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Belarus: Time for media reform

Policy paper on media freedom in Belarus

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About Index

Index on Censorship is an international organisation that promotes and defends the right to freedom of expression. Index uses a unique combination of journalism, campaigning and advocacy to defend freedom of expression for those facing censorship and repression, including journalists, writers, social media users, bloggers, artists, politicians, scientists, academics, activists and citizens.

About BAJ

The Belarusian Association of Journalists is an award-winning non-governmental association of media workers, promoting freedom of expression and independent journalism in Belarus.



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Executive summary

Belarus continues to have one of the most restrictive and hostile media environments in Europe. Recent years have brought no genuine improvements to the media situation. In a country that has not held a free or fair election since 1994, the authorities keep tight control over the media as a means of preserving their power.

The country's media market is strictly controlled by the Belarusian government. That control rigs the media market to benefit state-owned providers and impedes the development of independent print and television outlets through legislative and administrative restrictions. The state-owned media enjoys significant budget subsidies, favourable advertising and distribution contracts with government agencies. In comparison, independent publications face economic discrimination and distribution restrictions. Field research conducted for this policy paper in Belarus found clear differences between editorial policies of the media based on their ownership including the topics they cover and their approaches to coverage.

The internet has become an important source of independent information for Belarusians. The development of online news media is hindered by the structure of the internet market, which is dominated by large portals and services, including many Russian sites. Belarusian authorities also aim at tighter regulation of internet as outlined in Index's policy paper, "Belarus: Pulling the Plug".

Restrictive media legislation and its oppressive implementation has made the media landscape unfavourable for freedom of expression. Media law forces new outlets to register and regulations give the state the power to close down media even for minor infringements. Accreditation procedures are used to restrict journalists' access to information and foreign correspondents face additional obstacles in reporting from the country. The criminalisation of defamation, anti-extremism legislation and other laws are being used to curtail media freedom and persecute independent journalists and publishers. The police use violence and detain journalists, especially those who cover protests. Reporters are routinely sentenced to administrative arrests and fines.

Despite ongoing pressure by international bodies such as Index on Censorship, the authorities of the country have been quite reluctant to discuss or implement recommendations on media legislation or changes in practices of their implementation to bring them in line with international standards.

Index urges the Belarusian authorities to immediately remove all contraventions of human rights and media freedom. The much-needed reforms of the media field should be launched in order to end harassment and persecution of journalists, and eliminate excessive state interference in media freedom. The outline of these reforms should result from a dialogue with professional community and civil society of the country.

The European Union and other international institutions must place the issue of media freedom on the agenda of any dialogue with the Belarusian authorities to demand genuine reforms to bring the Belarus media-related legislation and practices of its implementation in line with the Belarusian Constitution and its international commitments in the field of freedom of expression.

Introduction

This paper looks at the media landscape within Belarus and how economic discrimination used by the authorities and the state licensing of media outlets has impacted upon media freedom in the country. This is followed by an analysis of the legal framework for the media in particular how the state has reduced the space for freedom of expression for all citizens but in particular for media freedom, with restrictions on the accreditation of journalists, the use of criminal defamation and of anti-extremism laws. The final section of the report looks at the important chill on freedom of expression posed by physical attacks on journalists and media workers.

This policy paper reiterates that media freedom is the key to improvements of the overall human rights situation in Belarus. International community and civil society of the country have appealed to the authorities of Belarus to reform the media field including during a monitoring and advocacy mission undertaken by press freedom and media development organisations, including Index on Censorship, in Belarus on 20-24 September 2009.¹ The recommendations of this mission have been benchmarked against the current state of media freedom in Belarus throughout this report after the recent visit by Index on Censorship in October 2013.

The report concludes with particular recommendations that should allow Belarus to bring media-related legislation and the practices of its implementation in line with international standards to fulfil its commitments, in particular as a member state of the United Nations and the OSCE.

Freedom of expression and freedom of the press is guaranteed in the Belarusian Constitution.² But despite the authorities of the country stating it “has a full-fledged national information space”³ that “develops dynamically”, the country is one of the world’s worst places for media freedom. Belarus is listed 193 out of 197, lowest in the 2013 Freedom of the Press rating by Freedom House.⁴ Reporters without Borders rank it 157 out of 179 countries in their 2013 Press Freedom Index.⁵

According to Thomas Hammarberg, a former Council of Europe Commissioner for Human Rights, “free, independent and pluralistic media based on freedom of information and expression are a core element of any functioning democracy; freedom of the media is also essential for the protection of all other human rights.”⁶

The media freedom situation and the form of the Belarusian media market are affected by the overall political situation. The media field is tightly regulated by the authorities of the country that see close control over the information sphere as their basis of preserving power. Belarus is described as “not free”⁷ in terms of political freedoms and is criticised for its overall poor human rights record. No election or national referendum in Belarus has been recognised

1 For Free and Fair Media in Belarus, International Fact-Finding Mission to the Republic of Belarus 2009, final report http://baj.by/sites/default/files/monitoring_pdf/Mission_report_EN.pdf

2 Constitution of the Republic of Belarus, <http://law.by/main.aspx?guid=3871&p0=V19402875e>

3 “Belarus has a full-fledged national information space”, BELTA <http://news.belta.by/en/pointOfView/?id=594920>

4 Freedom of the Press 2013, Freedom House <http://www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf>

5 Press Freedom Index 2013, Reporters Without Borders <http://en.rsf.org/press-freedom-index-2013,1054.html>

6 Human rights and a changing media landscape, Council of Europe <http://www.coe.int/t/commissioner/Activities/themes/MediaFreedom/MediaLandscape2011.pdf>

7 Freedom in the World 2013, Freedom House <http://www.freedomhouse.org/report/freedom-world/2013/belarus>

as free and fair by OSCE ODIHR⁸ since President Alexander Lukashenko came to power in 1994. According to Belarusian human rights organisations, there are currently eleven political prisoners behind bars.⁹ The report of the UN Special Rapporteur on the situation of human rights in Belarus suggests there are serious problems with freedom of expression, freedom of assembly, freedom of association and other fundamental rights and freedoms.¹⁰

Serious concerns over profound and systemic problems with media freedom in Belarus have been highlighted on numerous occasions by the European Parliament¹¹, the OSCE Representative on Freedom of the Media¹², the UN Special Rapporteur on the situation of human rights in Belarus, as well as civil society within the country.

“The Belarusian independent media fulfil a crucial role in the state dominated media landscape in Belarus and have been one of the main victims of the authorities’ crackdown on independent opinions after the 2010 Presidential elections,” said the EU Commissioner for Enlargement and Neighbourhood Policy Štefan Füle.¹³

The main areas of concerns are the restrictive legal framework, issues of impunity and journalists’ safety as well as the ongoing economic discrimination by the state against independent media. This policy paper looks in detail in all these issues.

8 Republic of Belarus, Presidential Election 19 December 2010, OSCE/ODIHR Election Observation Mission Final Report <http://www.osce.org/odihr/elections/75713>

9 List of political prisoners, Human Rights Centre Viasna <http://spring96.org/en/news/49539>

10 United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-52_en.pdf

11 European Parliament recommendation of 12 September 2013 to the Council, the Commission and the European External Action Service on EU Policy towards Belarus (2013/2036(INI)) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-382>

12 OSCE, The Representative on Freedom of the Media, Regular Report to the Permanent Council <http://www.osce.org/pc/102658>

13 Belarus: With Independent Journalists About European Future http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2012/07/20120718_2_en.htm

1 Belarus media landscape

The present media market of the country started to take shape at the beginning of 1990s as Belarus became an independent state as the Soviet Union disintegrated. Unlike other post-Soviet states, the process of the denationalisation and privatisation of the state media was not in fact ever launched leaving state control and ownership over most of national media. While a number of independent media outlets were established in the 1990s, very few have managed to survive to the present day.

