



BELARUS

**SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE
124TH SESSION, 8 OCTOBER TO 2 NOVEMBER 2018**

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1. INTRODUCTION

Amnesty International submits this document to the United Nations (UN) Human Rights Committee ahead of its forthcoming review of Belarus' fifth periodic report on measures taken to implement the provisions of the International Covenant on Civil and Political Rights (the Covenant). This document summarises Amnesty International's main human rights concerns in Belarus over the period from 2013-2018 but is not an exhaustive account.

During this period, the authorities in Belarus have continued to violate a number of fundamental human rights.

Despite positive steps indicating some progress towards abolition of the death penalty, Belarus continued to impose death sentences and execute prisoners in secret. The authorities persistently ignored requests from the UN Human Rights Committee to stay executions whilst cases were being considered.

The authorities in Belarus have continued to commit violations of the rights to freedom of peaceful assembly, association and expression, as well as the right to liberty and security of the person. In numerous cases, often in the context of peaceful protest, individuals have been arbitrarily deprived of their liberty by law enforcement officials. Hundreds of peaceful protesters and individuals attempting to exercise their rights to freedom of assembly and expression have been subjected to arrest, heavy fines, "administrative detention" and in some cases imprisonment following politically-motivated trials that did not conform to fair trial standards. In March and April 2017 alone, hundreds of peaceful protestors were detained across the country, in some cases with excessive use of police force. Most of the printed and broadcast media in the country operate under effective government control, and the authorities have taken steps to extend their effective control of the media to online media outlets. The legal framework governing secret surveillance allows the authorities to undertake wide-ranging surveillance with little or no justification, while authorization and supervision of surveillance safeguards are not adequate, and not carried out by an independent judicial body. Freedom of association has continued to be unduly restricted in Belarus, and while legislative changes to de-criminalise participation in the activities of an unregistered organisation are being considered, this "crime" may be replaced with a relevant administrative "offence".

2. THE RIGHT TO LIFE / DEATH PENALTY

Article 6

Despite positive steps and rhetoric from the Belarusian authorities regarding the inevitability of abolition of the death penalty and extended periods where no executions took place, at least ten men were executed in the period covered by this report.¹ No death sentences were overturned on appeal and President Lukashenka did not grant clemency in any case. Executions continued to be carried out in secret. No date or final meeting was given to the families, bodies of executed prisoners were not handed over to their families for burial nor were the burial sites disclosed. Furthermore, prisoners were not informed of their imminent execution until moments before the execution took place.

Families of executed men were informed of the date of execution only weeks later, causing them extreme distress and trauma. The authorities failed to make information regarding death sentences available to the public. Consequently, in the case of Kiryl Kazachok, who was executed in October 2017, information only came to light months later and largely due to the efforts of civil society.² Similarly, the death sentence of Viktor Liotau in September 2017, only came to light in January 2018. His fate, along with that of Aliaksei Mikhalenya, remain unknown following unconfirmed reports of their execution in May this year. In June 2018, after taking the unprecedented step of temporarily suspending the death sentences of Ihar Hershankou and Siamion Berazhnoy for a month following a procedural complaint made by their lawyer, the Supreme Court reinstated their sentences after the complaint was rejected.³ This leaves at least four, and possibly six men at risk of imminent execution at the time of writing.

2.1 RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Immediately commutes all death sentences to terms of imprisonment and establishes an official moratorium on executions with a view to abolishing the death penalty;
- Lifts all secrecy surrounding the use of the death penalty and informs the families of those previously executed about the location of their graves, the date of the execution, and offers the families the possibility to receive additional details about the execution, if they so desire;
- Ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Publicises on an annual basis comprehensive statistics on the death penalty and facts around the administration of justice in death penalty cases.

¹ For more information on executions in 2017, see Amnesty International, *Death Sentences and Executions 2017*, ACT 50/7955/2018, available at <https://www.amnesty.org/en/documents/act50/7955/2018/en/>.

² For more information, see Amnesty International, "Belarus: Undisclosed Execution Comes to Light", EUR 49/8063/2018, available at <https://www.amnesty.org/en/documents/eur49/8063/2018/en/>.

