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The Noose Tightens

Increasing controls on the press



ARTICLE 19

INTERNATIONAL CENTRE AGAINST CENSORSHIP

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International Centre Against Censorship

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INTRODUCTION

Since mid-1997 the situation for media freedom in Belarus has continued to deteriorate.¹ The noose has tightened further with a number of measures introduced by the authorities since the beginning of 1998. In January, amendments to the Law on Press and Other Mass Media came into effect, which strengthened a number of its restrictive provisions, and the government established a new public council to assist in implementing that law. In March the authorities put a ban on providing non-state media with official information, and issued new licensing regulations which control their dissemination of legal information. Even before any of these measures were introduced, in November 1997 a prominent non-state newspaper was closed down by the authorities because of the content of articles it had published. In January two journalists working for Russian television were given suspended prison sentences of two years and of 18 months for crossing the Lithuania-Belarus border while filming in July 1997.

This paper recounts these recent developments, assessing them in light of Belarus's international human rights obligations and briefly describing the background context. It notes also some relevant public statements made by the Belarus government. It then describes the principal universally-applicable international human rights standards relevant to freedom of expression and media freedom, and notes some specific comments by UN human rights bodies which over the past year have examined the situation of freedom of expression in Belarus. In conclusion, the paper reiterates those of ARTICLE 19's September 1997 recommendations to the Belarus government which are pertinent to the developments described here, and makes some other recommendations specifically addressing those developments. The implementation of these recommendations would make a major contribution to bringing the law and practice in Belarus into compliance with its international human rights obligations on freedom of expression.

A significant development since the beginning of 1998 was the establishment in Belarus at the end of February, after protracted negotiations, of an Advisory and Monitoring Group of the Organization for Security and Cooperation in Europe (OSCE). The OSCE also, in December 1997, appointed a Special Representative on Freedom of the Media, Freimut Duve, whose role it is to observe relevant

¹ For an account of the situation up to the end of July 1997, see ARTICLE 19, *"One More Mirror has Been Broken": Suppression of freedom of expression and media freedom in Belarus*, September 1997.

developments in OSCE participating states and work with participating states and with other OSCE institutions on addressing these issues and bringing about improvements. The close involvement of the OSCE in the promotion and protection of media freedom is to be welcomed, not only with regard to Belarus specifically, but also because of the reach of the OSCE into other states of the Commonwealth of Independent States (CIS) and former Soviet Union, since in many of those countries too there are serious breaches of media freedom. It must be hoped, therefore, that these issues can be addressed within the framework of regional cooperation and in cooperation with the OSCE, as well as with other relevant regional and international political and human rights bodies.

New Measures Restricting Media Freedom

Ban on providing official information to non-state media

An internal circular headed "on strengthening counter-measures against articles in the opposition press", marked "for official use" and signed by a senior adviser in the Department of Social and Cultural Policy under the Council of Ministers, was evidently circulated in March to various government departments and other bodies. It states that the government considers it necessary to take measures as follows:

- to prohibit ministries and other state bodies from passing any official documents (decisions, resolutions, orders, etc.) to non-state media;
- to inform state officials that they are not permitted to make comments to the opposition media on official documents;
- to prohibit state institutions and enterprises from placing advertisements in the opposition press (advertising being a major source of income for such newspapers).

The circular states that these measures are taken in accordance with a recent letter of the Presidential Administration, and an order of the President on strengthening counter-measures against articles in the opposition press and enhancing the work of the state media, and that the implementation of these measures is controlled by the President.

The authorities did not take any steps to publicize this new measure or, indeed, to inform those media who would be affected by it; when news of it became known, their initial response was to deny its importance. At the end of April, the Chairman of the State Committee on the Press, responding to questions at a meeting in Minsk held under the auspices of the OSCE, dismissed the circular as an "order [which] came from one official — it was not supported by the authorities".² But on 5 May, the President, speaking at a forum of journalists of Belarusian state media and some representatives of media of other CIS countries, stated that the instructions should have been given orally, not in writing. "[It] was done rudely: it was right by content, and rude by form", he said.³

Already a number of non-state media have been denied access to information, apparently on the basis of this circular. For example:⁴