The current development of the media in Belarus is significantly affected by the political and economic situation in the country after the presidential election of 19 December 2010 that was followed by a severe clampdown on political opposition and civil society and periods of financial instability.

This section analyses the state of the Belarusian news media market and provides a case study on how the ownership of the media matters on how current events are being reported in the country. We argue that the authorities keep tight regulatory and economic control over the news media market. State-run media that are used as means of government propaganda enjoy significant financial support, while independent news media face economic discrimination that make their position in the market more vulnerable.



1.1 Broadcast media

Broadcast media remain the primary source of information for most Belarusians. The overall reach of television is 98.4% of the population aged over 15, and its share in the media advertising market is over 50% of the total.¹⁴ This dominant position of television is the reason the state keeps this sphere under strict control. Most of broadcast media in Belarus are state-owned, and they enjoy significant financial support from the authorities. The state budget of Belarus for 2014 allocated 548 bn roubles (about £34m) for direct support of television and radio.¹⁵

There are 262 TV and radio stations registered, 178 of them (68% of the total) are owned by the state.¹⁶ There is no formal Public Service Broadcaster (PSB) with an independent board and a commitment to impartiality. Four national channels are owned by the National State Television and Radio Company that also owns five radio channels and five regional TV and radio companies.¹⁷ Two more national channels, ONT and STV, are formally joint stock companies, but they are not publicly listed, and all their founders are state companies.

There is not a single independent national TV channel or a public service broadcaster in the country. Independent broadcast media that operates from abroad face restrictions. For instance, Belsat TV channel, that has been broadcasting in Belarusian from Poland since 2007, has been refused permission to open an official editorial office in Belarus. Belsat's reporters face constant pressure and are subjected to warnings and detentions.¹⁸

At the same time, a decision taken in November 2013 to prolong accreditation in Minsk of the editorial office of Euroradio, an independent radio station that also broadcasts in Belarusian from Poland, can be considered as a positive step.¹⁹

The general process of licensing and frequency allocation in Belarus is complicated, not transparent and is controlled entirely by the government through licensing and frequency allocation processes.²⁰ More information about legal regulations of media activities can be found at the next chapter of this policy paper on the legal framework in Belarus for media outlets.

1.2 Printed media

Economic leverages are used by the authorities of the country to control the printed news media market in Belarus. While state-owned newspapers have preferences in advertising market and distribution, independent publications fail to enjoy equal conditions, being restricted from distribution systems and advertising. Economic difficulties threaten operations of non-state socio-political newspapers, and thus restrict the access of the audience to independent sources of information. This sub-section explains the mechanisms of such economic restrictions in place in Belarus in more detail.

14 ZenithOptimedia Belarus, presentation at Business Internet 2013 conference <http://bit.ly/1aVmDgz>

15 Law of the Republic of Belarus "On 2014 State Budget" (in Russian) <http://pravo.by/main.aspx?guid=3871&p0=H11300095&p1=1&p5=0>

16 Ministry of Information of Belarus, Data on the number of registered media as of 1 January 2014 (in Russian) <http://www.mininform.gov.by/rus/smi/>

17 National State TV and Radio Company <http://www.tvr.by/eng/about.asp>

18 Belsat denied registration yet again, Belsat TV <http://belsat.eu/en/aktualnosc/a,13489,belsat-denied-registration-yet-again.html>

19 Belarus extends accreditation for Euroradio bureau, Euroradio <http://euroradio.fm/en/euroradio-correspondent-office-prolongs-accreditation-belarus>

20 Media landscapes of Eastern Partnership countries, Yerevan Press Club 2011 <http://ijc.md/Publicatii/resurse/Media-Landscapes-en.pdf>

The majority of printed media – 1,146 out of the total of 1,556 registered in Belarus as of 1 January 2014 – are privately owned. Most of the non-state newspapers are not news publishers but mainly advertising or publications for entertainment. According to BAJ, there are less than 30 socio-political newspapers, both national and regional, in Belarus that are publications with actual news journalism.

There is a significant amount of evidence to suggest that the non-state owned press in Belarus faces economic discrimination. Direct state subsidies to the state-owned printed media in 2014 are projected to be 64 bn roubles (about £4 m).²¹ It is claimed by the editors of several non-state newspapers, that the costs of paper and printing for independent newspapers are higher than for state-owned ones.²²

Another form of direct economic discrimination by the government is the influence of the state over the advertising market. The economy of Belarus is dominated by the state, with 70 per cent of its GDP being the output of state-owned companies.²³ In practice this gives opportunities for the direct interference of the government in the distribution of advertising revenues. It is also the case that there is compulsory subscription to state-owned newspapers, both national and local, for employees of state-owned enterprises and organisations.²⁴

There is direct state intervention in the distribution of independent newspapers, which prevents their sale. At least eleven independent publications face restrictions to their distribution via state-run retail press distribution and subscription networks (see Table 1 on the next page). The distribution ban was imposed on the eve of the presidential election of 2006, when at least 16 independent newspapers were excluded from the subscription catalogue of Belposhta (Belarusian Post) and 19 had their contracts with Belsayuzdruk retail sales system cancelled. Due to the distribution restrictions several of them ceased to exist. Most of those that survived remain barred from state distributors and have had to either develop their own distribution systems or move completely online.

The authorities of the country persistently refuse to acknowledge the problem of distribution restrictions. Dzmitry Shedko, Deputy Minister of Information, wrote to Index request that “non-state media equally with state ones have a free access to state printing facilities and possibilities to distribute their publications through state press distribution structures.”²⁵ The Deputy Minister points out that the law provides for the freedom of contract, and the authorities cannot interfere with the will of distribution companies to sign contracts with any particular mass media outlet.

Despite this, in practice the reality is very different. In 2008 two independent newspapers, *Nasha Niva* and *Narodnaya Volia*, were returned to state distribution systems as a part of commitments the authorities of Belarus made to the European Union in order to re-launch a political dialogue with the EU.²⁶ It proves a decision to lift the distribution restriction is political and can be dictated by the state rather than economic.

21 Law of the Republic of Belarus “On 2014 State Budget” (in Russian) <http://pravo.by/main.aspx?guid=3871&p0=H11300095&p1=1&p5=0>

22 Shklou newsprint mill limits sales volume, BAJ <http://baj.by/en/node/8998>

23 Business in Belarus 2012, IPM Research Centre. <http://eng.research.by/webroot/delivery/files/english/sme/business2012e.pdf>

24 Падпіска з выкручваннем рук [Subscription with twisting of arms], RFE/RL <http://www.svoboda.org/content/article/24777027.html>

25 Letter from the Ministry of Information of 28 November 2013, No. 01-13/A-182

26 *Narodnaya Volia* and *Nasha Niva* Newspapers are Back to State Distribution Systems, BAJ <http://baj.by/en/node/8599>

