

STATEMENT

UPR Pre-session on Belarus

Geneva, 3 April 2020

Delivered by: Belarusian Association of Journalists

This statement is delivered on behalf of the Belarusian Association of Journalists (BAJ), a non-governmental, non-profit and non-partisan organization promoting freedom of expression and protecting media workers' rights in Belarus.

BAJ has participated in UPR processes at the national level since 2009.

This statement addresses implementation of the recommendations regarding freedom of speech addressed to Belarus during the second UPR cycle (five of them were supported by the State). According to the BAJ assessment, none out of the recommendations was fully implemented.

On the positive side, government agencies started a dialogue with journalist organizations on issues related to the exercise of freedom of expression, the right to information, and Internet governance. Belarus has lifted temporarily some of discriminatory economic measures in relation to independent media outlets. Thus, independent print media outlets that had been prohibited from distribution through state-owned monopolist post and newsstand chain in 2006 have been reinstated in the possibility.

Nevertheless, we cannot see improvement of the situation with free speech at the systemic level due to the further tightening of the legal framework for activities of media. All negative tendencies continue to exist and the situation has deteriorated dramatically since the presidential election campaign in 2020.

I. Amendments to the Law on Mass Media

Many countries (Sweden; Poland, Norway, Greece, Netherlands, Italy, Austria) during the previous review gave recommendations to amend legislative framework in order to ensure that it does not restrict freedom of expression and pluralism of media.

Despite this, the 2018 amendments to the Law on Mass Media have enhanced the state's surveillance of freedom of speech on the Internet and resulted in increased number of prosecutions for statements on the Internet. They, in particular, provide for:

- State registration of news websites as "online media outlets" for their staff members are deemed as journalists;
- Additional grounds for blocking websites under extrajudicial procedure by the Ministry of Information (for example, using a website for carrying out activities prohibited under the Belarusian legislation);
- Liability of website owners for content, including abusive or "incorrect" comments, posted by anybody on their pages;
- Obligation of website owners to identify commentators on their pages and forums and to provide their personal data at the request of the Ministry of Information.

Recommendation: Abandon the authority of the Ministry of Information to restrict arbitrary media freedom, in particular the licensing procedure for registering print and online media and extrajudicial blocking of access to websites.

II. Accreditation as a permission

During the previous UPR cycle, France made a recommendation to remove the accreditation requirement to journalists, but there were no efforts made by Belarus towards this.

Article 35(4) of the Law On Mass Media prohibits the activities of foreign journalists in Belarus without accreditation of the Ministry of Foreign Affairs, but Belarusian freelance journalists contributing to foreign media outlets are not entitled to obtain the accreditation under the Belarusian law.

Under Article 22.9 of the Belarusian Code of Administrative Offences the courts can judge journalistic activities without an accreditation as 'illegal production and/or distribution of media content.' The reason for prosecuting journalists for this offence is not the content of their work, but mere the fact that they were published by foreign media.

While freelance journalists are gathering information of filming they can be detained, accused under Article 22.9 and then fined by court.

The harassment of freelance journalists intensified after a wave of anti-government protests against a so called "parasite" tax on unemployed in the spring of 2017 that were covered by Poland-based Belsat TV and other independent media outlets. The number of journalists fined under Article 22.9 has increased dramatically (from 10 cases in 2016 to 118 in 2018). Some journalists were fined repeatedly. In 2018, Kastus Zhukouski from Homel was 'a champion' with his 12 fines (about \$7,000 in total). In 2020, it were at least 25 such fines.

The accreditation procedure is used to prevent foreign journalists from covering the events in Belarus, in particular during the 2020 presidential election campaign. Before the election, at least 100 journalists seeking the Ministry of Foreign Affairs' accreditation have received no response within a statutory period. As a result, they could not to work legally. At least 50 foreign journalists were banned from entering Belarus at the Minsk airport and several ones were deported and had entry bans. 19 journalists were deprived of their press accreditations.

Recommendations:

- a. Exclude the ban on the professional activities of journalists of foreign media without accreditation from the Law on Mass Media.
- b. Amend the legislative framework to include provisions for appealing against denying accreditation.

III. Lack of a law on access to public information

Article 19 of the International Covenant on Civil and Political Rights embraces a right of access to information held by public bodies. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.

Italy recommended Belarus, during the second UPR cycle, to reform existing legislation on freedom of information in accordance with international standards.

Belarus is a single state in Europe, which does not have a law on access to information of state bodies providing a democratic and transparent procedure for obtaining the information.

Belarusian media outlets faced widespread refusals to provide official information on the COVID-19 epidemiological situation in Belarus, in particular on the number of cases in specific settlements.

Recommendation: Adopt a law on access to public information.

IV. Criminal defamation

Lithuania and Estonia earlier proposed Belarus to decriminalize acts of defamation.

There are seven defamation articles in the Belarusian Criminal Code:

- 188 (Slander)
- 189 (Insult)
- 367 (Slander against the President of the Republic of Belarus)
- 368 (Insult of the President of the Republic of Belarus)
- 369 (Insult of a public agent)
- 391 (Insult of a judge or a people`s assessor)
- 369-1 (Discreditation of the Republic of Belarus)

The police applies these legislative provisions to interfere in the professional activities of journalists and bloggers. They file criminal cases under the defamation articles and conduct investigation interrogating media workers and searching their residencies or offices. Some of the cases result in court sentences. In April 2019, blogger Siarhei Piatrukhin was sentenced to a fine of approximately \$4,600 (with compensation for moral damages the total amount reached approximately \$9,000) under Articles 188 (Slander) and 189 (Insult) of the Belarusian Criminal Code. The reason for initiating his criminal case was an application of a police officer over a video on the blogger`s YouTube channel.

Recommendation: Decriminalize defamation.

V. Arbitrary detentions of journalists

In the second Universal Periodic Review, Romania, Greece, and Lithuania urged Belarus to abandon arbitrary detention of journalists. However, this bad practice continues.

Frequency of the arrests depends on the protest activity in the society that journalists cover. It peaked in 2020 in view of the protests during presidential election campaign (at least 180 cases by mid-September compared to 24 in 2019). There were mass detentions of journalists covering the protests against falsification of election results. During four days since the date of the election (from 9 to 12 August 2020), 70 journalists were shortly detained or arrested. They also faced cruel treatment by the police, damaging and seizing their professional equipment. 25 journalists were beaten up and three were wounded when police fired rubber bullets and stun grenades at the protesters. Dozens of the arrested journalists are prosecuted for alleged participation in an illegal demonstration and sentenced to imprisonment or fines.

Recommendations:

- a. Abandon arbitrary detaining and using violence in relation to journalists during the

exercise of their professional activities.

- b.** Investigate all cases of violation of journalists` rights and bring those responsible to justice.