934(RSP))”, 16 November 2016, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2016-1237+0+DOC+XML+V0//EN>.

time in 2016. Another organisation, Human Rights Centre Viasna, has been refused registration a total of three times since 2003, when the Supreme Court of the Republic of Belarus cancelled its registration as a result of the group's monitoring of the 2001 presidential elections.<sup>16</sup> In 2009, Viasna gave up on filing applications for registration. Viasna's staff believe that their application would be rejected immediately because of the centre's focus on human rights.

- **Called on the authorities to stop the harassment of independent media, and urged an end to the practice of administrative prosecution of freelance journalists under Article 22.9(2) of the Administrative Code, which prohibits reporters from working with foreign media without accreditation.**

Independent media is subjected to widespread discriminatory practices, such as a ban on distribution and the denial of access to information for journalists. Additionally, journalists and independent bloggers face threats and exorbitant fines. For example, the independent journalist Kastus Zhukouski was fined three times for "illicit manufacturing of media products," and held liable to pay a total amount of 1,440 EUR.<sup>17</sup> In December 2016, Iryna Arekhouskaya and Mikita Nedaverkau, both journalists with the independent news outlet Nasha Niva, were detained outside the KGB building while filming a protest rally marking the 25th anniversary of the collapse of the Soviet Union.<sup>18</sup>

- **Urged Belarus to end the prosecution of and pressure on political opponents, civil society activists, and human rights defenders.**

Civil society activists and human rights defenders continue to have their civil and political rights curtailed. Several opposition leaders who organised public gatherings have been charged with administrative offences and sentenced to pay disproportionately high fines. Although the authorities stopped jailing their opponents, the practice of imposing high fines should not be seen as an improvement. The authorities have merely changed the method of repression.

- **Called for the investigation of cases of forced disappearance.**

The main reason for imposing the first round of sanctions in 2004 was the disappearances of four opposition activists in 1999 and 2000 in Belarus, and the

subsequent failure to investigate these cases. The sanctions from 2004 are still in place at the time of writing, as the disappearances remain unsolved. An arms embargo also remains in place until 28 February 2017.

The majority of human rights defenders surveyed by Civil Rights Defenders agreed that the geopolitical situation was a key factor for the removal of sanctions, but also held the view that the EU should not have lifted the sanctions until Belarus lived up concrete expectations. As a result, the respondents voiced disappointment over the EU's actions; very few of them see the EU as a partner in the fight against human rights abuses.

“*In general, as Human Rights Defenders, we do not advocate for or against sanction policies, however, once the sanctions were introduced, their lifting should have been based on conditionality.*”

Anna Gerasimova, Director, The Barys Zvozkau Belarusian Human Rights House, Vilnius

“*I do not see or feel any real action from the EU when it comes to the promotion of human rights in Belarus.*”

Leonid Sudalenka, Legal Initiative, Gomel

“*At present, the Belarusian authoritarian regime in power is trying to re-establish contact with the EU in order to become a member of the European integration processes. One should not have any illusions however, when it comes to the possibility of any democratic change initiated from this highly centralised authoritarian regime.*”

Anonymous Defender of freedom of expression

The EU's decision to permanently lift sanctions against Belarus was criticised both nationally and internationally. Andrei Sannikov, the 2010 presidential candidate from the opposition and a former political prisoner, stated that the EU's decision "sends a very clear signal to the dictatorship that it can continue with its practices. We know when sanctions are lifted or the policy is softened we face more repression."<sup>19</sup> And the 2015 winner of the

16 Human Rights Center "Viasna", "About Viasna", 24 June 2002, <http://spring96.org/en/about>.

17 Libereco Partnership for Human Rights, "Analysis: 100 Days of Belarusian Rule of Law", 3 June 2016, <http://www.lphr.org/wp-content/uploads/2016/06/100%20Days%20of%20Belarusian%20Rule%20of%20Law%20-%20Analysis%20-%20Online%20Version.pdf>.

18 Human Rights Center "Viasna", "Human Rights Situation in Belarus: December 2016", 9 January 2017, <http://spring96.org/en/news/85742>.

19 The Guardian, "EU Lifts Most Sanctions against Belarus despite Human Rights Concerns", 15 February 2016, <https://www.theguardian.com/world/2016/feb/15/eulifts-most-sanctions-against-belarus-despite-human-rights-concerns>.

Nobel prize for literature, Svetlana Alexievich, said that “Belarus remains a soft dictatorship. Stalin’s dictatorship is not the only model.”<sup>20</sup>

The UN Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, has said that the

dismal state of human rights remains unchanged in the country.<sup>21</sup> Observers with the OSCE/ODIHR Elections Observation Mission said in their report<sup>22</sup> on the October 2015 presidential vote that Belarus had a “considerable way to go” to reach democratic standards.

## INTERNATIONAL OBLIGATIONS

Belarus is a signatory to several international conventions. But its domestic laws and procedures only rarely, if ever, comply with international commitments. The last year brought no genuine improvements to human rights, democracy or the rule of law. Despite repeated recommendations from international partners, Belarus continues to exercise the death penalty, prosecute human rights activists, and penalise independent journalists who criticise the regime.

Belarus is a party to the International Covenant on Civil and Political Rights (ICCPR)<sup>23</sup> and Optional Protocol I; the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>24</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);<sup>25</sup> and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>26</sup> Despite the recommendations made by national and international experts, Belarus still has not ratified the ICCPR Optional Protocol II on the abolition of the death penalty.

The regime refuses to cooperate with the Special Rapporteur on Belarus, whose mandate was established in 2012 and has been extended every year since its inception. So far, the Special Rapporteur has never been allowed to visit Belarus. His work is primarily based on the information received from various partners, including Civil Rights Defenders and the human rights defenders in Belarus who were interviewed for this report. According to the Special Rapporteur, the human rights situation in Belarus has remained critical since his office was

established. The only positive development has been the release of political prisoners.