Title	Belpost	Belsayuzdruk	Means of distribution
ARCHE.Pachatak magazine	Included into 2014 subscription catalogue	Refused distribution. Got refusals in 2013 under the pretext of selling the magazine "being financially unreasonable"	Belpost
Borisovskiye Novosti	Refused distribution since 2006. Returned to the subscription catalogues in June 2013, but excluded again in October 2013	Refused distribution since 2006	Editorial subscription, private shops, civil activists.
Hantsavitski Chas	In the subscription catalogue, but distribution restricted to Hantsavichy District only	In kiosks, but distribution restricted to Hantsavichy District only	70% are sold via its own distribution network
Gazeta Slonimskaya	Refused distribution since 2006. Applied twice in 2013 and filed a petition with 500 signatures in support, but got refused both times; filed a petition to the Presidential Administration, but unsuccessfully	Refused distribution since 2006. Applied twice in 2013 and filed a petition with 500 signatures in support, but got refused both times; filed a petition to the Presidential Administration, but unsuccessfully	Editorial subscription
Intex-press	Refused distribution since 2006	Refused distribution since 2006	Editorial subscription, private shops
Niasvizhski Chas	In the subscription catalogue, but distribution restricted to Niasvizh District only	Out. Refused in 2012; in 2013 they did not apply as they consider applying "pointless".	Local shops
Novy Chas	Refused distribution since 2006. In 2013 they did not apply as they consider applying "pointless".	Refused distribution since 2006. In 2013 they did not apply as they consider applying "pointless".	Editorial subscription, civil activists
Regionalnaya Gazeta	In the subscription catalogue, but distribution restricted to Minsk Region only	In	Belsayuzdruk
SNPlus. Svobodnyie Novosti Plus	Refused distribution, last time denied services in 2012	In	Belsayuzdruk
Tovarishch	Refused distribution since 2006. They did not apply in 2013 as the paper is published irregularly due to economic difficulties	Refused distribution since 2006. They did not apply in 2013 as the paper is published irregularly due to economic difficulties	Civil activists
Volnaye Hlybokae	Refused distribution. They applied in 2013, but were refused under the pretext of selling the newspaper "being financially unreasonable"	In local kiosks, but distribution restricted to 40 copies	Editorial subscription, private shops and markets

Table 1. The list of non-state newspapers restricted from distribution in state-run retail and subscription networks.²⁷

²⁷ Distributing Non-State Press in 2013, BAJ <http://baj.by/en/node/22883>

1.3 Online media

The internet in Belarus is developing extensively, although it cannot still boast of the same audiences as broadcast media. Over 4.85 m Belarusians aged over 15 access the internet (which is 12% more than a year ago) and over 80% of those with access go online every day. 68% of Belarus's internet users go online through a high-speed broadband connection.²⁸ The internet remains a relatively free domain of freedom of expression in the country, despite recent attempts by the government to put it under tighter control, as revealed in "Belarus: Pulling the Plug" report, produced by Index on Censorship in January 2013.²⁹

Growing internet penetration and the restrictions traditional media face offline has led to a significant development of online news media. For instance, several independent publications that stopped issuing printed versions due to distribution restrictions now only exist as websites. This is the case with Belorusskaya Delovaya Gazeta, once one of the leaders of non-state press (<http://bdg.by/>), Solidarnasc (<http://gazetaby.com/>) or Khimik regional newspaper (<http://ximik.info/>). Online versions of several existent newspapers reach a larger audience than their printed versions.

In general, independent online publications enjoy significantly greater popularity among internet users than pro-regime websites of state-run media (see Table 2).

Place in overall rating	Name of site	Type	No. of real users
16	charter97.org	Independent news site	338 878
17	kp.by	Russian-owned newspaper	331 382
25	naviny.by	Independent news site	250 735
30	ria.ru	Russian news agency	164 149
31	ctv.by	Site of a state TV channel	162 737
34	utro.ru	Russian news website	135 749
39	euroradio.fm	Site of independent radio	109 881
42	21.by	Independent news site	102 811
43	udf.by	Independent news site	101 916
45	telegraf.by	Independent news site	99 963

Table 2. Top 10 news websites visited by Belarusian internet users with the number of individuals in Belarus who visited them in November 2013. Source: Gemius, GemiusAudience 11/2013³⁰

²⁸ Mikhail Doroshevich, Gemius, presentation at Business Internet 2013 conference <http://bit.ly/1gPtX9C>

²⁹ Belarus: Pulling the Plug, Policy paper on digital challenges to freedom of expression in Belarus http://www.indexoncensorship.org/wp-content/uploads/2013/01/IDX_Belarus_ENG_WebRes.pdf

³⁰ Gemius Audience Survey 11/2013, Gemius, <http://www.audience.by>

This table represents online news publications only, but does not include the news sections of larger internet portals. It should be noted that they are much more popular than dedicated news publications. For instance, the news section of the largest Belarusian portal TUT.BY is visited by about 1,000,000 Belarusians aged over 15 monthly. News sections of major Russian portals Mail.ru and Yandex.ru are ranked 2nd and 3rd as sources of online news for visitors from Belarus.³¹

The two important trends of Belarus's online news market are:

- ***Dedicated news websites are not the most popular online destinations for Belarusians;***
- ***Russian websites have a significant market share in terms of Belarusian audience.***

The top 20 news publications have a joint reach of no more than 25% of the total number of Belarusians online. If news sections of major portals are taken into consideration, this share is still around 45%. At the same time, Mail.ru, a Russian portal that is the most popular website among the Belarusian audience, has an audience share of 61.7% alone. Users appear to favour reading news on portals, where they can get other services and on news aggregators.

Social media sites are visited by 72.5% of Belarusian internet users, with Russian Odnoklassniki.ru and Vkontakte leading in this group as well. Four of the six most popular websites in Belarus are Russian portals or services.

There are serious limitations to the development of the online news media market. This is not due to government restrictions, but primarily due to economic factors. The total annual volume of the online advertising market in Belarus in 2013 is estimated to be \$10.5 million US dollars.³² Despite 50% growth to 2012, Belarus still has one of the lowest advertising expenditure budgets per internet user in Europe.³³ The market is very much dominated by its leaders, including Russian media companies that have significant resources to expand and currently enjoy a significant market share.

Case study. State and non-state press: Different media realities

Index on Censorship in cooperation with Mediakritika.by, a Belarusian project dedicated to analysing and monitoring the national media landscape, conducted field research into the content published by state-owned and independent media (that is privately owned media that is free from political direction from the President and government). The research found clear differences between editorial policies of the media based on their ownership including the topics they cover and their approaches to coverage. The difference was particularly noticeable during major political campaigns, such as elections.

The research looked at the content of six Belarusian media outlets, analysed as presented at their websites in October 2013. They are two leading information agencies, state-owned BELTA and privately owned BelaPAN (presented online as Naviny.by), and four national newspapers, state-owned Sovetskaya Belorussiya (SB) and Zviazda, and independent Narodnaya Volia (NV) and Nasha Niva (NN).

31 ТОП новостных сайтов: множественность показателей [Top news sites: multiplicity of indicators], Mikhail Doroshevich, Mediakritika.by <http://mediakritika.by/article/1373/top-novostnyh-saytov-mnozhestvennost-pokazateley>

32 Интернет-реклама остается лидером роста на рекламном рынке [Internet ads lead the growth on advertising market], Marketing.by, <http://marketing.by/main/market/analytics/0065301/?/>

33 Chasing Western Europe. CEE online market 2012/2013, Lauris Lietavietis, Gemius, presentation at Webit, 6 November 2013 http://files.gemius.pl/Presentations/Gemius_Webit_Istanbul_06_11

The content was analysed in terms of presence of several specific topics (quantitative) and the way they were approached by the media (qualitative). The table below represents the number of articles covered or mentioned by the specified topics from the respective media outlets in October 2013:

Topics	State media			Independent media		
	BELTA	SB	Zviazda	BelaPAN	NV	NN
Cooperation with Russia, former Soviet states and the Customs Union	62	39	39	63	7	14
The Baumgertner and Belkaliy scandal	5	-	-	13	3	3
Cooperation with other countries, such as Ecuador, China, Syria, Chile, Cuba, Korea, Turkey	23	3	11	7	-	-
Relations with the EU and EU countries, Eastern Partnership	22	4	7	42	13	18
Relations with OSCE, UN and other international bodies	9	2	6	24	3	3
Activities of civil society organisations and political opposition; human rights situation in Belarus	2	2	-	63	15	10
State youth policy	16	1	3	1	-	1

On the first category, the coverage of relations with states from the former Soviet Union and the creation of a Customs Union (between Russia, Belarus and Kazakhstan) which is part of the official foreign policy of Belarus, the state news agency BELTA dedicates significant coverage. BELTA also gives significant coverage to successful foreign policy partnerships by the Ministry of Foreign Affairs and countries in South-East Asia and Latin America. The state media's significant coverage of the Customs Union and relations with Russia is not matched by coverage of Belarus – EU relations. The analysis found there was little coverage of foreign policy analysis except the opinions of state officials.