³ For more information, see Amnesty International, "Belarus: Unprecedented Supreme Court decision to suspend death sentences", available at <https://www.amnesty.org/en/latest/news/2018/06/belarus-unprecedented-supreme-court-decision-to-suspend-death-sentences/>.

3. THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON

Article 9

The right to liberty and security of the person is routinely violated in Belarus, including in the context of peaceful protests by law enforcement officials who have arbitrarily deprived individuals of their liberty. There have been numerous cases of short-term (“administrative”) and long-term imprisonment of individuals who have attempted to exercise their rights to freedom of expression and peaceful assembly following politically-motivated trials that did not conform to fair trial standards (see further details on these issues below).

On 25 March 2017, masked police officers raided the office of human rights group Vyasna, and arrested all 57 people present at the time. Among them were local and international human rights defenders and journalists who were attending a training and receiving instructions on monitoring demonstrations. A big peaceful demonstration was planned later in the day in Minsk (see details below), and the apparent purpose of the arrests was to prevent its independent monitoring. The individuals arrested were held for three hours at the local police station and released without charge or any explanation. One detainee was hospitalized with head injuries sustained during the arrest.⁴

3.1 RECOMMENDATIONS

THE STATE PARTY SHOULD:

- Fully respect the right to liberty and security of the person, and in particular end the practice of arbitrary arrest and detention of individuals solely in connection with their attempts to exercise their rights to freedom of expression and peaceful assembly, under the pretext of “offences” under Article 23.34 (participation in unauthorised mass gatherings) and Article 23.4 (resisting demands of a public official) of the Code of Administrative Offences and/or under trumped-up criminal charges;
- Immediately and unconditionally release all individuals deprived of freedom solely in connection with their attempts to exercise their rights to freedom of expression and peaceful assembly, and end the relevant criminal or administrative proceedings where ongoing, and quash all relevant convictions where passed;
- Institute independent, impartial and effective investigation of all past cases of unlawful deprivation of liberty by law enforcement officials, and hold to account in fair trial proceedings all those responsible of such violations and ensure access to an effective remedy to all victims.

⁴ For more information, see Amnesty International, “Belarus: Vicious crackdown on peaceful protests mars ‘Freedom Day’”, available at <https://www.amnesty.org/en/latest/news/2017/03/belarus-vicious-crackdown-on-peaceful-protests-mars-freedom-day/>.

4. FREEDOM OF EXPRESSION

Article 19

Freedom of expression continues to be severely restricted in Belarus, in law and in practice. Government critics and other dissenting voices who attempt to exercise this right, face harassment and other reprisals from the authorities, including in the form of administrative and criminal proceedings, and in some cases imprisonment. Most of the printed and broadcast media in the country operate under effective government control, and the authorities have taken further steps to extend their effective control of the media to online media outlets.

In April 2014, the authorities started using Article 22.9 of the Code of Administrative Offences (“unlawful creation and dissemination of mass media produce”) to prosecute freelance Belarusian journalists writing for, or contributing to, media outlets based outside Belarus. Under this provision, the authorities require such journalists to acquire formal accreditation with the Ministry of Foreign Affairs as foreign journalists, despite being Belarusian nationals. Such official accreditation has been routinely and arbitrarily denied to journalists working for foreign media outlets. As a consequence, more than 100 journalists working for printed media, radio and TV, and bloggers, have since been arrested, some repeatedly, for not having obtained the accreditation, and issued with fines. In at least eight cases, journalists observing and reporting from protests were arrested as participants and sentenced to administrative detention of between five and 15 days.

Under the vaguely worded amendments to the Law on Mass Media passed in December 2014, the Ministry of Information was given the power to compel internet providers to block access to specific online resources without judicial review. In December 2017 and January 2018, access to the websites of human rights organization Vyasna and of the independent news platforms Belarusian Partisan and Charter’97 were blocked under this provision. The ban remains at the time of writing.