Belarus also ignores the decisions issued by the UN Human Rights Committee. In the last six years, the Committee has seen a drastic increase of communicated cases from Belarus. Its decisions almost exclusively address violations of the rights to freedom of assembly and freedom of expression or political rights.

### Decisions issued by the UN Human Rights Committee on Belarus, 2016:

*Communication submitted by:* Margarita Korol (not represented by counsel)

*State party:* Belarus

*Date of communication:* 20 November 2009 (initial submission)

*Document references:* Decision taken pursuant to rule 97 of the Committee’s rules of procedure, transmitted to the State party on 22 August 2011 (not issued in document form)

*Date of adoption of Views:* 14 July 2016

*Subject matter:* Arrest and administrative fine for the author’s attempt to hold a picket

*Procedural issue:* Exhaustion of domestic remedies

*Substantive issues:* Freedom of assembly; freedom of opinion and expression

*Articles of the Covenant:* 19 (2) and 21

*Article of the Optional Protocol:* 5 (2) (b)<sup>27</sup>

20 Deutsche Welle, “Belarus Literature Nobel Winner Alexievich Warns of ‘Soft Dictatorship’”, 10 October 2015, <http://www.dw.com/en/belarus-literature-nobelwinner-alexievich-warns-of-soft-dictatorship/a-18775046>.

21 The Office of the United Nations High Commissioner for Human Rights (OHCHR), “Statement by the Special Rapporteur on the Situation of Human Rights in Belarus: No changes in the dismal human rights situation in Belarus since the presidential election”, 9 February 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17026&LangID=E#sthash.Q6AL0zTY.dpuf>.

22 Office for Democratic Institutions and Human Rights, “Republic of Belarus Presidential Elections 11 October 2015: OSCE/ODIHR Election Observation Mission-Final Report”, 28 January 2016, <http://www.osce.org/odihr/elections/belarus/218981?download=true>.

23 List of parties, ICCPR, available at: <http://www.hrweb.org/legal/cprsig.html>.

24 List of parties, ICESCR, available at: <http://www.hrweb.org/legal/escrsigs.html>.

25 List of parties, ICEFRD, available at: <http://indicators.ohchr.org>.

26 List of parties, CEDAW, available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw20/list.htm>.

27 International Covenant on Civil and Political Rights, Human Rights Committee, “Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2089/2011”, 30 August 2016, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqKb7yhSukPtYsnxNH1DBueuCbK4hkAkPi6wpiCwiKf2larY7cCdnx8Wz8Qrlp7UwhH0xc8C8c0wdkRXxK0Z6d55b%2b2%2bk1wbKbim34s6Um0GD5HMA3%2-fHReoqPoAs7AqE4HmXg%2fw%3d%3d>.



*Communication submitted by:* Valentin Evzrezov (not represented by counsel)

*State party:* Belarus

*Date of communication:* 5 August 2011 (initial submission)

*Document references:* Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 22 September 2011 (not issued in document form)

*Date of adoption of Views:* 14 July 2016

*Subject matters:* Refusal of authorisation to hold a peaceful assembly; freedom of expression

*Procedural issue:* Exhaustion of domestic remedies

*Substantive issues:* Freedom of expression; freedom of assembly

*Articles of the Covenant:* 19 (2) and 21

*Articles of the Optional Protocol:* 2 and 5 (2) (b)<sup>28</sup>

*Communication submitted by:* Sergei Androsenko (not represented by counsel)

*State party:* Belarus

*Date of communication:* 29 June 2010 (initial submission)

*Document references:* Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 30 March 2010 (not issued in document form)

*Date of adoption of Views:* 30 March 2016

*Subject matter:* Imposition of a fine for holding a peaceful assembly without prior authorisation

*Procedural issues:* Exhaustion of domestic remedies

*Substantive issues:* Right to freedom of expression; right of peaceful assembly

*Articles of the Covenant:* 19 and 21

*Articles of the Optional Protocol:* 5 (2) (b)<sup>29</sup>

Since Belarus is not a member of the Council of Europe, Belarusian citizens cannot access the redress mecha-

nism of resorting to the European Court of Human Rights (ECtHR).

## FOUR RIGHTS IN FOCUS

### 1. THE RIGHT TO POLITICAL RIGHTS

According to the Constitution, Belarus is a unitary, democratic, social state built on the rule of law.<sup>30</sup> In practice, however, the political environment is oppressive. Elections are neither free nor fair. Political parties cannot operate freely. Political activists and opposition candidates are often persecuted. The separation of powers, fundamental to democratic societies, is not practiced in Belarus.

In Belarus, elections are primarily regulated by the Constitution and the Electoral Code. The 1994 Constitution was amended twice by popular referendum,<sup>31</sup> which allowed Lukashenko to run and be elected for a fifth term in office. Neither of the referendums received international recognition. On 11 October 2015, Lukashenko was re-elected with 83.47% of the votes, according to official figures. The tight control over the media, especially over public broadcasters, prevented opposition candidates from running successful campaigns ahead of the election. Consequently, as in previous years international observers found the election undemocratic.

Students and public servants are often forced to participate in early voting. For example during the 2016 elections, at polling station No. 42, students at Mogilev State University were required to sign in to a dormitory administration's list in order to confirm that they had voted early. Similar cases have been reported from the Slutsk and Soligorskiy districts.<sup>32</sup> People in police custody and pre-trial detention facilities and those serving prison sentences, as well as citizens declared incompetent by the courts, are denied their right to vote.