The independent media also pays significant attention to the Russian – Belarusian relations, but there is significantly more coverage of Belarusian relations with the EU and other international institutions and organisations. For example, the number of news items on the “eastern” and “western” vectors produced by BelaPAN is almost the same; BELTA pays twice more attention to ex-Soviet countries, Russia first of all, than to cooperation with the West.

Even more dramatic differences are noted in the way state and independent media cover domestic politics. Within the state media politics is associated with (and consists of little more than) the

statements and public speeches of the President. State media outlets even have “President” as a separate news section. BELTA’s “President” section, for instance, had more than 80 news items on activities and statements of the head of the state in October 2013.

The most significant difference between the state-owned media and the privately owned media is that there is almost no mention of the activities of the political opposition, while the independent media provides significant coverage of the activities of opposition political parties but also independent trade unions, civil society organisations and activists.

Human rights issues or repressive measures taken by the authorities are widely covered by the independent media. As can be seen in the table, the state media almost entirely ignores these issues. While the recent scandal with Vladislav Baumgertner, the CEO of the Russian Uralkaliy company, who was arrested in Minsk,³⁴ generated significant headlines in the independent media in Belarus – and the media in Russia as well – it was hardly covered by the Belarusian state media; their coverage was reduced to quotes from President Lukashenko on the matter.

There have been no visible improvements of the situation with traditional news media since 2009 in Belarus. The state keeps dominating the broadcast media market and preserves tight control over printed publications. State-owned media are used as a tool for government propaganda, while independent socio-political press faces discrimination that limits their operational capacity and thus restricts the development of free and pluralistic media in the country. The internet re-shapes the news media market as it provides new opportunities for free flow of information and ideas, but its full-scale development as a free speech domain is hindered by economic peculiarities and attempts of state regulation.

Belarus media landscape: Recommendations

All forms of economic discrimination against non-state independent press should be eliminated, in particular:

- independent publications should be treated equally by the state system of press distribution and Belposhta subscription catalogues;
- the state has a pro-active duty to protect and promote freedom of expression and so should investigate anti-competitive practices including the charging of unequal prices for paper and the distribution services for publications for different types of ownership.

Reforms of the Belarusian media field should be launched, including de-monopolising of the electronic media, introducing public service media and creating a competitive media market. The outline of these reforms should result from a dialogue with professional community and civil society of the country.

³⁴ Uralkali chief arrest sparks potash tension, Charles Clover, Financial Times, <http://www.ft.com/cms/s/0/8ef93aa2-0f38-11e3-ae66-00144feabdc0.html#axzz2oodhqvq5x>



2 Media-related legal framework

Despite the constitutional guarantees and international obligations, Belarusian laws, by-laws and practices of their implementation seriously restrict the media freedom. This section of the policy paper analyses how the Law “On Mass Media” and practices of its implementation have negative effects on media diversity, including complicated procedure of compulsory registration of media outlets. A case study shows how the law can be used to put independent newspapers on the verge of being closed down. The procedure of accreditation and laws on state secrets are also used to restrict access to information. The following subsections describe how criminal defamation and anti-extremist laws are used to chill media freedom in Belarus.

2.1 Law “On mass media”

The law “On Mass Media” was adopted in 2008 and came into force on 8 February 2009,³⁵ despite concerns voiced by the Belarusian Association of Journalists³⁶ and the office of the OSCE Representative on freedom of the media.³⁷ Five years after the law came into force, the fears of civil society and international organisations have proved to be well-founded. In particular, the following provisions of the law have been assessed to be restrictive:

- new media outlets have to apply for permission to be registered, which is an impediment to the right of freedom of expression;
- the process of licensing of broadcast media is non-transparent;
- the process of accreditation restricts journalists’ access to information;
- activities of a media outlet can be suspended or cancelled on the basis of a court appeal by the Ministry of Information, with no regard to proportionality or freedom of expression; the process to cancel a broadcasting license is even simpler;
- the government of the country receives the right to regulate activities of “media that are distributed via internet”, although there is no definition of online media in the law.

Registration of media outlets

The compulsory registration of the print media, which has a chilling effect of media freedom, is still used in Belarus.

Article 13 of the media law provides for obligatory registration of any printed publication with a circulation of more than 299 copies. The registration process in Belarus has two stages; it is necessary to register an editorial board as a legal entity, and then to apply for registration of a media outlet. The law is arbitrary and presents a barrier to new entrants to the media market.

Editors of new media outlets must have higher education and at least five years of experience as editor-in-chief of a registered media. This is an arbitrary provision that makes it difficult for new media outlets to establish themselves. There are also additional restrictions that the Ministry of Information imposed in its decrees No. 17 and 18 of 7 October 2009, although they are not provided for in the law. There is a general rule that a company that is a unitary enterprise can be registered at its founder’s home address. Editorial boards of mass media that are unitary enterprises don’t have such right as the Ministry of Information demands them to have separate offices in non-residential premises.³⁸

In 2010-2012 the Ministry of Information issued 105 refusals to register new media outlets. “These are not draconian measures. We have the media law; we have always acted and will continue to act within the framework of this law,” commented Aleh Praliaskouski, the Minister of Information.³⁹

³⁵ Law of the Republic of Belarus “On Mass Media” <http://law.by/main.aspx?guid=3871&p0=H10800427e>

³⁶ Юристы БАЖ подготовили замечания к законопроекту о СМИ [BAJ lawyers prepared commentary to draft media law] <http://baj.by/ru/node/9563>

³⁷ Comments on the draft law of the Republic of Belarus “On the mass media”, OSCE Office of the Representative on freedom of the media <http://www.osce.org/fom/32599>

³⁸ Постановление Министерства информации от 7 октября 2009 № 18 [Decree of the Ministry of Information No.18, 7 October 2009] http://mininform.gov.by/_modules/_cfiles/files/Postanovlenie_MI_n_18_ot_07.10.2009.doc

³⁹ Мининформ Беларуси за 2010-2012 годы направил 105 отказов в регистрации СМИ [Belarus Mininform issued 105 refusals for media outlet registration in 2010-2012], BELTA http://www.belta.by/ru/all_news/society/Mininform-Belarusi-za-2010-2012-gody-napravil-105-otkazov-v-registratsii-SMI_i_623567.html

Newspapers with a circulation of less than 300 copies are not obliged to register, but their activities are also regulated and controlled by the state. Each publication with a circulation of more than ten copies has to send at least five copies to state regulatory bodies according to “an obligatory mailing list.” Moreover, state bodies, first of all public prosecutors’ offices, demand such small-circulation publication to register as legal entities, thus obliging them to rent offices, pay taxes and employ editors according to the rules of the Ministry of Information. On several occasions the local prosecutors’ offices has issued warnings to publishers of such small-circulation media.⁴⁰ These restrictions contradict the approach set out by the United Nations Human Rights Committee that stated that the requirements for the obligatory registration for small-circulation publications that are not issued on a regular basis is excessive; it has chilling effect of freedom of expression and it cannot be justified in a democratic society.⁴¹

Suspension and closing down of media outlets

Possibility of suspension and closure of media outlets is still a major problem despite changes in the law. The previous media law provided for a possibility to close down a media outlet by a court decision if the media violated Article 5 of the law at least twice within a year. Article 5 of the media law contained a list of ten particular violations that could lead to a court appeal against a media outlet.