The latest amendments to the Law on Mass Media, adopted in June 2018, extend government control to online media outlets. The changes will enter into force on 1 December 2018.

The amendments establish further bureaucratic hurdles for websites that want to register as official online media outlets. Websites that choose not to register as official online media outlets, or do not meet the new criteria, cannot file requests for accreditation with government institutions, effectively banning them from reporting on the work of the authorities.⁵

Under the new provisions, both registered and unregistered online media outlets will also be obliged to register the names of people who submit comments, such as those under articles or in online forums, thus infringing on people’s right to anonymity, and to disclose the relevant information to the authorities. The owners of registered online media outlets will also be legally responsible for the content of the comments. This is likely to encourage a culture of intense surveillance further curtailing open debate and freedom of expression.

Larysa Shchyryakova is an independent journalist from Homel, in south-eastern Belarus, who worked for Polish TV station, Belsat. A long-standing critic of the authorities, she has been arrested and fined numerous times for working “without an accreditation.” She and her TV channel have applied for accreditation at least four times, but have been arbitrarily denied each time. In 2016 alone, Larysa Shchyryakova received three such fines.

Larysa Shchyryakova was actively covering the anti-government protests in Belarus in 2017. On 12 March 2017, she was arrested while covering the protest in the city of Rahachou. Five days later she was found guilty of attending an “unsanctioned mass event” and fined 140 Belarusian roubles (about US\$ 75). On 18 March, the local police visited the home of her parents who were taking care of her son, and warned them that their daughter would lose custody over her son because of the large number of administrative violations she had committed over the years. The threat was repeated a week later, after she was arrested again while reporting on

⁵ For more information see Amnesty International, “Belarus: Detention of Journalists, Harassment of Independent Media and New Unduly Restrictive Legislation Mark a Low Point for Freedom of Expression”, EUR 49/9026/2018, available at <https://www.amnesty.org/en/documents/eur49/9026/2018/en/>.

another protest, and accused of two further administrative offences: failing to register her dog and not cleaning up sand around her apartment. Subsequently, Shchyryakova was brought to court after every article that she published and fined for working without an accreditation, totalling 18 fines which amount to over US\$ 5,000– a very high amount for a single mother from rural Belarus. The harassment from the authorities caused Shchyryakova a high level of distress and forced her to stop working as a journalist and seek professional psychological help.⁶

On 24 May 2018, Viktoria Biran, an LGBTI activist, took pictures of herself with a sign saying “YOU are fake” in front of the Interior Ministry, the State Security Committee (KGB) and the House of Government buildings. Two months later, she was found guilty for violating the administrative rules governing “mass events” and issued with three separate fines of 367.5 Belarusian roubles (about US\$ 178) each. Biran’s actions were prompted by the comments on the Interior Ministry’s official website that stated that the “LGBTI-community and all this struggle for their rights, and the very Day of the LGBTI-community – are just fakes”. The actions of the Belarusian authorities are particularly absurd as Biran was standing alone and did not participate in a “mass event”.⁷

4.1 RECOMMENDATIONS

THE STATE PARTY SHOULD:

- Respect the right to freedom of expression, and lift all undue restrictions in law and in practice, in particular by lifting all provisions in the Law on Mass Media that violate Belarus’ international human rights law obligations;
- End reprisals against government critics and other dissenting voices, and in particular end all administrative and criminal proceedings that have been initiated against individuals in connection with their attempts to exercise the right to freedom of expression, and where these proceedings have resulted in conviction and imprisonment, quash the conviction and release them immediately and unconditionally;
- End harassment and other reprisals against free media outlets and individual journalists;
- Abolish the provision requiring freelance Belarusian journalists contributing to foreign-based media to obtain accreditation from the Ministry of Foreign Affairs;
- Repeal or review the provision in the Law on Mass Media under which the Ministry of Information can compel internet providers to block access to specific online resources without judicial review.

⁶ For more information, see Amnesty International, “Belarus: Journalist May Loose Son After Covering Protests: Larysa Schiryakova”, EUR 49/6024/2017, available at <https://www.amnesty.org/en/documents/eur49/6024/2017/en/>.

