

National Human Rights Index

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2023

The Right to Free Expression:

Expert Commentary

The score:	1.2
<i>Including scores by component:</i>	
• Freedom of opinion and expression	1
• Access to information	1.3 -0,1

In 2023, there is still a situation when, despite the formal statement of the right to freely express an opinion, in practice it is impossible to realize this right without subsequent sanction. Assessing the state of the right to free expression in 2023, the Index experts gave lower scores than in 2022. **Among the main reasons are:**

- continued persecution of expressions of opinion on the criterion of their allegedly oppositional, critical character, which concerned both new statements and those made in 2020 and earlier;
- the range of "forbidden" opinions was legislatively expanded;
- the practice of "digital torture" through the recording of "repentant videos" reached a new level: it was adopted by educational institutions and the media;
- 10 independent media (twice as many as in 2022), as well as the Belarusian Association of Journalists were recognized as "extremist formations"
- persecution of journalists, bloggers and human rights defenders continues: in 2023, human rights defenders from Viasna detained since July 2021 were sentenced to long prison terms.

- **Freedom of opinion and expression**

In 2023, practices of harassment, intimidation and stigmatization for expressing opinions remained widespread. They continued to apply not only to those who directly express dissent in any form, but also to those *perceived by the authorities* to hold an alternative to pro-government position. The persecution based on the criterion of their allegedly oppositional, critical orientation concerned both



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new statements and publications, reposts, and other forms of expression made in 2020¹ and earlier² in all conceivable forms³, including opinions on scientific, historical, moral, and religious issues.

The pre-election situation was not an occasion for relaxation: the continued exclusion of independent media from the public sphere⁴ and the restriction of access to other channels of information through the application of "anti-extremist legislation" (see below) nullified the possibility of political statements on key public issues if they contradicted the official narrative.⁵ Persons who actively expressed an alternative position earlier, participated in electoral campaigns as observers or otherwise attempted to participate in the political life of the state were persecuted⁶. The continued dismissals in 2023 of those listed as signed up for the nomination of an alternative candidate in 2020⁷ further cast doubt on the possibility of a free election campaign in 2024. Thus, in 2023, the preparations for the single day of voting in 2024 took place in an information bubble filled with content from state media that regularly violated the standards of information journalism⁸, as well as reports by pro-government activists who allowed themselves to use hate speech and media harassment of dissenters⁹.

In 2023, the practice of "digital torture" through the recording of "repentant videos" also reached a new level, with the country's main law school¹⁰, regional media¹¹, and main state channels adopting this format. Detainees are called "extremists" and "radicals" and are forced to disclose their personal details. At the same time, the "guilt" voiced in the video consists in subscribing to "forbidden" information resources.¹²

¹ On the ongoing 2023 persecution for participating in the 2020 peaceful protests: <https://spring96.org/ru/news/113976> , P. 17.

² See prosecutions for reposts made before the events of 2020 and definitely before the relevant resources were recognized as banned for dissemination: <https://humanconstant.org/obzor-borby-s-ekstremizmom-v-belarusi-za-yanvar-mart-2023/> ; also see below the practice of applying "anti-extremist" legislation with retroactive force of law.

³ <https://humanconstant.org/prigovory-za-finansirovanie-terrorizma-i-ekstremistskie-startap-haby-obzor-borby-s-ekstremizmom-v-belarusi-za-iyul-sentyabr-2023/>

⁴ <https://baj.media/ru/analytics/smi-v-belarusi-v-2023-godu-elektronnyy-byulleten-bazh>

⁵ <https://elections2024.spring96.org/ru/news/113484>

⁶ <https://spring96.org/ru/news/113566> , <https://spring96.org/ru/news/112548>

⁷ <https://news.zerkalo.io/life/49556.html> , <https://news.zerkalo.io/economics/50469.html> , <https://news.zerkalo.io/life/31288.html>

⁸ <https://mediaiq.info/dengi-v-meshkah-na-ukrainu-ne-otpravlyajut-antiukrainskie-narrativy-ot-sb-belarus-segodnya> ; <https://mediaiq.info/kak-belarusskie-smi-narushali-standarty-v-dekobre>

⁹ <https://mediaiq.info/karajushhaya-dlan-propagandy> , <https://mediaiq.info/my-budem-sypat-vam-etu-sol-na-rany-dalshe-bahmut-ocherednoj-vitok-oskorblenij-i-ugroz-ot-azarjonka>