- Towards the end of March, correspondents of the local newspaper *Slonimskaya Gazeta* were denied accreditation at the city and regional executive committees in Slonim, Grodno region. A letter to the newspaper from the Regional Executive Committee stated: "since your newspaper is independent, we consider accreditation of your correspondent to be pointless". A similar letter from the City Executive Committee stated that only the local state newspaper was permitted to attend meetings of that committee.
- In mid-April, a correspondent of *Narodnaya Volya* was preparing an article about one of the people who had worked on building the sarcophagus over the Chernobyl reactor in neighbouring Ukraine after the explosion and disastrous discharge of radiation in 1986. She sought information from the Belarusian Ministry of Emergencies as to how many people who had done such work within the contaminated zone were still alive. In response, she was told that there was a provision to refuse the non-state newspapers access to any information.

² Reuters, 29 April 1998.

³ Belapan news agency, Minsk, 1732 GMT 5 May 1998; BBC Worldwide Monitoring, © BBC.

⁴ Several of these incidents are reported in Belarusian Association of Journalists (BAJ) Monitoring, April 1998.

- Also in mid-April, a deputy prime minister refused to answer questions from correspondents of the Gomel local network of the Belarusian state broadcasting company until it had been confirmed to him that they were representing the state media.
- Towards the end of April, the local civil defence headquarters and an official of the Regional Executive Committee in Grodno refused to provide a local newspaper correspondent with information about a bomb alert at the premises of the local administration. The executive committee official told the journalist that she could obtain this information by reading the official newspaper. (As things turned out, it was a false alarm — no explosive device was found.) The same journalist was also refused information about a competition for young singers — an official of the local cultural department stated that he was forbidden to provide information by telephone to the non-state media.
- In early May, the news agency Belapan reported that its own local correspondent and a correspondent of the newspaper *Tovarishch* had been denied accreditation to the session of the Parliamentary Assembly of the Union of Belarus and Russia,⁵ which was being held in Gomel. The Belapan correspondent was told by the local authorities that the list of accredited correspondents, which included about 20 from the local media, had been amended by the Presidential Administration. The officials did not refer explicitly to the policy of exclusion, but referred instead to a lack of space in the hall where the meeting was being held. Belapan commented in its report of this incident, "It is interesting that the problem arises only when [President] Lukashenka is in the building".⁶

This prohibition effectively denies non-state media access to a wide range of information necessary for them to carry out their function of informing the public. Moreover, given the continuing predominance of the state sector in public affairs in Belarus, the scope of the prohibition is potentially very broad. For example, in May, a major commercial bank issued instructions to managers of its local offices to comply with the provisions of the March circular. And the incident described above of

⁵ The joint assembly established under the Belarus-Russia treaty (see ARTICLE 19, September 1997, Section 2.4).

⁶ Belapan news agency, Minsk, 1300 GMT 3 May 1998; BBC Worldwide Monitoring, © BBC.

refusing access to information about the aftermath of the 1986 Chernobyl catastrophe has particularly disturbing connotations in light of what has subsequently become known about the cover-up at the time by the Soviet authorities, with disastrous results for the lives and health of the local population.

While in the past, even before this circular was issued, there have been a number of instances where non-state media have been obstructed in their efforts to obtain official information, or denied accreditation or access to official events, the instructions contained in this circular now give explicit official legitimization, from the highest levels of government, to the refusal to provide information to non-state media. Their practical effect was summed up in a recent remark by a journalist who said, "Before, getting information was a difficulty for us; now it is a problem".

Moreover, for non-state media which are heavily dependent on advertising as well as sales income, and in view of the heavy dominance of the public sector in the economy, the prohibition on advertising could severely disadvantage them and aggravate their already precarious financial situation. Indeed, the wording of that provision in the official circular indicates that this is its very purpose. As such, it appears to be one more measure by the authorities to hamper the activities of non-state media by exerting economic and financial pressure on them.⁷

The fundamental right to freedom of expression and information is often regarded as a core human right, in that it is an essential prerequisite for the effective protection and implementation of other human rights. Moreover, international human rights standards⁸ set out the right of the public to seek and receive information and ideas of all kinds from a diversity of sources. This means that the media must be allowed freely to obtain information and report on matters about which the public have a right and a need to know.