⁷ For more information, see Amnesty International, “Belarus: New law as authorities slap solo LGBTI protester with fine for ‘mass’ protest”, available at <https://www.amnesty.org/en/latest/news/2018/07/belarus-new-law-as-authorities-slap-solo-lgbti-protester-with-fine-for-mass-protest/>.

5. ARBITRARY AND UNLAWFUL INTERFERENCE IN A PERSON'S PRIVACY OR FAMILY LIFE

Article 17

The legal framework governing secret surveillance allows the authorities to undertake wide-ranging surveillance with little or no justification. The System of Operative Investigative Measures (SORM), a system of lawful interception of all electronic communications, enables the authorities direct access to telephone and internet communications and associated data. The possible surveillance restricted human rights defenders, other civil society and political activists as well as journalists in exercising their human rights.⁸

The SORM system allows the authorities direct, remote-control access to all user communications and associated data without notifying the providers. Under Belarusian law, all telecommunications providers in the country must make their hardware compatible with the SORM system. The system facilitates real-time monitoring of communications as well as access to data which telecoms operators are required by law to retain for up to five years. The SORM system provides access both to the content of communications and the associated metadata (data such as the time, manner or location of communication).

The right to privacy is at risk in Belarus because the law allows broad powers of physical surveillance, including audio monitoring of people or premises, and because personal data may be compromised when computers, mobile phones, or other devices are confiscated by the authorities. The lack of transparency regarding the state's surveillance capabilities means ultimately no one knows the full range of tools and techniques available to the authorities.

Secret surveillance is carried out by a wide array of state agencies and authorized on the basis of a number of broad and vague legal grounds. It can be used, as a matter of domestic law, to subject to surveillance people who are not suspected of any wrongdoing. Authorization and supervision safeguards are inadequate, and usually carried out by prosecutors, rather than an independent judicial body.

5.1 RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE STATE PARTY:

- Brings the legal framework governing secret surveillance in line with Belarus's international obligations, and in particular ensures that surveillance cannot be undertaken with little or no justification; and
- Brings practice in accordance with these obligations, and ensures that authorization and supervision safeguards are adequate, and carried out by an independent judicial body.

⁸ For more information, see Amnesty International, Belarus: "It's enough for people to feel it exists": Civil Society, Secrecy and Surveillance in Belarus, EUR 49/4306/2016, available at <https://www.amnesty.org/en/documents/eur49/4306/2016/en/>.

6. FREEDOM OF PEACEFUL ASSEMBLY

Article 21

The right to freedom of peaceful assembly remains unduly and severely restricted in Belarus, in law and in practice, and those who attempt to exercise it face arrest by police (often using excessive force), heavy fines, and arbitrary detention, and in some cases imprisonment.

The authorities in Belarus continue to crackdown on peaceful protesters who take to the street. There are two public protest events regularly held every or nearly every year, the Freedom Day in March and the Chernobyl annual rally in April, which routinely get arbitrarily blocked and disrupted by the police, and dozens, sometimes hundreds, of peaceful protesters are arbitrarily detained. Some of them are released later without charge. Others, typically high-profile protesters from among political and civil activists and the most publicly vocal protestors, are arrested and later heavily fined or sentenced to “administrative detention” lasting up to 25 days, for their purported violations, such as protesting without a prior permission from the authorities, purported swearing in public or purportedly failing to obey police’s “legitimate orders”.

Following the adoption of a Presidential Decree in late 2015 which imposed a tax on the unemployed, and the beginning of its active implementation, peaceful anti-government protests took place across Belarus in 2017. Between February and April 2017 alone, over 900 people were arrested in connection with the protests, including political activists who were prevented from attending the protests and journalists. Representatives of Amnesty International, attending protests on 25 March 2017 as observers, witnessed the arrest of dozens of peaceful protesters at demonstrations in Minsk, and saw instances of excessive use of force by the police. They did not witness a single incident of violence, or any unlawful acts, on the part of demonstrators. In connection with the events of 25 March, at least 177 protestors were found in violation of provisions of the Code of Administrative Offences, in court proceedings that did not conform to fair trial standards, and fined or sentenced to “administrative detention” of between five and 25 days, including for purported failure to obey police’s “legitimate orders”. Courts uniformly accepted unquestioningly police reports as “evidence” against the individuals on trial defendants without giving due consideration to the evidence presented by the defence.