28 International Covenant on Civil and Political Rights, Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2101/2011, 30 August 2016, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsukPtYsnxNH1DBeueuCbk4iqgDnCOS5%2bEg6l%2bicg451K1%2fJq7sB0jigihfQhPthBRjB1QbZ3GF5i5zh5%2fdCds29yUOLkf0F7CAZcXn7oLaMm5bSWl0Vdz%2fA100qkaPGaSA%3d%3d>.

29 International Covenant on Civil and Political Rights, Human Rights Committee, "Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2092/2011", 11 May 2016, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsukPtYsnxNH1DBeueuCbk4jqCl5XclAft6ld2FylZH2FP3b7kz4oGv4Ag78kefeeyMazQKB8tKjOSHd2CPY5i5ZVLGNOCe5dIP9e9qN%2fvAcwYiH56WKCFC6NT%2f4PdL45g%3d%3d>.

30 Constitution of the Republic of Belarus from 1994, as amended on 24 November 1996 and 17 October 2004, art. 1, Undated, <http://www.pravo.by/main.aspx?guid=6351>.

31 Referendum on 24 November 1996 - increasing the power of the presidency. Due to several violations of election legislation, only Russia and some other Commonwealth of Independent States (CIS) and members of OSCE recognised the results; Referendum on 17 October 2004 - abolishing the two-term presidency limit. Based on the opinion from the referendum of 17 October 2004 in Belarus, adopted by the Venice Commission, the combination in a single question of two different issues; one relating to an individual situation and one proposing a constitutional amendment, is in contradiction with the principle of unity of content as set forth for example in the Guidelines for Constitutional Referendums at National Level, adopted by the Venice Commission in July 2001 (CDL-INF(2001)10, at II.C). More details available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)029-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)029-e).

32 Belarus Digest, "Early Vote Period - Digest Of The 2016 Parliament Elections", 11 September 2016, <http://belarusdigest.com/story/early-vote-period-digest-2016-parliament-elections-27187>.

According to the report from the OSCE/ODIHR Election Observation Mission, issued in connection with the September 2016 parliamentary election, state TV channels dedicated 82% of their coverage to the president and government officials and 17% to the Central Election Commission Chairperson. Opposition candidates received a mere 1% of prime-time political coverage combined and were only mentioned collectively, with no reference given to individuals. A similar trend was also noted at the state-owned Radio 1 channel.

Source: OSCE/ODIHR: Election Observation Mission Final Report, Republic of Belarus Parliamentary Elections, 11 September 2016, Warsaw, 8 December 2016

OSCE/ODIHR have been sending their election monitors to Belarus since 2001. Their review of the elections indicate that they all fell short of the OSCE standards for democratic elections.<sup>33</sup> Out of the 38 recommendations issued to Belarus by OSCE/ODIHR monitors concerning the 2010 and 2012 elections, authorities addressed only three. The monitors issued the same set of recommendations after the October 2015 presidential election and the subsequent September 2016 parliamentary vote. However, no progress was made. Over the years, the European Parliament has raised similar concerns about the country's elections, the state of human rights and freedoms, the death penalty, the situation for political prisoners, and civil society.

In 2013, authorities introduced amendments to the Electoral Code that abolished public funding for electoral campaigns. The removal of this already modest financial support made it even more difficult for the opposition to raise funds for campaigning purposes. Moreover, no public consultations were ever held with relevant stakeholders prior to the adoption of these amendments,<sup>34</sup> as is required by paragraph 5.8 of the 1990 OSCE Copenhagen Document. In 2015, authorities also capped the funds candidates are allowed to spend on elections at 85,000 EUR, under the proviso that they refrain from using such funds for media advertisements.<sup>35</sup> With foreign donations for campaigns forbidden by law, opposition candidates have little or no funds to pay for their campaigns.

Not a single political party has been able to obtain registration from the authorities since 2000. This practice is in contradiction with paragraph 7.6 of the 1990 OSCE Copenhagen Document<sup>36</sup> as well as the recommendations

made by the European Union, OSCE/ODIHR, and the Special Rapporteur on the human rights situation in Belarus.

The absolute majority of human rights defenders surveyed by Civil Rights Defenders stated that it is impossible to exercise one's political rights, as political parties are denied the possibility to register for elections. The activity of non-registered parties is unlawful and can lead to a sentence of up to two years in prison. Vote counting and tabulation processes also lack transparency. Any attempt to boycott an election is strictly forbidden.

“Political parties find it impossible to participate in the political life of the country especially when it comes to elections as the results are always fabricated. Political activists and opponents of the current regime are also constantly prosecuted. They are routinely brought to trial, fired from their jobs, and these are just some of the tools used against them. This has the collective effect of dramatically limiting political activities in the country.”

Ales Bialiatski, Human Rights Centre Viasna, Minsk

“You can be engaged in political activity in Belarus only if you refrain from criticising the current political regime. If not, then your political work is side-lined by the authorities.”

Leonid, human rights defender from Vitebsk

State bodies responsible for the promotion of human rights in the country are strictly controlled by the president. The only human rights mechanisms available for citizens – i.e. non-governmental human rights organisations – are persecuted.

## 2. THE RIGHT TO FREEDOM OF EXPRESSION

Belarus continues to silence voices that are critical of the regime through the suppression of journalists and the independent media. While foreign media outlets fight to obtain accreditation in the country, local journalists and freelance reporters have restricted access to information and are penalised for publishing content about the manifestos of opposition candidates or election boycotts. Local human rights defenders interviewed for this report agree that violations of the right to freedom of expression

33 Office for Democratic Institutions and Human Rights, “Republic of Belarus Presidential Elections 11 October 2015: OSCE/ODIHR Election Observation Mission Final Report”, 28 January 2016, <http://www.osce.org/odihr/elections/belarus/218981?download=true>.