The importance of freedom of information, and the role played by the media, was emphasized in a resolution adopted by the UN General Assembly at its first session in 1946, which referred specifically to freedom of information as

a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of information

⁷ For a description of other forms of financial and economic harassment of non-state media, see ARTICLE 19, September 1997, Sections 7.4 and 7.5.

⁸ For a more complete account of the international human rights standards relevant to the issues described in this paper, see below, pp. 20-22.

implies the right to gather, transmit and publish news anywhere and everywhere without fetters.⁹

Of prime importance in this area is information about public affairs and the workings of government. If the non-state media are to be refused such information at source, it is hard to see how they can carry out their essential function of facilitating the free flow of information to the public.

Controls on dissemination of legal information

In January the Council of Ministers adopted a resolution that activities connected with the dissemination of legal information would require a licence from the Ministry of Justice. Regulations setting out the procedures relating to such licences were issued in March.¹⁰ The legal information which comes within the scope of the regulations is defined as "texts of normative legal acts comprising the structure of legislation of the Republic of Belarus". Licence applications are issued, suspended and annulled by a Commission comprising specialists from the Ministry of Justice and the National Centre for Legal Information.

It is not clear at this stage how these regulations will apply in practice, but the conditions stipulated in the regulations are onerous and provide considerable scope for a licence to be refused. A newspaper or periodical which applies for a licence must already be registered with the State Committee on the Press, and its staff must include specialists with higher legal education. A copy of the registration certificate and details of the legally-qualified staff, together with copies of their relevant diplomas, must be submitted with the licence application. The Commission which examines licence applications also interviews those staff to determine the level of their professional training. Other requisite supporting documents include notary-certified copies of the editorial office's statute and certificate of registration as a legal entity, and a document from the tax authorities confirming that there are no outstanding tax liabilities. The Commission has the authority, if necessary, to request other documents, in addition to those listed in the regulations, as evidence of the applicant's ability to disseminate

⁹ United Nations General Assembly Resolution 59(I), First session, 14 December 1946.

¹⁰ Resolution No. 42 of the Council of Ministers, 13 January 1998; Regulations on the procedure of issuing special licences for the distribution of legal information, approved by the Minister of Justice 14 March 1998, entered into effect 23 March 1998.

legal information. The Commission may also arrange for an expert assessment, at the applicant's expense, to determine whether a particular applicant fulfils the requirements. The last two discretionary requirements in particular could provide considerable scope for delay and interference on political grounds.

A licence can be suspended for, among other things, a breach of the regulations; dissemination of unreliable legal information; or failure to inform the licensing body of any relevant changes in the licensee's circumstances. The validity of the licence is suspended until the breach is corrected. A licence can be annulled for, among other things, a licensee's failure to correct a breach which has led to suspension; failure to fulfil the directions of state bodies about the dissemination of legal information; or dissemination of unreliable legal information. A decision to refuse to issue a licence, or to suspend or annul a licence, can be appealed to a court.

It seems clear that the regulations are directed at the non-state sector, since they contain an exemption for the state sector media (as well as for media which do not need to register with the State Committee on the Press — that is, those with a circulation below 300). Non-state media have already been told that the kind of information which they have been publishing up to now will in future be subject to their obtaining a licence. In March, *Femida-Nova*, which in the past has regularly published the texts of presidential decrees and governmental resolutions, received a letter from the Chairman of the State Committee on the Press stating that in future it would require a licence in order to continue to do this.

The Council of Ministers resolution does not offer any reasons in justification of the introduction of this measure to control the dissemination by independent media of such fundamental information relating to the workings of government. If this measure is supposed to be aimed at ensuring accuracy in reporting on such matters, that is not a legitimate reason for imposing state regulation of this kind; such things as accuracy in reporting are more properly matters for self-regulation by professional bodies, such as associations of media professionals, applying professional criteria independent of government control, and in any case they should apply to state and non-state media alike. In any event, if there is inaccurate reporting on matters of this kind, any government has ample means to ensure the dissemination of official information to the public — all the more so when the state sector is as dominant in the media as it is in Belarus.