In the new Law “On Mass Media” this article is omitted, but this is not necessarily an improvement. On the contrary, Article 51 of the present media law allows for the closing down of any media outlet after any two (or, in some cases, even after one) warning, issued by the Ministry of Information or a prosecutor’s office, for any infringement, even a minor one.

In 2010-2012 the Ministry of Information issued 180 official warnings to mass media;⁴² two of them, *Narodnaya Volia* and *Nasha Niva*, were on the verge of being closed down. The Ministry withdrew its claims, but the legal framework that allows closing media outlets down is still in place.

Case study: Appeals against Narodnaya Volia and Nasha Niva

In 2011 the Ministry of Information appealed to the Supreme Economic Court with a legal claim to close down two leading independent newspapers *Narodnaya Volia* and *Nasha Niva*.

Prior to the appeal the Ministry issued three warnings to *Nasha Niva*. Two of them were issued for articles over the reaction of the Belarusian authorities to a Russian documentary called “God Batska” (a reference to the title of Francis Ford Coppola’s *Godfather* movie and a Belarusian word “batska” meaning “father”), where President Lukashenko was criticised. The film was broadcast by the Russian NTV television channel in 2010-2011 to considerable public interest. One more warning was issued for an article about a bomb blast in the Minsk underground on 11 April 2011; according to the Minister Aleh Praliaskouski, the reason for the warning was “improper coverage of the bombing.”⁴³

40 Маланакладная газета «Брама» атрымала папярэджанне з пракуратуры [Brama small-circulation publication warned by prosecutor’s office], BAJ <http://www.baj.by/be/node/2749>

41 Vladimir Petrovich Laptsevich v. Belarus, Communication No. 780/1997, U.N. Doc. CCPR/C/68/D/780/1997 (2000) <http://www1.umn.edu/humanrts/undocs/session68/view780.htm>

42 Мининформ Беларусі за 2010-2012 годы направила 105 отказов в регистрации СМИ [Belarus Mininform issued 105 refusals for media outlet registration in 2010-2012], BELTA http://www.belta.by/ru/all_news/society/Mininform-Belarusi-za-2010-2012-gody-napravil-105-otkazov-v-registratsii-SMI_i_623567.html

43 Мининформ ходатайствует о закрытии двух газет из-за некорректного освещения в них теракта в минском метро [Ministry of Information solicits for closing down of two newspapers for improper coverage of Minsk metro bombings], BELTA http://www.belta.by/ru/all_news/society/Mininform-xodatajstvuet-o-zakrytii-dvux-gazet-iz-za-nekorrektnogo-osveschenija-v-nix-terakta-v-minskom-metro_i_552668.html



The Minister of Information Aleh Praliaskouski talks to independent journalists who staged a flash mob in support of Narodnaya Volia and Nasha Niva newspapers during Media in Belarus exhibition in Minsk, 4 May 2011 (image: photo.bymedia.net)

Narodnaya Volia received four official warnings before the appeal. The last one was issued for an article called “Goebbels-TV is on air” and was a critique of a highly sensationalist documentary broadcast by state television about events after the presidential election of 19 December 2010 in Minsk that accused the opposition of organising mass riots.⁴⁴

The newspapers appealed against the warnings and a court examination of their cases was postponed. While it was on hold, on 6 July 2011 the Ministry of Information issued one more warning to each of the two newspapers stating that Nasha Niva did not publish its subscription index in a single issue and that Narodnaya Volia had printed the wrong number of issues.

In July 2011 the Ministry of Information withdrew its court appeals to close the newspapers down. The decision to withdraw the appeal was arguably due to the significant public response to the case, including reactions from the international community. It is worth mentioning, that Narodnaya Volia and Nasha Niva were the two independent newspapers that were returned to the state press distribution systems in 2008; at that time it had been presented as a step forward by the authorities of Belarus in order to normalise their relations with the EU.

Despite the court appeals against the newspapers being withdrawn, each of the publication was fined 14 m roubles (about £1,800) for violation of Article 22.9 of the Administrative Code (“violation of the media legislation by a mass media outlet iteratively within a year after a previous written warning”).⁴⁵

Regulation of online media

While online media in Belarus are able to operate relatively freely, the authorities of the country reiterate their commitment to introduce tougher regulation for information websites to duplicate restrictions media face offline. It already resulted in restricting the access to several independent news websites that are included in an official black list.

⁴⁴ Говорит и показывает «Геббельс-ТВ» [Goebbels-TV is on air], Sviatlana Kalinkina, Narodnaya Volia <http://bit.ly/1bv9dml>

⁴⁵ Belarus: Two independent newspapers fined, Marta Cooper, Index on Censorship <http://www.indexoncensorship.org/2011/08/belarus-two-independent-newspapers-fined/>

Articles 11 and 17 of the media law provide for the registration of “mass media that are distributed via the internet global computer network” while giving space for the Council of Ministers to develop particular regulations. At the same time, the law provides no definition of online media. No governmental decree on the regulation of online media has ever been actually published, despite the law being in force for five years.

The current definition in the law allows the government to in theory consider many different types of websites as “mass media that are distributed via the internet global computer network”; including corporate websites that publish updates and personal blogs. Presidential Decree No. 60 (“On the Measures to Improve the Use of the National Segment of the Internet Network”), signed on 1 February 2010, marked a new set of challenges to online free speech.

About 20 different by-laws and governmental decrees have been adopted since to regulate the implementation of different provisions of the Decree No. 60. None of them specifically addresses online media outlets, but they influence activities of Belarusian websites. In particular, the present legislation provides for the following regulations:

- all Belarusian websites that provide services to citizens of Belarus must be moved to the national .by domain zone and be physically hosted on servers, located in the country;
- customers of internet cafes are obliged to register and present their passports before they can go online;
- internet service providers must identify all internet connections and store data about their customers and websites they visit; ISPs are also obliged to install technical system for search and surveillance in the internet, System for Operative Investigative Activities (SORM), that the police and security services officers have access to;
- “lists of limited access” of websites are introduced; the sites on the list are banned from access from computers at state bodies, educational institutions, public libraries, etc.

Governmental regulation of online media may be introduced in the near future. According to Belarus’s Deputy Information Minister Dzmitry Shedko, “the most influential Belarusian websites may be given the mass media status.” The Deputy Minister stated in November 2013 a working group had been set up to address this issue. The ministry is taking a restrictive approach to regulation of online media. Only representatives of government agencies have been included in the working group. The Deputy Minister has argued the regulations are a necessity to make “the most popular and influential websites accountable for distributing any kind of information”, including a possibility of revocation of registration for breaking the regulations.⁴⁶

As Mr. Sedko reiterated in his letter to Index in November 2013, “at the moment the Ministry of Information is considering the issue in detail in order to elaborate an optimal decision to be suggested to the Council of Ministers.”