34 Ibid. Paragraph 5.8 states that the legislation will be adopted at the end of a public procedure.

35 Ibid.

36 Ibid. Paragraph 7.6 provides that participating states will respect the right of individuals and groups to establish in full freedom, their own political parties and other organizations. [ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx).

have resulted in the total domination of the state-owned media and censorship, as well as the criminal prosecution of independent opinions.

While the Constitution guarantees freedom of expression, the Criminal Code contains a number of laws that are implemented to curtail this human right. The law criminalises the “defamation of the president of the Republic of Belarus” (Article 367), “insulting the president” (Article 368), “insulting the authorities” (Article 369), and “discrediting the Republic of Belarus” (Article 369.1).

In order to extend control over independent media ahead of the presidential and parliamentary elections in 2015 and 2016, the Belarusian authorities quickly amended the media legislation in December 2014. The amendment allows the Ministry of Information to block websites without a court order if they have received two warnings within a 12-month period. Private media outlets are often subjected to intense pressure from the state. Freelance reporters are not considered journalists and are therefore unable to receive accreditation.

According to Article 19 of the ICCPR, Belarus recognises that everyone has the right to hold opinions without interference as well as the right to freedom of expression. The latter includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media, regardless of frontiers.<sup>37</sup>

Belarus is thus under international obligation to respect and protect the fundamental right to freedom of expression. Therefore, the national legislation governing freedom of expression in the country should clearly articulate and realise the main principles applicable when this right is exercised.

Article 33 of the Constitution of the Republic of Belarus guarantees freedom of opinion and expression and the right to exercise it freely. It forbids the monopolisation of the media by the state, public associations or individuals,

and does not permit any type of censorship.<sup>38</sup> The 2008 Law on Mass Media (Law No. 427-Z, 2008, amended on 20 December 2014) reaffirms the state’s commitment to guaranteeing freedom of opinion and expression as well as prohibiting censorship and termination of mass media activities.<sup>39</sup> However, international organisations and national independent experts have repeatedly criticised many of its provisions for broadly restricting freedom of expression, including online.<sup>40</sup>

Even though the Special Rapporteur on Belarus recommended a notification-based system for registration, media outlets are still obliged to apply for permission to be registered. Their activities can be suspended or cancelled on the basis of a court appeal by the Ministry of Information. The process of licensing for broadcast media is not transparent. Licensing and registration systems for independent journalists are incompatible with the right to freedom of expression.<sup>41</sup>

The amendments that were adopted in December 2014 have led to the broadening of state control over online media, independent websites, and Belarusian sections of the Internet. While avoiding the specifics – using vague terminology that allow diverse interpretations – the law sets a strict trajectory on the distribution of information on the Internet and therefore enables more stringent limitations.<sup>42</sup> As a result, the authorities have the right to block all information considered to be “a threat to national security” and harmful to the state.

In previous years, the authorities have permanently or temporarily cut access to a great number of opposition and independent-information websites for no given reason.<sup>43</sup> The wide space for interpretation has resulted in excessive regulation by the authorities, as outlined by OSCE Representative Dunja Mijatovic at the end of 2014.<sup>44</sup>

One example is the case of Eduard Palchys, the Founder of the website 1863x.com. He was detained and accused of incitement to racial, national or religious hatred or discord (Criminal Code, Article 130(1)) and distribution of

37 UN Human Rights Office of High Commissioner, “International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49”; Article 19, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

38 Constitution of the Republic of Belarus from 1994, as amended on 24 November 1996 and 17 October 2004, art. 33, Undated, <http://www.pravo.by/main.aspx?guid=14551>.

39 Law of the Republic of Belarus No 427-Z of 17 July 2008 “On Mass Media”, amended on 20 December 2014, <http://law.by/main.aspx?guid=3871&p0=h10800427e>.

40 Xindex, “За Реформы СМИ в Беларуси” (“Time for media reform in Belarus”), February 2014, [https://baj.by/sites/default/files/analytics/files/belarus\\_media\\_freedom\\_ru\\_web\\_0.pdf](https://baj.by/sites/default/files/analytics/files/belarus_media_freedom_ru_web_0.pdf).

41 Organization for Security and Co-operation in Europe, “Comments on the Draft Law of the Republic of Belarus on the Mass Media”, 27 June 2008, <http://www.osce.org/fom/32599>.

42 Bastunets Andrej, “Analysis of the Main Amendments to the Law “on Mass Media of the Republic of Belarus”, Belarussian Association of Journalists, [https://baj.by/sites/default/files/analytics/files/analiz\\_osnovnyh\\_izmenenij\\_v\\_zakon\\_respubliki\\_bielarus1.pdf](https://baj.by/sites/default/files/analytics/files/analiz_osnovnyh_izmenenij_v_zakon_respubliki_bielarus1.pdf).

43 UN Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights in Belarus”, 29 April 2015, A/HRC/29/43, <http://www.refworld.org/docid/5577ef0c4.html>.

44 OSCE Representative on Freedom of the Media on “New regulation and recent blockings threaten free speech on Internet in Belarus”, 22 December 2014, [www.osce.org/fom/132866](http://www.osce.org/fom/132866).

pornographic materials (Criminal Code, Article 343(2)). He was found guilty and sentenced to 21 months of restricted mobility. According to human rights defenders interviewed for this report, there are strong indications that the real reason for his prosecution was the political views he expressed on his blog. An independent analysis conducted by representatives from Belarusian human rights organisations, assisted by specialists, concluded that the information posted on 1863x.com represents the author's critical views of certain events and facts, but does not incite racial, national or religious hatred or discord.<sup>45</sup> Palchys became the third political prisoner of 2016.

Article 35.4 of the Law on Mass Media poses another problem. It prohibits the professional activities of journalists without accreditation specifically issued by the authorities. The law sets apart journalists working for foreign media, who must obtain accreditation through a complicated procedure at the Ministry of Foreign Affairs. In numerous cases, the Ministry has repeatedly refused accreditation to journalists who work for foreign media outlets.

