

Belarus Human Rights Index

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2019

Right to freedom of expression

Score: 3.3

Including scores by component:

- Freedom of opinion and expression – 3.5
- Access to information – 3
- **Freedom of opinion and expression**

The situation regarding freedom of expression and the status of the media remains dire. Amendments to the Law “On Mass Media”, which came into force at the end of 2018, have tightened state control over freedom of speech on the internet. As a result, the number of cases of prosecution for online comments is on the rise.

Self-censorship is widespread in Belarus, which, according to experts, is a consequence of constant pressure on citizens who express their opinions publicly. The restrictions on the right to freedom of expression contained in the legislation overwhelmingly fail to meet the requirements of proportionality and reasonableness.

The Criminal Code of Belarus contains a number of defamation provisions (including those providing for increased liability for slander and insulting public officials, including the president), some of which are applied in practice. For instance, in April 2019, blogger Sergei Petrukhin was sentenced under Articles 188 (Slander) and 189 (Insult) of the Criminal Code to a fine of approximately \$4,600 (together with compensation for non-pecuniary damage, the total payment amounts to around \$9,000)¹.

In 2019, there was an increase in the number of cases where individuals were prosecuted under Article 130 of the Criminal Code, ‘Incitement of racial, national or religious enmity or discord’, for photos or videos posted on social media. However, the legislation does not clarify the distinction between administrative and criminal liability for such acts. Courts and investigative bodies do not assess the context of the author’s statement, its content, or the harm caused to public interests. Under

¹ See the joint statement by human rights and other civil society organisations in Belarus on the criminal case against blogger Sergei Petrukhin: <http://spring96.org/ru/news/92515>



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this article of the Criminal Code, individuals face punishment in the form of restriction or deprivation of liberty for a term of up to five years.

In 2018, the Human Rights Committee, in assessing the situation regarding the exercise of freedom of expression, expressed concern about laws and practices which, in its view, do not comply with the principles of legal certainty, necessity and proportionality, as required by the International Covenant on Civil and Political Rights, and which significantly restrict freedom of opinion and expression².

Overall, despite serious legislative restrictions which are interpreted arbitrarily in practice, experts believe that in 2019 people were able to express themselves fairly freely (including online) on various topics, including criticism of the authorities' actions and decisions, and were not held accountable, with a few exceptions.

According to experts, Belarusian legislation concerning the activities of journalists is among the most repressive in the region. In Belarus, the practice of harassing and persecuting journalists working for non-accredited foreign news agencies is widespread. In 2019,³ recorded 21 detentions of journalists and bloggers, and 44 cases of fines being imposed on freelance journalists for working with foreign media without accreditation⁴. On 4 March 2019, the Zavodsky District Court of Minsk found Marina Zolotova, editor-in-chief of the leading Belarusian internet portal TUT.BY, guilty of official inaction (Article 425 of the Criminal Code) and sentenced her to a fine of 7,650 Belarusian rubles (approximately \$3,800 at the National Bank's exchange rate). In addition, [the court ordered](#) her to pay 6,000 rubles (approximately \$3,000) in legal costs to BelTA⁵.

On 20 March 2019, the Investigative Committee of Belarus announced via its official Telegram channel that a criminal case had been opened under Part 1 of Article 340 of the Criminal Code regarding a knowingly false report of a bomb threat at the district executive committee in the urban settlement of Oktyabrsky. The suspect in the case is blogger Andrei Pauk, whose mobile phone number was included in the bomb threat message. On 20 March, A. Pauk was detained; his home was searched and his computer and other professional equipment were seized. According to the investigation, A. Pauk sent an email to the Gomel Regional Department of the Ministry of Emergency Situations reporting a bomb threat against the Oktyabrsky District Executive Committee (a local executive authority). Following questioning, A. Pauk was released. A month later, the criminal case

² Concluding observations of the Human Rights Committee on the fifth periodic report of Belarus, CCPR/C/BLR/CO/5, paragraph 49

³ For further details, see Mass Media in Belarus, No. 1 (60), 2020. Results of 2019, <https://baj.by/sites/default/files/analytics/files/2020/smi-01602020-ru.pdf>

⁴ For more details on the repression of journalists working without accreditation: <https://baj.by/be/analytics/shtrafy-zhurnalistam-pa-art-229-kaap-tablica-abnaulyaecca>

⁵ <https://baj.by/ru/analytics/massmedia-v-belarusi-no1-60-2020-itogi-2019-goda>



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against him was closed and the seized equipment was returned. The blogger also received anonymous threats⁶.