Providing the public with information such as the texts of laws, regulations, and decrees is a fundamental aspect of the rule of law and essential to enable the public to inform themselves about the workings of government. There is no clear reason why it has to be licensed in this way, particularly when the regulations set such

strict qualifying standards and licence conditions that the measure seems likely to amount in practice to a restriction on the free flow of this type of information.

There is no justification for such a restriction under international human rights standards, which permit restrictions on freedom of expression and the free flow of information only if they fulfil certain strict criteria. These criteria include that any such restriction must be demonstrably necessary for the specific purpose of respect for the rights and reputations of others, or protecting national security or public order, or public health or morals.¹¹ Moreover, international standards set out the right of the public to receive information from a diversity of sources. By apparently seeking to control the provision of such information by non-state media, this measure would appear to infringe that right for no legitimate reason, and so to breach Belarus's international human rights obligations on freedom of information.

Council for implementing the Law on Press

A "Public Council on disputed issues which arise in implementing the Law on Press and other Mass Media" was established by the Council of Ministers under resolutions adopted in December and in January.¹²

The Council is described in the January resolution as "a consultative and analytical body established to assist the relevant state bodies" (which would include the State Committee on the Press) "in ensuring the correct application of the [Law on Press], and to ensure fuller implementation of its requirements in relation to periodicals". Its 23 members are appointed by the Council of Ministers. They include civil servants (including the official who issued the circular, described above, prohibiting the provision of official information to non-state media), academics, and several editors of state sector media, but no editors from the non-state media.

The resolution setting out the Council's functions states that, at the initiative of its own members or at the initiative of "the bodies of state authority, courts [or] the Prosecutor's office", the Council "makes conclusions on whether materials published in periodicals have violated the requirements of Article 5 of the Law on Press and

¹¹ For an account of restrictions on freedom of expression which are permissible under international human rights standards, see below, pp. 21-22 and ARTICLE 19, September 1997, Section 3.6.

¹² Resolution No. 1591 of 2 December 1997; Resolution No. 59 of 19 January 1998.

Other Mass Media".¹³ Article 5 of the Law on Press sets out a number of purposes for which the media are not allowed to be used, including a new provision, introduced by a January 1998 amendment, prohibiting use of the media to publish information "damaging the honour and dignity of government officials whose status has been established by the Constitution". Publication of material deemed to infringe Article 5 can result in formal warnings by the State Committee on the Press or the Prosecutor's office which, if repeated, can lead to the suspension or closure of the periodical in question.¹⁴

As a body with responsibility for assessing alleged infringements of the content restrictions in Article 5 of the Law on Press, it amounts to a censorship body in all but name. Local legal experts have pointed out that, as such, its establishment infringes Article 4 of the same law, which states that the establishment of bodies with the function of censorship of the media is not permitted.

The establishment of this body appears to be an attempt to give a veneer of public opinion to censorship of the press. But, while it may purport to reflect public opinion, its members are government appointees, and there appears to be no guarantee of the independence of either the body itself or its individual members.

Although the Public Council on the Press has not yet started to operate in practice, there are indications that it is likely to become another body for imposing the restrictive provisions of the Law on Press, which were augmented by amendments which came into effect in January.

Amendments to the Law on Press¹⁵

In January a number of restrictive amendments to the Law on Press and Other Mass Media came into effect. The amendments originally proposed had been passed by the National Assembly at first reading in June 1997. Following the summer recess they were, with a few revisions, adopted by the lower house on 15 October with just one

¹³ Resolution No. 59, paragraphs 6 and 4.

¹⁴ For example, see the case of *Svaboda*, described below, pp. 12-14.

¹⁵ For a general assessment of the provisions of the Law on Press, including the amendments as originally proposed, in light of international human rights standards, see ARTICLE 19, September 1997, Section 4.2.

dissenting vote. But on 29 October,¹⁶ the upper house, by a 49:1 majority, rejected the amendments, on the grounds that they were unconstitutional. After some minor revisions, the amendments were then adopted by both houses of the National Assembly in mid-December.