The authorities have prosecuted and unlawfully penalised freelancers who are believed to have cooperated with foreign media, on the basis of Article 22.9(2) of the Administrative Code. In fact, the article concerns Belarusian rather than foreign media and does not hold journalists accountable.<sup>46</sup> In 2016, the state targeted two journalists from the Homel district: Konstantin Zhukovski, who was prosecuted seven times, and Larisa Shiryakova, who was prosecuted three times.<sup>47</sup>

In relation to the average salary in Belarus, approximately 340 EUR per month, these fines are exceedingly high. They are used as an effective method of censorship. According to Andrei Bastunets, Chairperson of the Belarusian Association of Journalists, the Belarusian authorities oppress and target freelance journalists who contribute to foreign media in order to restrict its influence "as the important independent sources of information in the conditions where there is a lack of independent audiovisual media in Belarus."<sup>48</sup>

In a statement on 1 March 2016, the Minister of Internal Affairs of the Republic of Belarus claimed that some

media channels had launched an "information war" against the police. The minister declared that they would enlist all statutory means available to respond to these breaches of the law, including legal action.

In August 2016, the Independent Institute for Socio-Economic and Political Studies (IISEPS) closed down its activities in Belarus after pressure from Belarusian security services and a propaganda campaign in state-run media outlets. The human rights community links this harassment specifically to the 2016 parliamentary election and more broadly to the authorities' determination to restrict the right to receive and disseminate information, especially in relation to political and social life.<sup>49</sup>

During the parliamentary election, the state violated the right to freedom of expression and access to information. Opposition candidates faced censorship when trying to publish their election manifestos in pro-government newspapers, even though the law dictates that the state-run media is required to give equal opportunities to all candidates. According to the Central Election Commission's resolution No. 32, adopted on 28 June 2016, candidates are permitted a single five-minute speech slot on state radio; state television should only permit participation in debates with candidates from the same district.

#### OPPRESSION IN ACTION

The state-run, regional newspaper *Ostrovezkaja Pravda* refused to publish the manifesto of Nikolaj Ulasevich, an opposition candidate to the parliamentary election in 2016, because it supposedly contained false information about his pro-government opponent.

The TV and radio company Grodno also rejected his recorded speech with reference to the Electoral Code, stating that a candidate's manifesto must not contain "propaganda of war, incitement to violent change of the constitutional order or violation of territorial integrity of the Republic of Belarus, to social, national, religious and racial hatred, calls encouraging or having the aim to disrupt or cancel, or postpone the elections, set in accordance with the legislative acts of the Republic of Belarus, insults

45 Human Rights House Network, "Joint Statement of the Human Rights Organizations Regarding the Criminal Prosecution of Blogger Eduard Palchys", 05 October 2016, <http://humanrightshouse.org/Articles/21926.html>.

46 Belarusian Association of Journalists (BAJ), "Привлечение к ответственности журналистов за сотрудничество с иностранными СМИ без аккредитации по части 2 ст.22.9 КоАП", 7 July 2015, <https://baj.by/ru/analytics/privlechenie-k-otvetstvennosti-zhurnalistov-za-sotrudnichestvo-s-inostrannymi-smi-bez>.

47 Belarusian Association of Journalists (BAJ), "Fines to Journalists for Violating Article 22.9 of the Administrative Code (Chart) (Updated)", 15 April 2016, <https://baj.by/en/analytics/fines-journalists-violating-article-229-administrative-code-chart-updated>.

48 Bastunets Andrei, "Press freedom Has Never Been Easy in Belarus", Mapping Media Freedom, January 22, 2016, <https://mappingmediafreedom.org/plus/index.php/2016/01/22/andrei-bastunets-press-freedom-has-never-been-easy-in-belarus-2/>.

49 Human Rights Center "Viasna", "Human Rights Situation in Belarus. August 2016", 1 September 2016, <http://spring96.org/ru/news/8472>.

and slander related to officials of the Republic of Belarus, candidates for the President of the Republic of Belarus, candidates for deputies.”

Ulasevich believes that both cases are connected to his criticism of pro-government opponents. The court rejected his complaint in the initiation of civil proceedings; the next step is to appeal to the UN Human Rights Committee for support.

Source: Human Rights Centre Viasna

During 2016, two of the biggest state-owned distribution companies of printed newspapers, “Belpochta” and “Belsoyuzpechat”, continued to refuse to distribute “Novy Chas” and other independent media through their national network of sales points and subscription systems, for no apparent reason.<sup>50</sup>

“ Since September 2015 officials from ‘Belsoyuzpechat’ and ‘Belpochta’ have refused three times the distributing of ‘Novy Chas’ an independent newspaper through their subscription catalogues. In over ten years of regularly issuing publications, we have been rejected a total of seven times in being granted access to these catalogues and each time a different type of excuse has been used. Officials state that they are free to choose who will benefit from their distribution network. At the same time, the opportunities for distributing our newspapers have recently become much more restricted. The Ministry of Information has demanded all distributors of media to register, and without special registration it is only the editorial office itself who can distribute the newspaper. So, from now on we cannot legally distribute the newspaper through our volunteers in the regions, because it puts them in the position of being branded as law breakers. People find it difficult to collect all the documents required to go through the mountains of bureaucracy in order to register with the Ministry of Information. And it is also not a solution for us to include all the 26 distributors as editorial staff. So, we are forced to limit our distribution network, where volunteers continue to work at their own risk and peril.”

Oksana, Kolb, Editor in Chief, Novy Chas, Minsk

“ One year since the EU lifted sanctions against Belarus, freedom of expression has remained for the most part unchanged. Despite a thaw in relations with Minsk, the West should continue to support the few remaining independent media outlets that struggle to survive and counteract state and Kremlin propaganda.”