British freelance journalist Filip Warwick was arrested on 25 March 2017 in Minsk while covering the large anti-government protests. Warwick was walking around central Minsk on that day when he was approached by two masked police officers, who punched him and threw him in a truck for detainees. They were driven to a nearby police station, where dozens of others were detained in its courtyard. Warwick was forced to stand with his face towards a wall and his hands behind his back for six hours and was denied access to a translator or the British embassy in Minsk. When the translator finally arrived, Warwick was questioned, and punched several times by police official. He was released without any charge on the same day and returned to the UK. After several weeks, he was informed through the British embassy that he is banned from entering Belarus for three years.

In October 2016, activist Dzmitry Paliyenka was found guilty of “violence or threat of violence against an employee of law enforcement agencies” and “production and distribution of pornographic materials or items of pornographic character” and given a two-year deferred prison sentence. The charges were trumped-up, and related to a cycling event which took place in Minsk on 29 April 2016 to peacefully protest against restrictions on cyclists. The deferral of his sentence was cancelled on 7 April 2017 and he is currently serving the two-year prison sentence, which is due to end in October 2018. He is a prisoner of conscience, targeted solely for the peaceful exercise of his right to freedom of peaceful assembly. While in prison, Dzmitry Paliyenka has been singled out by the prison authorities for particularly harsh treatment, including repeatedly being placed in

solitary confinement on baseless grounds, having correspondence to and from him withheld, being deliberately isolated from other inmates and having his monthly spending money reduced.

6.1 RECOMMENDATIONS

THE STATE PARTY SHOULD:

- Fully respect the right to freedom of peaceful assembly;
- Bring its legislation in line with Belarus's international commitments, and in particular abolish the unduly restrictive rules and regulations governing public assemblies, including the requirement to seek prior express permission for such events from the authorities;
- End all administrative and criminal proceedings that have been initiated against individuals in connection with their attempts to exercise the right to freedom of peaceful assembly, and where these proceedings have resulted in conviction and imprisonment, quash the conviction and release them immediately and unconditionally.

7. FREEDOM OF ASSOCIATION

Article 22

Freedom of association has continued to be unduly restricted in Belarus. Currently, legislative changes to decriminalise participation in the activities of an unregistered organisation are being considered. However, the intention is to replace this “crime” with a relevant administrative “offence” which, if adopted, will similarly unduly restrict the right to freedom of association.

While the proposed repeal of Article 193-1 of the Belarusian Criminal Code is a welcome step as it lifts existing restrictions on the right to freedom of association, it is critical that this progress is not countered by introducing new measures which would violate that same right. The proposed new Article 23.88 to the Belarusian Code of Administrative Offences, essentially replaces the criminal liability for participation in the activities of an unregistered organisation with a fine of up to 1,225 Belarusian roubles (about US\$ 600). Activists who formerly risked being sentenced to prison, will now be susceptible to receiving high fines for organising or participating in the activities of a non-registered organisation. The proposed fine does not need to be imposed by a court and instead can be decided by an official of the Interior Ministry, which could lead to further potential abuses.⁹

7.1 RECOMMENDATION

THE STATE PARTY SHOULD:

- Bring national legislation and practice on freedom of association in full compliance with its international obligations, and in particular repeal Article 193-1 of the Criminal Code of the Republic of Belarus, and abstain from substituting it with a relevant amendment of the Code of Administrative Offences;
- Register those political parties and civil society organisations that have been arbitrarily denied official recognition.

⁹ For more information, see Amnesty International, “Belarus: Authorities Must Not Tarnish Positive Steps by Imposing New Restrictions on Freedom of Association”, EUR 49/8506/2018, available at <https://www.amnesty.org/en/documents/eur49/8506/2018/en/>.

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