¹⁰ <https://news.zerkalo.io/life/39896.html>

¹¹ <https://mediaiq.info/pokayannye-video-teper-i-v-rajonkah-gosorgany-podkljuchilis-k-borbe-protiv-podpisok-na-negosudarstvennye-resursy>

¹² <https://mediaiq.info/prinuditelnye-pokayaniya-poyavilis-v-telenovostyah-kontent-neoficialnyh-telegram-kanalov-silovikov-perekocheval-na-gostv>



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The state's systematic suppression of freedom of expression continues to be based on legislation that is already inherently unlawful, both because the regulation does not meet the criterion of legal certainty¹³ and because of unreasonably severe sanctions for expressing an opinion, including deprivation of liberty. Statistics on cases of harassment available to human rights defenders show that these sanctions are frequently used: since 2020, among other grounds of harassment,

- at least 92 persons have been imprisoned under Article 361 of the CC (Calls for actions aimed at harming the national security of the Republic of Belarus),
- at least 447 persons were convicted on charges of inciting hatred or discord (Article 130 of the CC) (in 78% of cases with imprisonment),
- 691 people were convicted under Article 368 of the CC for insulting A. Lukashenko (with imprisonment in at least 18% of cases, and in 4 cases - referral to compulsory treatment).¹⁴

In addition to the fact that insult and slander against the president, insulting other representatives of power, discrediting the state, abuse of state symbols remain criminalized¹⁵, in 2023 the range of "prohibited" opinions was extended to propaganda of terrorism "and its public justification"¹⁶. In the review period, the concept of "discrediting the Republic of Belarus" was also expanded to include "dissemination of knowingly false information... about the activities of the Armed Forces of the Republic of Belarus, other troops and military formations, paramilitary organizations"¹⁷. All wording remain broad, vulnerable to arbitrary interpretation of the law enforcer¹⁸. The situation is aggravated by the fact that the listed innovations are automatically included in the ecosystem of "anti-extremist" legislation and become the basis for inclusion of persons convicted under these articles (in the case of

¹³ For a discussion of "anti-extremist" legislation, see, https://baj.media/sites/default/files/analytics/files/2024/extremism_and_media.pdf , pp. 12, 19, 21, 25.

¹⁴ https://spring96.org/files/reviews/ru/review_2023_ru.pdf , pp. 16-20.

¹⁵ Each article, however, provides, among other things, for a deprivation of liberty sanction. See CC: <https://pravo.by/document/?guid=3871&p0=hk9900275>

¹⁶ Art. 289-1 CC

¹⁷ Art. 369-1 CC.

¹⁸ See the definition of "propaganda of terrorism": "dissemination in any form of materials and (or) information for the purpose of forming in an individually undefined circle of persons a commitment to terrorist ideology or recognizing terrorist activity as permissible". Note to Art. 289-1 of the Criminal Code.



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the list of "terrorists" – also those who are accused¹⁹⁾ in the lists of "extremists" and "terrorists"²⁰⁾ with subsequent restrictions in rights²¹⁾.

In 2023, the freedom of publishing was further restricted, with new grounds for suspending and revoking state registration of publishers²²⁾, with the court's powers in relation to these procedures transferred to the Ministry of Information.

The state continues to develop an ecosystem of "anti-extremist" legislation, which is gradually becoming the main mechanism for suppressing freedom of expression, allowing the prosecution of undesirable speech in any form, with virtually any content, using the goals of combating the widely interpreted "extremism" and "terrorism". The regulation of this struggle remains insufficiently clear²³⁾, predictable²⁴⁾ and accessible to both law enforcers and society²⁵⁾. Mechanisms for recognizing "materials" and "organizations/formations" as "extremist", placing individuals on "terrorist" and "extremist" lists with subsequent serious restriction of their rights are still based on vague definitions and are carried out without proper judicial control and thorough analysis of each statement²⁶⁾. At present, there are no effective legal remedies: formally existing opportunities to appeal the relevant

¹⁹⁾ See para. 5 of the Regulation on the Procedure for Determining the List of Organizations and Individuals, Including Individual Entrepreneurs, Involved in Terrorist Activities, Appealing the Decision to Include an Organization or Individual, Including an Individual Entrepreneur, in Such a List and Considering Other Appeals of These Organizations, Individuals, Including Individual Entrepreneurs, and Bringing the List to the Notice of Persons Engaging in Financial Transactions and the Financial Monitoring Authority, approved by the Resolution of the Council of Ministers of 30.12.2014 N 1256.

²⁰⁾ https://baj.media/sites/default/files/analytics/files/2024/extremism_and_media.pdf, c. 30-32.