Independent media experts have noted that the proposals will not create additional opportunities for the journalists of online publications. In line with the practice of the current law, the regulation seems to be intended to introduce additional responsibilities for online media outlets to restrict their coverage in a similar manner to that of the printed press.⁴⁷

⁴⁶ Mass media status for popular Belarusian websites debated, BELTA <http://news.belta.by/en/news/society/?id=732965>

⁴⁷ A. Bastunets: ‘There are more cons than pros in the on-line media registration’, BAJ <http://baj.by/en/node/22963>

Possible media law reforms

The authorities of the country have been quite reluctant to discuss or implement recommendations on reforms of media-related legislation. Nor have there been changes to the implementation of the law to bring the practices of public bodies in line with international standards. In particular, the country's officials have stated they do not recognise the mandate of the UN Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, and will not cooperate with him.⁴⁸

Dunja Mijatović, the OSCE Representative on Freedom of the Media, was able to make an official visit to Minsk in June 2013 and welcomed “the readiness of the authorities to intensify dialogue and co-operation with her office on much needed improvement of the media freedom situation.”⁴⁹ Still, the analysis presented in this policy paper shows the overall developments in the media field are no more positive than a few years ago. The authorities of Belarus show little sign of wishing to discuss reforms of the media field with civil society. Attempts by the Belarusian Association of Journalists to apply to the Standing Commission on human rights, national relations and mass media of the House of Representatives of the National Assembly to hold an open and public discussion on media-related laws and their implementation in Belarus were rejected. As was BAJ's proposal to the national parliament to discuss reform of the media law with international experts, in particular the OSCE.⁵⁰

Andrei Naumovich, the Chair of the Standing Commission, replied to BAJ on 15 February 2013, that all the suggestions were “considered in detail with the Ministry of Information.” According to the Ministry, “at present the Law ‘On Mass media’ functions stably, it allows solving current practical problems in activities of mass media, and fosters the advancing development of information field of the country.” Mr. Naumovich informed BAJ the Parliamentary Commission “considers initiating of amendments to the media laws to be unreasonable.”⁵¹

Index on Censorship approached the Ministry of Information of Belarus in October and November 2013 to discuss media reform. The Ministry did not reply to a request for a meeting in Minsk. The Ministry responded in a letter with Dzmitry Shedko, Deputy Minister, stating that the Ministry “conducts systematic analysis and monitoring” of implementation of media-related legislation in the country; it also “considers suggestions of citizens and legal entities on these issues” and “initiates amendments in the media law, when necessary” though gave no specific examples of this. In January 2014 Usevalad Yancheuski, the Head of the Principle Ideological Department of the Presidential Administration, informed BAJ that the Ministry of Information “is requested to invite representatives of journalistic organisations” to be involved in the work on possible amendments to the Media Law, but it has led to no particular steps so far.

2.2 Accreditation and state secrets laws as means of restriction of access to information

There are various ways in which access to information for journalists is restricted in Belarus. The main two of them are the accreditation of journalists and the use of secrecy laws.

48 EU and Belarus: Change the black list, keep the deadlock, Index on Censorship <http://www.indexoncensorship.org/2013/11/eu-belarus-change-black-list-keep-deadlock/>

49 OSCE representative welcomes enhanced media freedom dialogue with Belarus, urges improvements, OSCE <http://www.osce.org/fom/102341>

50 http://baj.by/sites/default/files/article-pdf/to_the_chairperson_of_the_permanent_commission.pdf

51 Belarusian Authority Decides that Law on Mass Media is Good as It Is, BAJ <http://baj.by/en/node/19654>

The procedure of accreditation is understood by state bodies as a permission they are entitled to grant – or to reject – to a journalist for receiving official information from them.

Additional barriers to access to information are created by the laws on state secrets and state service. These laws contain vague and broad definitions of data that can be declared a state secret. More than 60 different state bodies and institutions have the right to attribute certain information to be a state secret; the list of organisations includes the Ministry of Information, the Ministry of Culture, the Ministry of Education, the National State Television and Radio Company and regional authorities (Regional Executive Committees). Loosely-defined provisions in these laws allow for the restriction of access to information of public interest by labelling certain data as a “state secret”.

***Action in support of
Andrzej Poczobut in
front of the court in
Hrodna, June 2011
(image: Siarhei Balai)***



2.3 Criminal defamation

Criminal defamation is chilling to freedom of expression. A prison sentence may lose a journalist their job, while a criminal record may make them unemployable in the future. Belarus continues to criminalise defamation, even though the UN special rapporteur on freedom of expression has called for its decriminalisation.⁵²

Six articles of the Criminal Code provide for criminal liability for libel and defamation, while offering additional protection to state officials, including the president of the country. These articles have been used against journalists. In July 2011 the journalist Andrzej Poczobut received a three-year suspended jail sentence for libelling the president.⁵³ A year later he faced similar charges again. The journalist spent ten days in detention in June 2012. In 2013 the new criminal case against him was cancelled and all charges were dismissed.⁵⁴

A criminal case against the journalist Mikalay Petrushenka was initiated in 2012. He was charged with insult of a state official; his article for Nash-dom.info website allegedly contained

⁵² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, United Nations Human Rights Council

⁵³ Belarus: Journalist convicted of defaming Lukashenko loses appeal, Alice Purkiss, Index on Censorship <http://www.indexoncensorship.org/2011/09/belarus-journalist-convicted-of-defaming-lukashenko-loses-appeal/>

⁵⁴ Guilty of calling Europe's last dictator a dictator, Andrei Bastunets, Index on Censorship <http://uncut.indexoncensorship.org/2012/10/guilty-of-calling-europes-last-dictator-a-dictator/>

“public insult” of a deputy head of Orsha local authority. Linguistic experts who analysed the text found no insulting words or expressions there; the case was dropped in October 2012.

Belarusian law provides not only for criminal, but also administrative and civil liability for defamation. It can be noted as a positive development that in recent years there have been no administrative or civil libel cases against media or journalists were initiated by Belarusian officials.

2.4. Anti-extremism laws used to put pressure on media and journalists

Anti-extremist legislation has been used in Belarus to curtail media freedom. The current law “On counteraction to extremism” came into force in 2007. It contains vague and ambiguous definitions of terms “extremism” and “extremist materials” that allow for its arbitrary implementation.

On 10 January 2011 the Ministry of Information cancelled the broadcasting license of Avtoradio for distribution of information that the ministry considered “public appeals for extremist activity” after the authorities broadcast an election appeal by opposition candidate Andrei Sannikov during the 2010 presidential elections. The appeal contained the phrase “the fate of the country is determined not in a kitchen, but on the square” a phrase the authorities deemed as an appeal to extremism.⁵⁵ All attempts of Avtoradio to appeal against the decision were unsuccessful.

In October 2012 the authorities started a full-scale tax inspection of ARCHE magazine. The Department of Financial Investigations blocked bank accounts of the magazine, thus making its further issuing impossible.⁵⁶ In two pieces shown by state television Valery Bulhakau, the editor of ARCHE, was in fact accused of “dissemination of extremist literature”. That slander campaign forced Bulhakau to temporarily leave the country. Later the case was dropped.

41 copies of Belarus Press Photo album was confiscated on 12 November 2012 by Belarusian customs officers on the border between Belarus and Lithuania. The KGB, State Security Committee, appealed to court with a request to consider the album to be “extremist material”. According to the KGB, the photos “reflect only negative aspects of life of the Belarusian people with authors’ personal insinuations” and thus they “humiliate citizens of Belarus” and “belittle the authority of the state power.” The publication that contained the best press photos by Belarusian photo reporters was considered extremist by Ashmiany District court on 18 April 2013; all the confiscated copies of the album were destroyed. In September 2013 the Ministry of Information cancelled the publishing license of Lohvinau Publishing House that was a publisher of Belarus Press Photo album. The publisher appealed against the decision, but in November 2013 the Supreme Economic Court of Belarus upheld the decision by the Ministry of Information to cancel the licence of the Lohvinau Publishing House.

Other laws are also used to persecute journalists for their legitimate professional activities. In August 2012 Anton Suriapin, a journalism student, was charged with assisting an illegal crossing of the Belarusian border. He had posted photos on his blog of teddy bears dropped by parachute over Belarus by a Swedish PR firm to protest over the lack of media freedom in the country.⁵⁷ He was arrested and detained by the KGB for more than a month, but later released. On 29 June 2013 the KGB announced that a criminal case against Anton Suriapin was dropped, and he was cleared of all charges.