The executive authorities have the power to issue warnings to media outlets, and to suspend or cease their publication. The Ministry of Information has the right to decide to remove media distributors, as well as publishers, producers and distributors of other printed materials, from the relevant registers, which effectively amounts to a ban on distribution. The grounds for removal from the state registers of media distributors include: the distribution of foreign media products without the relevant authorisation from the Ministry of Information; the distribution of news reports and/or materials prohibited from distribution under Article 38 of the Media Law; and the issuance of two or more written warnings to the distributor within a year. The publication of a media outlet may be suspended by a court upon a claim by the Ministry of Information or the public prosecutor. Such a claim may be filed within six months of a warning being issued, regardless of the severity of the grounds on which it was issued.

The Media Law (Article 35) provides for the mandatory accreditation of foreign media journalists by the Ministry of Foreign Affairs, which may only be obtained by full-time staff of foreign media organisations. Foreign media journalists are prohibited from carrying out their professional activities on the territory of the Republic of Belarus without accreditation. The Law “On Mass Media” does not provide for the possibility of appealing against a refusal of accreditation.

Belarusian legislation provides for a specific extrajudicial form of sanctions against the media – written warnings issued to them by the Ministry of Information. The vast majority of such warnings are issued to independent publications, which can have serious negative consequences for them. The law stipulates that a media outlet may be shut down by court order if the editorial office or its founder has received two or more warnings from the Ministry of Information within a year, or following two warnings from the prosecutor’s office to the editorial office’s officials. According to experts, the threat of closure due to warnings leads to the de facto establishment of self-censorship within media editorial offices.

A positive development, according to experts, is that all non-state publications that have applied to the state monopoly enterprise for media distribution by subscription, ‘Belpochta’, have been included in the subscription catalogues. They have also been granted the opportunity to be sold through the retail network of the state enterprise ‘Belsouzpechat’. There are no cases of unjustified refusal to register print media. Thus, with regard to non-state media, the state has abandoned a number of discriminatory economic measures. However, the funding of state media on a non-competitive basis from the state budget remains in place. State bodies have entered into dialogue with journalists’ organisations on issues relating to the exercise of freedom of expression, the right to information, and the regulation of the Internet⁷.

⁶ <https://baj.by/ru/analytics/massmedia-v-belarusi-no1-60-2020-itogi-2019-goda>

⁷ https://belhelcom.org/sites/default/files/ru_by_upr_coalition_report.pdf



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- **Access to information**

Belarus has no separate law on access to information of public interest. Existing regulations and practices do not provide effective mechanisms for accessing such information. The Law “On Information, Informatisation and Information Protection” grants state bodies the right to arbitrarily restrict the dissemination of information of public interest, including environmental information. Despite a significant improvement in the availability of environmental information, executive authorities are not sufficiently familiar with the regulations on public access to environmental information, as evidenced by failure to meet deadlines for its provision, processing requests in accordance with legislation on appeals from citizens and legal entities, and providing information in a form other than that requested (for example, instead of providing a copy of the minutes of public discussions, a response was given in which the contents of the minutes were rewritten), and in refusing to provide information on spurious grounds⁸.

State bodies in Belarus do not take ‘public interest’ into account as a category determining the legitimacy of providing particular information. Thus, the Law ‘On Mass Media’ contains no mention whatsoever of the public functions of journalists and the media, or of guarantees for the realisation of their right to access information in connection with the performance of their professional activities. In essence, media requests are dealt with under the legislation governing appeals from citizens and legal entities.

The accreditation system in Belarus is often used to restrict journalists’ access to information. The potential for this is inherent in the very definition of ‘accreditation of a media journalist’ given in Article 1 of the Law on the Media, which characterises it as ‘confirmation of a media journalist’s right to cover events’. In practice, accreditation is interpreted as the right of a state body or other institution to authorise a particular journalist to cover its activities.

In Belarus, there is a national statistical committee – Belstat – which, in general, publishes information relating to various spheres of public life. However, according to experts, the published data is not machine-readable. Analysing it requires additional effort on the part of researchers to convert it into the appropriate format. Experts also highlighted the following issues: the absence on the Belstat website of much data of public interest; the lack of disaggregated data; some data being available only on a paid basis, etc.

According to experts, state bodies restrict the dissemination of information even in cases where such restrictions are prohibited by law; for example, access to information regarding the activities of state bodies, their budgets, specific instances of breaches of the law, and citizens’ rights is frequently restricted.

⁸ https://greenbelarus.info/files/downloads/dostup-k-ekoinformatsii_obzor_ekodom.2018.pdf



Draft legislation, roadmaps, technical documentation on the activities of certain authorities, etc., are either not published or published late. Experts highlighted as a problem the fact that access to the database of regulatory legal acts is subject to a fee, even for those concerning human rights and freedoms. People are often forced to search for many regulatory legal acts using search engines; however, in such cases, it is difficult to ascertain whether the regulatory act found is currently in force.

Legislation on state secrets, according to experts, covers a fairly broad range of information. Furthermore, there is a great deal of 'publicly significant' documentation that is available only for internal use. All of this, in the experts' view, has a negative impact on the realisation of the right of access to information.

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