²¹⁾ <https://humanconstant.org/razbiraemysya-s-ekstremistskimi-spiskami-perechen-grazhdan-belarusi-inostrannyx-grazhdan-ili-lic-bez-grazhdanstva-prichastnyx-k-ekstremistskoj-deyatelnosti/>

²²⁾ Dissemination of slander and prohibited information - for suspension of activity; issuance of publications containing information "dissemination of which may harm the national interests of the Republic of Belarus" or "signs of extremism", as well as information prohibited by court decision - for deregistration:

<https://pravo.by/document/?guid=12551&p0=H12300283>, <https://baj.media/be/analytics/zapret-inostrannyh-media-propaganda-terrorizma-i-diskreditaciya-cto-sluchilos-v-2023-godu>

²³⁾ On the non-compliance of "anti-extremist legislation" with the criterion of "legality":

<https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh>

²⁴⁾ On changes in the application of the same norms (legal consequences of subscribing to "extremist" resources):

<https://humanconstant.org/prigovory-za-finansirovanie-terrorizma-i-ekstremistskie-startap-haby-obzor-borby-s-ekstremizmom-v-belarusi-za-iyul-sentyabr-2023/>

²⁵⁾ The lists of "extremist materials/formations/organizations", "extremists" and "terrorists" are cumbersome, inconvenient to use documents that are inaccessible to certain groups of the population (in particular, the digitally illiterate); keeping track of changes in them in a timely manner (with some lists being updated several times a week) and responding accordingly is an unreasonably heavy burden for law-abiding citizens. At the same time, certain groups of citizens are forced to make a formal commitment not to commit acts that fall under the arbitrarily broad definition of "extremism"

(https://news.zerkalo.io/life/53697.html?utm_source=news.zerkalo.io&utm_medium=news-bottom-block&utm_campaign=relevant_news) and sign documents according to which they are familiarized with the list of "extremist materials" and undertake to take measures not to spread the latter (at the same time, the list itself runs to hundreds of pages): <https://penbelarus.org/2023/09/08/the-cultural-sector-in-belarus-in-2022-2023-repressions-trends.html>

²⁶⁾ <https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh>



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decisions cannot be used both due to the absence of appropriate guarantees in the legislation and the general dysfunctionality of the judicial system.²⁷

The effect is particularly devastating for independent media, which continue to feel the effects of most of the tools provided for by the "anti-extremist" legislation: for example, in 2023:

- media information products continued to be recognized as "extremist" (as a consequence, media outlets were subject to blocking on the territory of the Republic of Belarus, authors of information materials and other media employees, as well as media audience risked administrative prosecution for "dissemination of extremist materials" under Article 19.11 of the Code of Administrative Offenses²⁸; in the first half of the year, 1.7 times more people were prosecuted under this article than in the same period of 2022²⁹, in total in 2023 - at least 2,791 people³⁰);
- 10 independent media (twice as many as in 2022), as well as the Belarusian Association of Journalists were recognized as "extremist formations" **extrajudicially** (such media are deprived of the possibility to function in the territory of the Republic of Belarus, any interaction with them, including financing, providing interviews, cameraman assistance, etc. entails criminal prosecution (often with the retroactive application of the law)³¹)
- continued persecution of journalists under "extremist" articles, which entails inclusion in the lists of "terrorists" (12 media workers were included in the list in 2023; inclusion in this list is still possible in relation to defendants, and under articles that criminalize various forms of speech³²) and "extremists" (33 media workers were included in the list)³³.

Experts note the continued persecution of journalists, bloggers and human rights defenders. In 2023, Viasna human rights defenders detained since July 2021 were sentenced³⁴ to long prison terms. The period under review was marked by at least 46 detentions of journalists and 34 searches, which were accompanied by criminal prosecutions (16 journalists were sentenced during the year; another six were

²⁷ Id.

²⁸ This article has become a convenient tool of persecution, given that distribution of the products of virtually all mainstream media is prohibited, and "distribution" itself is interpreted arbitrarily broadly and has no statute of limitations. Such practices create an atmosphere of intimidation in which the population is afraid not only to comment on publications of independent resources, publicly discuss and share them, but also simply to read them on their device: <https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh> , p. 20.

²⁹ <https://baj.media/ru/analytics/doklad-bazh-belarus-2022-2023-prava-cheloveka-grazhdanskoe-obshchestvo-media>

³⁰ https://spring96.org/files/reviews/ru/review_2023_ru.pdf , c. 21

³¹ Id., p. 28.