Anonymous defender of freedom of expression

“ The state controls all television channels, radio stations and most newspapers in the country. It uses this monopoly for its own purposes, and does not allow opponents and democratic NGO’s access to the media.”

Ales Bialiatski, Human Rights Centre Viasna, Minsk

“ The media does not cover or give air time to opposition parties’ and organisations’ activities. Instead it publishes short comments regarding unauthorised gatherings and subsequent penalties levied against activists.”

Vladimir Velicikin, Human Rights Centre Viasna, Brest

According to the human rights activists who participated in Civil Rights Defenders’ survey, the right to freedom of expression is not respected in Belarus. For example, ordinary citizens do not feel comfortable expressing their views, fearing state persecution. Professional journalists are denied access to information, unable to exercise their rights. Foreign literature is subjected to a so-called “extremism examination.” Independent media outlets are often closed down. The authorities use all means available to prosecute journalists and the media. There is a blacklist of websites that cannot be accessed from libraries and state institutions, including universities.

The UN Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, does not see any major improvements with regards to freedom of expression. He states that “legal changes [have] further aggravated the situation of the right to free expression and media pluralism, and repressions against independent journalists and publishers [have] continued.”<sup>51</sup>

In its report, the OSCE/ODIHR Election Observation Mission notes that the strict media regulations contain pro-

50 Belarusian Association of Journalists (BAJ), “Mass Media in the Period of Elections to the Chamber of Representatives. (July – September 2016)”, 31 October 2016, <https://baj.by/en/analytics/e-newsletter-mass-media-belarus-bulletin-349-mass-media-period-elections-chamber>.

51 UN Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights in Belarus”, 29 April 2015, <http://www.refworld.org/docid/5577ef0c4.html>.

visions in breach of international standards, challenging the right to freedom of expression.<sup>52</sup>

The Council of the European Union has urged Belarusian authorities to eliminate all obstacles to a free and independent media.<sup>53</sup>

### 3. THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

The right to freedom of peaceful assembly and association continues to be heavily restricted in Belarus. Participants of public demonstrations face administrative charges in the form of hefty fines. If they refuse or are unable to pay, their property may be confiscated. Human rights organisations and political parties in the opposition are routinely refused registration, despite the fact that they risk prison sentences of up to two years if found to be unregistered.

#### 3.1 FREEDOM OF ASSEMBLY

According to Article 21 of the ICCPR, the right to peaceful assembly should be recognised and may only be subjected to restrictions that are legitimate, proportionate and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals, or protection of the rights and freedoms of others.<sup>54</sup>

Article 22 states that everyone shall have the right to freedom of association with others, though lawful restrictions may be imposed on members of the armed forces and of the police in the exercising of this right.

The Constitution of Belarus grants freedom of assembly and association through Articles 35 and 36 as well as Article 23, which lists the lawful restrictive measures that may be imposed. These provisions are formulated in a manner similar to articles in major international treaties. The wording suggests that freedom of assembly and association may only be subjected to the limitations

necessary for the protection of other people's rights in a democratic society. However, the Constitution also entitles other legislative acts to impose boundaries and restrictions on these rights.<sup>55</sup>

The Law of the Republic of Belarus, No 114-Z, adopted on 30 December 1997 (amended as of 10 January 2015), on Mass Actions<sup>56</sup> complicates the exercising of the right to peaceful assembly. It prescribes a number of restrictions, characterised by a rigid registration procedure and overregulation of other procedural aspects. With so many provisions to fulfil, it is easy for the authorities to find a reason to decline an application.

Before any mass event, organisers must first submit a request for a permit to the relevant authority, typically the local executive and administrative body.<sup>57</sup> The data requested is wide-ranging: detailed personal information about organisers, the drivers of vehicles when applicable; information about the purpose of the event, sources of funding, transport routes and vehicles to be used during the event; the exact location of the gathering; and measures taken for the sake of security, medical care and sanitation.

During 2016, the authorities vigorously used these provisions to reject applications to exercise the right to freedom of assembly. In some regions, including Vitebsk and Baranavichy, local public authorities even permanently rejected applications to hold events in places specifically allocated for such purposes.

Such comprehensive restrictions violate citizens' rights to freedom of peaceful assembly. During a mass action, official bodies have the right to refuse access to the location where the event is taking place, to encircle participants with security measures, and to photograph and film those present. The latter makes it easy for the authorities to identify participants and initiate administrative and criminal procedures against them.

52 Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights on "Election Observation Mission Final Report:11 September 2016", 8 December 2016, <http://www.osce.org/odihr/elections/287486>.

53 Council of the European Union on "Council Conclusions on Belarus", 15 February 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-belarus-conclusions/>.

54 UN Human Rights Office of the High Commissioner on "International Covenant on Civil and Political Rights", adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, Undated, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

55 Constitution of the Republic of Belarus from 1994, as amended on 24 November 1996 and 17 October 2004, art. 23, 35-36, Undated, <http://www.pravo.by/main.aspx?guid=6351>.

56 Law "On Mass Actions in the Republic of Belarus" No. 114-Z from 30 December 1997, as amended on 10 January 2015, <http://guir.minsk.gov.by/obshchestvenno-massovaya-rabota/massovye-meropriyatiya/zakon-respubliki-belarus-o-massovykh-meropriyatyakh-v-respublike-belarus>.

57 Article 5, Law of the Republic of Belarus No 114-Z of 30 December 1997 (Amended on 10 January 2015) on Mass Actions in the Republic of Belarus, Undated, <http://law.by/main.aspx?guid=3871&p0=H19700114e>.

**Change of tactics:** Prior to August 2015, authorities carried out forced terminations of unauthorised peaceful gatherings, which included the immediate arrest of organisers and participants. In 2016, they changed their tactics, allowing people to continue their actions. Now organisers and participants are prosecuted after the event has finished.