Among other things, the amendments:

- give a formal role to the State Committee on the Press in formulating and implementing state media policy, as well as in regulating the media, and making decisions on registration and on alleged infringements of the law;
- establish more stringent requirements for registration of newspapers and periodicals, for example, requiring applicants to provide documentary proof that relevant local authorities approve the location of their offices (Article 10);¹⁷ and in the case of a newspaper or periodical which has been banned, its founder is prohibited from establishing any other media entity for the following two years (Article 8);
- require all periodicals with a circulation of 300 or more to register (Article 1) (previously, this requirement applied only to those with a circulation of 500 or more);¹⁸
- enable the registering body (that is, the State Committee on the Press) to suspend publication of a newspaper or periodical for up to three months without a court ruling (Article 16) (previously, any such order had to be made by a court following an initiative by the registering body or Prosecutor);¹⁹

¹⁶ This was the day before the UN Human Rights Committee in Geneva was to examine Belarus's fourth periodic report on its implementation of the International Covenant on Civil and Political Rights (see below, p. 25).

¹⁷ The amendment as originally proposed would have required also that the applicant supply certification from the tax authorities that no tax liabilities are outstanding. The stated reason for this amendment having been dropped when the lower house adopted the amendments in mid-October was that such budgetary matters are "irrelevant to the essence of this law".

¹⁸ The amendment as originally proposed would have required the registration of all media, however small their circulation.

¹⁹ The amendment as originally proposed would have permitted the suspension of media entities for up to one year.

- permit foreign periodicals (with certain exceptions covered by international agreements) to be distributed within Belarus only with the permission of the authorities (Article 25);
- prohibit the import, export or distribution of material which does not meet the requirements stipulated in Article 5 (that is, the provisions regulating content) (Article 25);
- prohibit the use of media to publish "information damaging the honour and dignity of government officials whose status has been established by the Constitution" (Article 5).²⁰

The more stringent regulatory provisions introduced by the new amendments appear considerably to increase the scope for the authorities to arbitrarily refuse registration or to suspend media on wide-ranging grounds. But under international standards the right to freedom of expression and information includes the right to publish a newspaper, periodical or other publication without government approval. This means that, while a government may legitimately require a newspaper or other publication to register with the authorities for administrative reasons, for example to register the name of the proprietor and/or editor and the business address from which it is published, registration requirements should not provide for the authorities to refuse registration or ban publication on the grounds of content. But the January 1998 amendments increase the already considerable power of the authorities in this respect.

The provisions requiring official permission for the distribution of foreign periodicals, and restricting the import and export of material which does not comply with the content restrictions in Article 5, appear to be inconsistent with Article 44 of the law itself, which states that citizens have the right to obtain reports and materials from foreign mass media. More fundamentally, these amendments appear to be in breach of Article 19 of the International Covenant on Civil and Political Rights which states that the right to freedom of expression includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers".

The restrictions in Article 5 go well beyond the limitations on freedom of expression which are permissible under international standards.²¹ While a number of

²⁰ The amendment as originally proposed would have explicitly included also the President under this provision.

²¹ See below, pp. 21-22, and ARTICLE 19, September 1997, Section 3.6.

the prohibitions in Article 5 are on their face similar to the purposes for which, in certain circumstances, international human rights law permits restrictions to be imposed on freedom of expression, the law makes no mention of the other essential element which is required if such restrictions are to comply with international law — namely, that they be demonstrably necessary for one of certain specified purposes. These provisions therefore give wide scope for the authorities to control publications on grounds of content, and they have exercised this in practice in a number of instances where media have been issued with formal warnings — or, in one recent instance, closed down — for alleged infringements of these provisions. The scope of these restrictive provisions has now been extended by one of the January 1998 amendments which prohibits the publication of information damaging the honour and dignity of government officials. Such a restriction is a clear breach of established principles of international human rights law.²²

The Law on Press, despite a statement in the preamble that it secures the constitutional rights of citizens for freedom of speech, press and information, in fact, if anything, tends towards the reverse, and the stringent state controls included in a number of its provisions have been applied in a way which severely curbs freedom of expression in the media. The January 1998 amendments increase the level of state control over the media, reinforce the law's restrictive provisions which effectively subvert its provisions on press freedom and freedom of expression, and amount to flagrant violations of international standards on freedom of expression.