⁵⁵ Belarus: radio station closed, Index on Censorship <http://www.indexoncensorship.org/2011/01/belarus-radio-station-closed/>

⁵⁶ Belarus: Lukashenko launches attack on last intellectual outpost, Yanina Melnikava, Index on Censorship <http://uncut.indexoncensorship.org/2012/11/lukashenko-launches-attack-arche/>

⁵⁷ Belarus declares war on teddy bears, Index on Censorship <http://www.indexoncensorship.org/2012/07/belarus-declares-war-on-teddy-bears/>

Recent years have seen no improvements of the media-related legislation in Belarus, despite continuous calls for reforms from civil society of the country and international community. The media law remains restrictive; it fails to foster the development of pluralistic and independent news media through a complicated procedure of compulsory registration of new media outlets and possibilities for the state to close down existing media even for minor infringements. The authorities clearly look into expanding the restrictive regulation to online news media, while access to some independent websites is already restricted in Belarus. The procedures of journalists' accreditation and laws on state secrets are used to restrict access to information. Criminal defamation and anti-extremist laws are used to curtail free speech. Despite the recent talks between Belarus's Foreign Ministry and the Office of the OSCE Representative on Freedom of the Media, the authorities of the country remain reluctant even to discuss any possible legal reforms of the media field with civil society.

Media-related legal framework: Recommendations

The Law of the Republic of Belarus "On Mass Media" must be reformed, in particular:

- to secure independent self-regulation of journalism, allowing reporters of both online and offline news media, including freelance journalists, to operate freely;
- registration procedures for new media outlets should be simplified to lift all the artificial restrictions for entering the media market;
- a possibility of extrajudicial closing down of media should be eliminated; the Ministry of Information should not have the authority to impose sanctions on media, including initiating of cases of closure of media outlets.

Six articles of the Criminal Code providing for criminal liability for defamation should be abolished:

- Article 188 "Libel"
- Article 189 "Insult"
- Article 367 "Libel in relation to the President of the Republic of Belarus"
- Article 368 "Insulting the President of the Republic of Belarus"
- Article 369 "Insulting the representative of the authorities"
- Article 369–1 "Discrediting the Republic of Belarus"

Equal and full access to information should be ensured for all journalists of both online and offline media. The institute of accreditation should not be used to restrict the right to access information. In particular, the existing ban for cooperation with foreign media without an accreditation should be lifted as it contradicts the Constitution of Belarus and its international commitments in the field of freedom of expression.

Several provisions of the Presidential Decree No 60 of 1 February 2010 on regulating the internet should be dropped in line with the recommendations in 'Belarus: Pulling the Plug', along with various other edicts related to the implementation of the decree. In particular, owners of websites should be free to register them at any domain and host them in any country. News websites should not be black-listed and blocked.



3 Physical safety of journalists

One of the greatest chills on the freedom of expression in Belarus is the disappearance, murder, suspicious suicide and impunity against media workers that has demonstrated the very real physical risks that those who practice independent journalism in Belarus face. Since the beginning of Alexander Lukashenko's presidency, a number of journalists have been murdered or died in suspicious circumstances to considerable international condemnation. Journalists today inside Belarus still face physical violence and threats. A number of high profile journalists have fled the country to protect their personal safety.

No progress has been made on investigation of cases of deaths of the journalists Dzmitry Zavadski (disappeared on 7 July 2000), Veranika Charkasava (brutally murdered on 20 October 2004), Vasil Hrodnikau (found dead on 18 October 2005), Aleh Biabenin (found dead on 3 September 2010).⁵⁸ The public still has no clear answers over the circumstances of their deaths, nor have any of the perpetrators of these crimes been brought to justice. Zavadski's body has never been found and instigators of his murder has never been identified and tried; Charkasava's murderer has never been found and investigation into the case was suspended;⁵⁹ details of Hrodnikau's and Biabenin's cases⁶⁰ have led their family and colleagues to question official results of investigations. The European Parliament has called for a full investigation into Biabenin's death.⁶¹

"As long as even one journalist is prosecuted or intimidated for critical speech, the whole media community feels threatened and the chilling effect remains," said the OSCE Representative on Freedom of the Media, Dunja Mijatović, during her official visit to Minsk in June 2013.⁶² Unfortunately, physical violence against journalists and preventing them from conducting of their professional duties have become one of the major concerns over the past several years in Belarus.

3.1 Detentions of journalists

The Constitution of Belarus grants any citizen the right to gather and impart information. Moreover, Article 34 of the Law "On Mass Media" provides for the right of a journalist to be present "in the area of armed conflicts or emergencies, mass actions, in places of other socially important events and transmit information from there."

Despite of these legal provisions, the arbitrary detention of journalists and the interference into their professional activities continues unabated, especially during street actions by civil society and the opposition. For instance, at least 24 journalists were detained and at least 21 were attacked and injured by the riot police on 19 December 2010 in Minsk while they covered a major rally by the opposition in Independence Square that protested against the results of the presidential election.⁶³

Monitoring by the Belarusian Association of Journalists noted at least 265 cases of the detention of journalists in Belarus in 2011-2013.

In 2011 there were 160 of such cases, and at least seven instances of use of physical violence by the police against journalists. The most significant number of detentions happened during the summer of 2011, during peaceful street actions organised by the Revolution through Social Networks movement.⁶⁴ At least 103 instances of detentions of journalists across the country were noted. The arrests were brutal; the police prevented reporters from filming the rallies, in some cases by using excessive force and damaging journalists' professional equipment. At least 22 journalists who were detained while covering the actions were summoned to courts for alleged "participation in unsanctioned actions", 13 of them served actual administrative arrests, and the rest were sentenced to fines.

58 Unsolved cases, Belarussian Association of Journalists <http://baj.by/en/scandals>

59 Investigation into Veranika Charkasava Case Suspended, BAJ <http://baj.by/en/node/22632>

60 Suspicions over 'suicide' of Belarus activist Aleh Byabenin, Index on Censorship <http://www.indexoncensorship.org/2010/09/belarus-aleh-byabenin/>

61 European Parliament urges full probe into Belarusian journalist's death, RIA Novosti <http://en.rian.ru/exsoviet/20100906/160479511.html>

62 OSCE representative welcomes enhanced media freedom dialogue with Belarus, urges improvements, OSCE <http://www.osce.org/fom/102341>

63 Lists of journalists and BAJ members beaten and detained in Minsk, BAJ <http://www.baj.by/en/node/8896>

64 Belarus protesters rally on the web, Index on Censorship <http://www.indexoncensorship.org/2011/07/belarus-protesters-rally-on-the-web/>

In 2012, 60 cases of detention of journalists, distributors of non-state press and social media activists were noted. In most cases the detentions lasted for 2-3 hours only, but in several cases they led to fines and detention for up to 15 days. At least 13 journalists received official warnings of prosecutors' offices in 2012; most of them were warned for cooperation with foreign media without accreditation. At least four journalists were summoned for interrogation by the KGB.

In 2013 45 instances of journalists' detentions have been noted as of November. Four of them led to administrative arrests of 3 to 12 days each. Prosecutors' offices issues at least eight official warnings to journalists for their activities.

Leaders of the Belarusian Association of Journalists, Zhanna Litvina and Andrei Bastunets, met the head of Minsk city police Aliaksandr Barsukou on 23 October 2013 to discuss the issue of the police interference in journalists' professional activities.⁶⁵ During the meeting Mr. Barsukou noted the number of detentions of journalists decreased in comparison with 2011-2012. Just a week after the meeting, seven journalists were detained by the police in Minsk while covering the Mourning Marathon, an event to commemorate victims of Stalin's repressions.⁶⁶

3.2 Travel restrictions

Several journalists and media experts were banned for travelling abroad by the authorities of the country in 2012. It became a new form of pressure on independent media community.