³² Among them are Art. 361 of the Criminal Code (calls for sanctions), Art. 130 of the Criminal Code (incitement to hatred), Art. 130-1 of the Criminal Code (rehabilitation of Nazism), Art. 130-2 (denial of the genocide of the Belarusian people).

³³ <https://baj.media/be/analytics/smi-u-belarusi-u-2023-godze-elektronny-byuleten-bazh>

³⁴ Nobel Peace Prize laureate Ales Bialiatski- to 10 years in a reinforced penal colony, Valiantsin Stefanovic- to 9 years in a reinforced penal colony, Uladzimir Labkovich- to 7 years in a reinforced penal colony; Zmitser Salauyou- to 8 years in absentia: <https://spring96.org/ru/news/110945>



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charged)³⁵, crackdown on several mass media outlets through a set of repressive mechanisms, including detentions and searches of editorial offices, recognizing certain information products as "extremist materials" and the media itself as an "extremist formation"³⁶. There are known cases of politically motivated persecution of bloggers³⁷. In addition, journalists, bloggers and human rights defenders have been subjected to torture and other forms of prohibited treatment in places of detention³⁸. Effective and impartial investigations into these acts of persecution continue to be lacking.

According to experts, the existing legislation regulating media activities is not at all conducive to the protection of the media and journalists - on the contrary, it contains grounds for the use of repressive mechanisms. Among the key developments³⁹ that aggravated the situation in 2023 are the following:

- the possibility of banning foreign mass media as an automatic response to restrictions imposed by other states on Belarusian mass media⁴⁰;
- additional grounds for revoking media registration (in case of recognition as an "extremist organization/formation"⁴¹ or in case the media founder is included in the list of "extremists" or "terrorists");
- the list of grounds for blocking websites has been expanded (while the existing regulation does not provide for the assessment of the content of individual materials, the new grounds also have the effect of total blocking of the entire resource⁴²);
- a ban on the distribution of information from blocked resources for news aggregators;
- in continuation of the decree No. 131⁴³ adopted in 2022, which introduced a levy on advertisers, which is subsequently used as "subsidies" to finance state media, in 2023 the list of areas for which the

³⁵ <https://baj.media/ru/analytics/smi-v-belarusi-v-2023-godu-elektronnyy-byulleten-bazh>

³⁶ See, among others, the situations of the "Ranak" TV channel (<https://baj.media/ru/content/v-svetlogorske-zaderzhali-8-sotrudnikov-telekanala-ranak>), Intex Press (<https://baj.media/ru/content/sayt-i-socseti-samogo-populyarnogo-baranovichskogo-izdaniya-inteks-press-priznali>), of the newspaper "lnfa-kur'er" (<https://baj.media/ru/content/prostite-zatakov-final-my-ego-ne-vybirali-ina-kurer-obyavil-o-vynuzhdenom-zakrytii>).

³⁷ <https://baj.media/ru/analytics/smi-v-belarusi-v-2023-godu-elektronnyy-byulleten-bazh>, c. 4.

³⁸ https://spring96.org/files/reviews/ru/review_2023_ru.pdf

³⁹ Full analysis of changes: <https://baj.media/be/analytics/zapret-inostrannyh-media-propaganda-terrorizma-i-diskreditaciya-cto-sluchilos-v-2023-godu>

⁴⁰ <https://baj.media/be/analytics/zapret-inostrannyh-media-mozhet-li-gosudarstvo-ssylatsya-na-vzaimnost>

⁴¹ On the defects of legal regulation of these statuses and the arbitrariness of law enforcement practice, see pp. 21-32: <https://baj.media/be/analytics/ekstremizm-i-media-analitika-bazh>

⁴² <https://baj.media/be/analytics/zapret-inostrannyh-media-propaganda-terrorizma-i-diskreditaciya-cto-sluchilos-v-2023-godu>

⁴³ <https://baj.media/be/analytics/ideologiya-genocid-slezhka-cto-sluchilos-v-2022-godu-v-pravovom-pole>



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collected funds can be used was expanded (they are still limited to the financing of state organizations and their information products, non-state media cannot apply for this support⁴⁴⁴⁵).