Throughout 2016, Viasna documented a total of 484 administrative cases initiated against social activists, human rights defenders and journalists from independent media outlets for exercising their rights to peaceful assembly and freedom of expression.<sup>58</sup> There are also cases in which authorities have confiscated the property of civil society activists who have been unable to pay their fines.<sup>59</sup>

By the end of November 2016, Belarusian human rights activists had been forced to pay a total of over 88,000 EUR.

All public gatherings must be registered with the Ministry of Justice; those critical of the regime are routinely denied registration. Two days after the EU lifted its sanctions in February 2016, Victor Shery, Representative of the Students' Government Coordinating Council of the Belarusian State Medical University, declared that three non-governmental organisations working on student matters were "unauthorised" and "illegal." According to Civil Rights Defenders' sources, there are strong indications that the authorities subsequently instructed heads of Universities to engage in "preventive conversations" with their students. The students were warned against participating in the activities of these organisations, because they were "targeted by other forces as misleading with elements of anti-government nature."<sup>60</sup>

The human rights defenders surveyed by Civil Rights Defenders agreed that the right to freedom of assembly is largely suppressed by the state. Belarusian legislation contravenes the country's international obligations, as the vast majority of those who organise unauthorised demonstrations end up being penalised. In 2016, the number of those punished for participating in protests, rallies or other public events increased seven-fold compared to 2015.

### 3.2 FREEDOM OF ASSOCIATION

According to the law,<sup>61</sup> all public associations must be registered with the Ministry of Justice. The application process is highly obstructive. Acting without registration is a crime under Article 193.1 of the Criminal Code, with potential punitive sanctions of up to two years in prison. In practice, obtaining registration is impossible for organisations that are critical of the regime.

At the end of April 2016, the Ministry of Justice refused to register the campaign "Tell the Truth" for the fifth time. It argued that the goals of the association were too vaguely articulated.

“The lifting of sanctions has brought no change to people's rights when it comes to Freedom of Association. The main repressive Criminal Code Art. 193.1 deems it illegal to operate as an unregistered organisation. It is therefore an everyday reality for people; that criminal prosecutions can be initiated against them if they do 'any' work on behalf of an unregistered organisation.”

Ales Bialiatski, Human Rights Centre Viasna, Minsk

“It is practically impossible to exercise this right because of the extremely repressive legislation that is currently in place. The trend in recent years has changed; participants of unauthorised gathering are 'only' fined, as opposed to being imprisoned and this marks a questionable 'improvement.' However what is an extremely worrying development for us is the authorities actions of auctioning off the property of activists who fail or are unable to pay a fine .”

Natallia Mankouskaya, Minsk

“Over the past few years the authorities have refused opposition organisations and parties to participate in hundreds of gatherings!”

Vladimir Velicikin, Human Rights Centre Viasna, Brest

In a report from 21 April 2016, the UN Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, confirmed that civil society groups are

58 Human Rights Center "Viasna", "Human Rights Situation in Belarus in 2016: Analytical Review", [http://spring96.org/files/misc/review\\_2016\\_en.pdf](http://spring96.org/files/misc/review_2016_en.pdf).

59 Хартия 97, "У Ольги Николайчик Отбирают Дом в Минске", 4 January 2017, <https://charter97.org/ru/news/2017/1/4/236530/>

60 Human Rights Center "Viasna" on "Human Rights Situation in Belarus: February 2016", 1 March 2016, <http://spring96.org/en/news/82462>.

61 Law of the Republic of Belarus No. 3254-XII from October 4, 1994 (As amended on 4 November 2013) "On public associations", <http://lida.by/isp/87/404/doc/5376.html>.

repeatedly and arbitrarily denied registration on various grounds, often without direct reference to relevant laws or regulations. He also noted that the number of individuals who have been fined as a result of administrative prosecution for participating in an unregistered event has not declined since the presidential election in October 2015.<sup>62</sup>

In its report,<sup>63</sup> the OSCE/ODIHR Election Observation Mission observes that restrictions on the fundamental freedoms of association, expression and assembly have narrowed the public space and affected the environment for campaigning negatively.

The Council of the European Union stresses the importance of a vibrant civil society to the social and economic welfare of a country, and calls on the Belarusian authorities to allow civil society greater involvement in discussions about government policy.

“No applications for peaceful gatherings in Grodno have been approved in the last ten years!”

Local human rights defender

#### 4. THE RIGHT TO A FAIR TRIAL AND AN EFFECTIVE REMEDY

As a state party to the ICCPR, Belarus has a clear obligation to ensure the right to a fair trial and an effective remedy. Yet the regime continues to fail to comply with its international obligations. The judiciary is not independent and the right to a fair trial is not respected, especially in politically motivated cases.

Article 14.1 of the ICCPR provides that “all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him [or her], or of his [or her] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>64</sup>

Article 60 of the Belarusian Constitution and national legislation provides for the right to a fair trial and establishes the independence of judges. However, internal legal regulations governing the appointment, tenure, promotion, removal and remuneration of judges do not generally conform to the standards that guarantee judicial independence, which is required in order to ensure the right of an individual about to be tried by an independent court.

The president has exclusive powers and discretion to approve or reject any proposed candidate to the judiciary without explanation. According to law, the judges are appointed for a five-year term, with the possibility of extension for one further term or, sometimes, indefinitely.<sup>65</sup> Judges who are loyal to the president often retain their position further undermining the principal tenets of the right to a free and fair trial.

In practice, the judiciary functions as an instrument of repression. In many cases those who are brought before the courts are there on politically motivated charges, which often contravene international provisions and standards.