Actions Brought by the Authorities Against the Media

Closure of "Svaboda"

Even before the amendments to the Law on Press, on 24 November 1997, *Svaboda*, one of the largest-circulation non-state newspapers, was ordered by a court to be closed. It had received several formal warnings from the State Committee on the Press and the Prosecutor's office for publishing material which, in the assessment of those bodies, breached the prohibitions in Article 5 of the Law on Press. The court's ruling on closure was based on four warnings which the authorities had issued for the following:

²² See below, p. 21, and ARTICLE 19, September 1997, Section 3.5.

- an article at the end of May 1996 about the judges who presided at trials of people involved in street protests; the warning by the State Committee on the Press stated that this article "contained misinformation aiming to discredit the judicial system" and thereby breached Article 5 by "infringing citizens' morals, honour and dignity";
- an article published in September 1996 entitled "The Gospel according to Luka"; according to the warning issued by the Prosecutor's office, this aimed to discredit the President and other officials, in breach of the Article 5 prohibition on "infringing citizens' morals, honour and dignity";
- publication without official permission of a series of articles on the case of Tamara Vinnikova, formerly Chairperson of the National Bank, who since January 1997 had been detained under investigation on corruption and fraud charges;²³ the warning issued by the Prosecutor's office in mid-April 1997 stated that the articles infringed the Article 5 prohibition on "disclosure of information which is the property of the state or of any other confidential material specially protected by law";
- publication of a statement in early May 1997 by the so-called "Belarusian Liberation Army"; the warning issued by the State Committee on the Press stated that this breached the Article 5 prohibition on "calling for the seizure of power or forced change in the constitutional order".²⁴

Local lawyers and others have raised a number of concerns about the fairness and legality of the proceedings. For example, the court ordered closure simply on the basis of warnings having been issued to *Svaboda* by the authorities — it did not examine the issue of whether the warnings had been justified, nor did it listen to the views of independent experts about the nature of those warnings. According to an eminent local lawyer, it took only fifteen minutes for the court to reach a decision to close the newspaper and invalidate its registration certificate. Journalists and others

²³ Tamara Vinnikova was released from prison into house arrest in November 1997 on grounds of ill-health. At the time of writing she is still under investigation.

²⁴ As a result of publishing this statement, and two other articles in mid-1997 and two readers' letters published in January 1997, *Svaboda* has been under criminal investigation under Article 67 (incitement to overthrow the constitutional order), Article 71 (infringement of ethnic, racial and religious equal rights), and Article 128(2) (defamation) of the Criminal Code. At the time of writing the investigation is still pending.

who observed the trial "had the impression that the decision was made long before the trial and no arguments could change it. The court appeared to be a disguise for the authorities' decision to close down the ... newspaper."²⁵ *Svaboda* appealed against this decision on 19 December, but the appeal was dismissed.

Since early 1998, the editors have succeeded in bringing out a new newspaper, *Naviny*, which, as a precautionary move, they had registered with the authorities some months earlier. But this has a lower circulation than *Svaboda*, and to date the newspaper has not been able to persuade the state sector distribution agency to increase the number of copies on sale in its outlets.

Trial of journalists working for Russian television

On 28 January, Pavel Sheremet, head of the Minsk bureau of the Russian ORT television channel, and Dmitri Zavadski, a cameraman, received suspended prison sentences of two years and of 18 months respectively for crossing the Lithuania-Belarus border in July 1997 while filming a report about smuggling for the ORT current affairs programme *Vremya*. The film crew had initially been detained briefly at the border and fined for a breach of border regulations, but a few days later, after *Vremya* broadcast the report, they were arrested on much more serious charges under the Criminal Code, of premeditated illegal crossing of the state border. During the investigation, Pavel Sheremet had been detained for over two months, and some of his colleagues detained for shorter periods.