Zhanna Litvina, the Chairperson of the Belarusian Association of Journalists, Andrei Dynko, the editor of *Nasha Niva* newspaper, and Mihas Yanchuk, a representative of Belsat TV channel, were denied the right to leave the territory of the country. Ms. Litvina was not allowed out at the Minsk National Airport; Dynko and Yanchuk were forced to leave trains on the border with Lithuania and Poland respectively by Belarusian border guards.⁶⁷ No legal grounds for such restrictions were provided; the ban was lifted only in September after appeals of the persons affected to courts. Officers of the Department of Citizenship and Migration explained the situation by a technical software glitch. It is noteworthy that the alleged software glitch disproportionately affected independent journalists, opposition leaders and civil society activists.

3.3 Restrictions of activities of foreign correspondents

The authorities of the country use different methods to restrict the distribution of information about the internal situation in Belarus abroad. Reporters that work for Belsat TV channel and Radio Racyja, a media operator based in Poland that broadcasts in the Belarusian language, have both been refused official accreditation to operate within Belarus. European broadcasters have also been affected. In March 2012 camera crews of SVT (Sweden) and TV3 (Estonia) television channels were detained in Minsk, despite both having being officially accredited in Belarus.⁶⁸

Several foreign journalists faced obstacles during the parliamentary elections in Belarus in

65 Кіраўніцтва БАЖ сустрэлася з начальнікам сталічнай міліцыі [BAJ leaders met head of Minsk police], BAJ <http://baj.by/be/node/22639>

66 Journalists Detained on the Day of Commemorating Victims of Stalinist Repressions, BAJ <http://baj.by/en/node/22701>

67 Belarus bans journalists and activists from travelling, Index on Censorship <http://www.indexoncensorship.org/2012/03/belarus-travel-ban/>

68 Estonian journalists detained by Belarusian police while shooting a program, BAJ <http://baj.by/en/node/11439>

September 2012. 350 foreign reporters were officially accredited to cover the elections, but four journalists from Germany and Sweden were not allowed in the country as they were denied entry visas. Two more Swedish journalists, Erik Von Platen and Gustaff Andresson, had to spend 16 hours at the Minsk International Airport before their accreditation was confirmed and their visas were issued. It is unclear as to the criteria the authorities apply to issue visas for foreign correspondents.

On the same day, 21 September 2012, Amos Roberts, Australian SBS TV journalist, was searched at the customs of the Minsk airport at 2.30 as he was trying to leave Belarus after a week of legitimate work in the country. His professional equipment was confiscated; the procedures of a search and confiscation were not followed.⁶⁹ The journalist was allowed to leave the country only the following day, but his equipment was returned to him only one year later, in October 2013.⁷⁰

Physical safety of journalists and impunity remain serious problems that have a chilling effect of media freedom in Belarus. The most acute issue nowadays is police interference with journalistic activities and arbitrary detentions of reporters that cover mass street actions. At least 265 cases of the detention of journalists in Belarus in 2011-2013 are noted. The police chiefs are reluctant to recognise and address the problem, despite constant calls from the professional organisations in the country and international community.

Physical violence against journalists: Recommendations

The practice of arbitrary detention of journalists, including those that cover street actions, should be immediately stopped.

All cases of interference of the police and other state officials into legitimate journalistic activity should be investigated, and those responsible should be brought to account.

⁶⁹ Australian journalist is free, but his equipment is confiscated, BAJ <http://baj.by/en/node/17565>

⁷⁰ Беларускія мытнікі вярнулі "аўстралійскае" абсталяванне і плюшавага мішку [Belarusian customs returned Australian equipment and teddy bear], BAJ <http://baj.by/be/node/22711>

Conclusions and recommendations

This policy paper looked into the developments with the media freedom situation in Belarus in 2010–2013 taking into consideration the particular benchmarks set by the “For Free and Fair Media in Belarus” report, prepared by the fact-finding mission of international press freedom and media development organisations, including Index on Censorship, in Belarus in September 2009.

Analysis shows there have been no visible improvements of the media freedom situation during inrecent years. The state continues to dominate the broadcast media market and preserves tight control over printed publications. State-owned media are used as a tool for government propaganda, while the independent socio-political press faces discrimination. The internet re-shapes the news media market as it provides new opportunities for free flow of information and ideas, but its full-scale development as a free speech domain is hindered by economic peculiarities and attempts of state regulation.

Despite continuous calls for reforms from Belarusian civil society and the international community, media-related legislation remains restrictive and fails to foster the development of pluralistic and independent news media in Belarus. Other laws, such as defamation articles of the Criminal Code, anti-extremist or state secrets legislation are also used to curtail media freedom, restrict access to information and prosecute journalists. Despite the recent talks between Belarus’s Foreign Ministry and the Office of the OSCE Representative on Freedom of the Media, the authorities of the country remain reluctant to discuss any possible legal reforms of the media field with civil society and professional community.

Physical safety of journalists and impunity remain serious problems that have a chilling effect of media freedom in Belarus. The most acute issue is police interference with journalistic activities and arbitrary detentions of reporters during mass street actions.

As Belarus remains one of the least free places in Europe for journalists and the media to operate, immediate reforms of the Belarus media field should be launched to end harassment and persecution of reporters, and eliminate excessive state interference in media freedom. The European Union and other international institutions must place the issue of media freedom on the agenda of any dialogue with the Belarusian authorities to demand genuine reforms of the media for the country to live up to its international commitments in the field of freedom of expression.

Index on Censorship believes changes are needed to bring the Belarusian media-related legislation and practices of its implementation in line with the Constitution of the country and its international commitments.

Reforms of the Belarusian media field should be launched, including de-monopolising of the electronic media, introducing public service media and creating a competitive media market. The outline of these reforms should result from a dialogue with professional community and civil society of the country.

The practice of arbitrary detention of journalists, including those that cover street actions, should be immediately stopped. All cases of interference of the police and other state officials into legitimate journalistic activity should be investigated, and those responsible should be brought to account.

All forms of economic discrimination against non-state independent press should be eliminated, in particular:

- independent publications should be treated equally by the state system of press distribution and Belposhta subscription catalogues;
- the state has a pro-active duty to protect and promote freedom of expression and so should investigate anti-competitive practices including the charging of unequal prices for paper and the distribution services for publications for different types of ownership.

The Law of the Republic of Belarus “On Mass Media” must be reformed, in particular:

- to allow for independent self-regulation of journalism allowing reporters of both online and offline news media, including freelance journalists, to operate freely;
- registration procedures for new media outlets should be simplified to lift all the artificial restrictions for entering the media market;
- a possibility of extrajudicial closing down of media should be eliminated; the Ministry of Information should not have the authority to impose sanctions on media, including initiating of cases of closure of media outlets.

Six articles of the Criminal Code providing for criminal liability for defamation should be abolished:

- Article 188 “Libel”
- Article 189 “Insult”
- Article 367 “Libel in relation to the President of the Republic of Belarus”
- Article 368 “Insulting the President of the Republic of Belarus”
- Article 369 “Insulting the representative of the authorities”
- Article 369–1 “Discrediting the Republic of Belarus”

Equal and full access to information should be ensured for all journalists of both online and offline media. The institute of accreditation should not be used to restrict the right to access information. In particular, the existing ban for cooperation with foreign media without an accreditation should be lifted as it contradicts the Constitution of Belarus and its international commitments in the field of freedom of expression.

Several provisions of the Presidential Decree No 60 of 1 February 2010 on regulating the internet should be dropped in line with the recommendations in ‘Belarus: Pulling the Plug’ policy paper, along with various other edicts related to the implementation of the decree. In particular, owners of websites should be free to register them at any domain and host them in any country. News websites should not be black-listed and blocked.

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