In addition, the ideologization of state media continued during the review period. Since 2023, the Faculty of Journalism of the Belarusian State University is officially oriented towards training specialists for state media ("execution of the state order"⁴⁶) exclusively on a budgetary basis⁴⁷. Human rights defenders note not only the cleansing of the public sphere inside the country from independent media, but also politically motivated repression of state media employees, including detentions at their workplaces, administrative harassment and dismissals.⁴⁸

- **Access to information**

Legislative and practical restrictions on the population's access to information continued in 2023. The above-mentioned repressions against independent media, active use of "anti-extremist" legislation to suppress the dissemination of undesirable information by other actors still deprive people within Belarusian jurisdiction of access to a huge array of information. Due to the above-mentioned problems, journalists of independent mass media actually have no direct access to government information and are forced to communicate with officials, presenting themselves as ordinary citizens, which reduces the quality of information received and also negatively affects the accountability of officials. "Anti-extremist" legislation makes communication with independent media and their journalists dangerous, which creates a significant barrier to access to primary sources of information. The above-mentioned innovation allowing to impose a ban on the activities of foreign media as part of "retaliatory measures" also contains the potential to further restrict access of Belarusians to alternative information.

⁴⁴ <https://pravo.by/document/?guid=12551&p0=P32300098>

⁴⁵ <https://baj.media/be/analytics/zapret-inostrannyh-media-propaganda-terrorizma-i-diskreditaciya-cto-sluchilos-v-2023-godu>

⁴⁶ <https://www.belta.by/society/view/79-zajavlenij-na-60-mest-dekan-zhurfaka-bgu-o-priemnoj-kampanii-na-fakultete-580460-2023/>

⁴⁷ The plan is to train "battle bayonets" and "information commandos" <https://www.belta.by/society/view/pertsov-pervokursnikam-zhurfaka-vy-nashi-boevye-shtyki-v-informatsionnoj-vojne-585656-2023/>, <https://sputnik.by/20230403/zhurfak-bgu-znachitelno-sokraschaet-nabor-i-otmenyaet-platnye-mesta-1073953834.html>

⁴⁸ <https://baj.media/ru/analytics/smi-v-belarusi-v-2023-godu-elektronnyy-byulleten-bazh>, c. 10.



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State authorities continue to manipulate data⁴⁹, hide official statistics⁵⁰, and deny individual requests for information on national security grounds⁵¹. The resolution of the Council of Ministers No. 667 "On Some Issues of Handling Appeals of Citizens and Legal Entities", updated in 2023, provides for an additional ground for denying access to information: when receiving appeals during a hotline or a direct telephone line, an official has the right to terminate the call if "there are grounds to believe that the purpose of the appeal during a direct telephone line is to discredit the Republic of Belarus, including its state bodies and officials"⁵². At the same time, experts note a high level of activity of state bodies in organizing various formats of interaction with citizens through hotlines, seminars, dialogue platforms. Their effectiveness in conditions of total limited freedom of expression and pervasive atmosphere of fear (which does not allow citizens to calmly use even the available channels of communication with the state) is questionable; according to experts, such events are rather demonstrative, imitating two-way communication with society.

In the review period, the regulation of the protection of state secrets was not improved in order to correct the previously noted problems⁵³; in 2023, criminal liability for violation of the requirements for the protection of state secrets was introduced⁵⁴, which, in the opinion of experts, continues the general trend of increased attention to the activities of civil servants, is another tool of control and pressure on them.

⁴⁹ https://t.me/belhalat_by/8311

⁵⁰

https://news.zerkalo.io/life/60869.html?_gl=1*1dsw3c8*_ga*MTAwNzOwNzk5Ny4xNjc5OTI0MDQy*_ga_B8LJ3JOEWY*MTcwNzgxODkzMi4zNC4xLjE3MDc4MTkwMDEuNjAuMC4w, See also para. 4 of the Instruction on the procedure of dissemination and (or) presentation to users of official statistical information generated by state statistical offices: <https://www.belstat.gov.by/ofitsialnaya-statistika/polzovatelyam/poryadok-rasprostraneniya-ofitsialnoy-statisticheskoy-informatsii/>, providing for the possibility of restricting the dissemination of official statistical information if it may harm the national security of the Republic of Belarus, public order, morality, rights and legitimate interests of legal entities and individuals. There are no clear criteria for application of this norm in the regulation.

⁵¹ <https://www.rfi.fr/ru/европа/20231129-эксперт-всё-насилие-схоже-по-своей-природе-от-лукашенко-оно-исходит-или-члена-семьи-четверти-века-оказалось-недостаточно-чтобы-мы-осознали-эту-взаимосвязь>

⁵² <https://pravo.by/document/?guid=12551&p0=C22300933>

⁵³ https://belhelcom.org/sites/default/files/8_pravo_na_svobodu_vyrazheniya_mneniy_2022.pdf

⁵⁴ New article 375-2 of the Criminal Code of the Republic of Belarus:

<https://pravo.by/document/?guid=3871&p0=hk9900275>



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