The judicial system is arbitrary. The fate of political prisoners depends on the goodwill of the president, especially in politically motivated cases. On 22 August 2015, President Lukashenka pardoned six political prisoners: Mikalai Statkevich, Mikalai Dziadok, Ihar Alinevich, Yury Rubtsou, Artsiom Prakapenka, and Yauhen Vaskovich. Nevertheless, their criminal records remained, restricting their ability to exercise their civil and political rights. The former prisoners cannot stand for any future office, and could be sent back to prison at any time. As of January 2017, there are still three political prisoners incarcerated.

In Civil Rights Defenders' survey, the majority of respondents claimed that Lukashenka is in full control of the judiciary. Many stated that the courts more often than not fail to refer to relevant national and international legislation when assessing a case.

62 UN Human Rights Council on “Report of the Special Rapporteur on the Situation of Human Rights in Belarus”, 21 April 2016, <http://www.refworld.org/docid/575fb5bc4.html>.

63 Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights on “Election Observation Mission Final Report”, 8 December 2016, <http://www.osce.org/odihr/elections/287486?download=true>.

64 UN Human Rights Office of the High Commissioner on “International Covenant on Civil and Political Rights”, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, Undated, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

65 Code of Judicial Administration and the Status of Judges of the Republic of Belarus (Judicial Code), art. 99, Undated, <http://www.kc.gov.by/en/main.aspx?guid=13205>.



### Testimonies from Human Rights Defenders:

In disputes between the state and the citizen, the citizen never wins.

“ Even after the lifting of sanctions by the EU, the authorities continue to subject those alleged to have committed a minor breach to punitive sanctions, often without sufficient justification. The most important thing to remember is that the punishment decided is not done according to the court’s decision, but at the prosecutor’s will. This practice may be seen through the conduct in legal cases and decisions brought against Eduard Palchys (see freedom of expression section), and against the political prisoner Vladimir Kondrus.”

Serghei Ustinov, Legal Initiative, Minsk

“ Citizens of Belarus are routinely deprived of their right to have a fair trial in Belarus. All courts in Belarus are appointed by the president. In all civil-politically motivated cases, judges do not take independent and objective decisions, but always consult the concerned officials from the executive branch of power.”

Ales Bialiatski, Human Rights Centre Viasna, Minsk

Human rights activist Victoria Fedorova has brought to 15 courts the matter of the failure of closed institutions to provide information about conditions in temporary detention centres, which constitutes a violation of the right of access to information. No court has considered the appeal of a human rights activist, as it is not under their direct jurisdiction. This is a violation of Article 60 of the Constitution, which provides for the protection of rights and freedoms.

“ I have taken part in about 15 trials and submitted 15 appeals. I have never been able to defend my right to a fair trial! The court decisions were not only unlawful, but often very humiliating! The courts in Belarus are working solely in the interests of the ruling regime. In recent years, political opponents of the government were always convicted. According to official statistics only 0.8% of verdicts given were deemed justifiable in character.”

Victoria Fedorova, Executive Director, Legal Initiative, Minsk

## CONCLUSION AND RECOMMENDATIONS

Exactly one year after the EU lifted its sanctions, Belarus still lacks respect for the rule of law and basic human rights. Despite repeated recommendations from international independent experts, Belarus has failed to amend repressive legislation that violates civil and political rights. Basic rights such as the right to freedom of association, freedom of assembly, and the right to a fair trial and an effective remedy continue to be violated.

In addition to lifting its sanctions, the EU doubled its financial assistance to Belarus from 14.5 million EUR in 2015 to 29 million EUR in 2016. Some of these funds will be used to keep asylum seekers, intent on reaching Europe, in refugee camps in the authoritarian state.

Local human rights activists are disappointed by the EU's decision to lift sanctions. Their overall perception is that the human rights situation in Belarus has deteriorated, and that the EU's lack of consistency will encourage the government to continue to clamp down on civil society and opposition activists.

The EU must now earn back the trust and confidence of Belarusian society, by demonstrating that human rights are still a central core value of the Union. Therefore, **Civil Rights Defenders calls on the European Union and all its member states to:**

1. Put pressure on Belarus to fully implement the ICCPR when it comes to:
  - Restoring the civil and political rights of released political prisoners;
  - Immediately releasing the three remaining political prisoners;
  - Ensuring the rights to freedom of expression, assembly and association by repealing Article 193.1 of the Criminal Code;
  - Reviewing and amending the Electoral Code in order to ensure equal access for all candidates, voters' right to free expression, and genuine competition without barriers for campaigning;
  - Ensuring the rights to a fair trial and an effective remedy and closing all politically motivated cases;
2. Demand that Belarus ratifies and begins to implement the ICCPR Optional Protocol II on the abolition of the death penalty;
3. Insist that Belarus cooperate with international actors such as OSCE and the UN Special Rapporteur;
4. Include human rights as a top priority in EU-Belarus dialogue and refuse to ratify the Bilateral Partnership and Cooperation Agreement concluded in 1995 until Belarus lives up to its international human rights obligations;
5. Include civil society representatives in the human rights dialogue between the EU and Belarus. If Belarus does not agree to this requirement, the EU should refrain from the human rights dialogue and focus on bringing up human rights concerns in all other contacts with the regime;
6. Elaborate on a plan concerning minimum requirements for Belarus to address in a comprehensive human rights agenda, followed by a three-year roadmap to ensure that sustained progress is made in Belarus;
7. Support civil society in their advocacy work, both at national and international levels;
8. Closely monitor the implementation of the national plan on human rights that Belarus adopted on 24 October 2016;
9. Prolong the arms embargo and sanctions against the four members of Lukashenka's security service deemed to be responsible for the disappearances of four regime critics in 1999 and 2000.





WE EMPOWER PEOPLE

Sergels torg 12  
111 57 Stockholm, Sweden  
Phone: +46 8 545 277 30  
info@crd.org  
[www.crd.org](http://www.crd.org)