The trial was held in the town of Oshmiany. While the trial lasted, a 30-kilometre security zone was put into effect at the Belarus-Lithuania border — a revival of a measure which, in Soviet times, had been applied at the external borders of the USSR (but not at this particular border, since both Lithuania and Belarus were constituent states of the USSR). The implementation of the security zone meant that access by observers to the trial was impeded, since participants and observers had to obtain a special permit in order to enter the border zone.

Local lawyers have raised strong doubts about the fairness of the trial and the reliability of the evidence. They have pointed out that at the point where the alleged border violation took place, the border is not clearly defined or marked, and that any such offence would normally be treated as an administrative offence, and would not

²⁵ Mikhail Pastukhov, *The Trial of "Svaboda"* (Minsk: Law Centre for Media Protection, January 1998).

be the subject of serious criminal charges. President Lukashenka, who publicly expressed his own opinion on the case, when speaking to journalists shortly after the trial, took the view that the sentences were lenient: "if we take into account ... that the clause under which [they have] been convicted suggests a five-year term of imprisonment, let the misfits thank the justice of Belarus".²⁶ Pavel Sheremet and Dmitri Zavadski lodged an appeal which was dismissed by the Grodno regional court on 24 March.

Background to Recent Developments²⁷

The criminalization of the case of the ORT journalists, the elaborate security precautions surrounding their trial, the intense politicization of the whole affair, including the close interest which the President showed in the case, his evident propensity, even before the trial, to make public comment on matters relating to the supposed guilt of the people concerned, and the lengthy diplomatic wrangles which it led to at the highest levels between Belarus and Russia, are a reflection of some particular factors relating to the overall media situation in Belarus.

The government is intensely sensitive about the broadcast media and has prevented domestic broadcasters being used as a platform for alternative information or opinions. In effect the only significant broadcast media which have provided alternative information on national news and matters of public interest are four Russian channels which broadcast also to Belarus. The most widely received of these is 51% state-owned ORT (the others are state-owned RTR; the St Petersburg channel; and the non-state channel NTV). These channels have been openly critical of some of the policies of the Belarusian government, in particular those of the President. In the run-up to the November 1996 referendum on constitutional issues, when the state-controlled Belarusian broadcasting media largely acted as a mouthpiece for government propaganda, and when the authorities had closed down the remaining non-state radio stations with any significant news or current affairs content, the Russian

²⁶ RIA news agency, Moscow, 2310 GMT 29 January 1998; BBC Worldwide Monitoring, © BBC.

²⁷ For a more detailed description of media structures in Belarus, and of the general political background, see ARTICLE 19, September 1997, Sections 5 and 2.

channels were effectively the only available broadcast source of alternative information and points of view.²⁸

The Belarusian government, however, has alleged that they provide selective and distorted news coverage. In March 1997, Alexander Stupnikov, the local correspondent of NTV, had his accreditation withdrawn and was expelled from the country.²⁹ In July 1997, ORT's Pavel Sheremet was deprived of his accreditation because of his allegedly distorted coverage, shortly before the incident at the border which was followed by the investigation and trial described above.

The state sector printed media are numerically dominant and distributed throughout the country. The circulation figures for non-state media are much smaller and their distribution is more restricted than state sector publications; local media professionals have estimated that altogether the non-state media have about a 10% share of the total circulation. These media are heavily dependent on state-run printing and distribution facilities, which at times have been unpredictably withdrawn, in order to function. While they are reasonably easy to obtain in Minsk and the main towns, obstruction by the state-controlled distribution networks and the practical and financial difficulties of establishing alternative means of distribution means that their availability elsewhere in the country is limited.

While non-state media are not subject to direct government control in the same way as the state sector media, they are subject to controls such as registration requirements, formal warnings for infringements of content restrictions, and other provisions of the Law on Press, as noted above. In addition, the government has applied a range of regulatory and administrative measures to the non-state media in a way which severely inhibits their freedom and ability to operate. In some instances the buildings where these media have their premises have been taken over by the Presidential Administration, and those which occupy premises in state-owned buildings have faced massive and repeated rent increases, arbitrary revision of the terms of their lease, and in some cases summary eviction. They have also been subject to repeated tax inspections with no advance notice, often resulting in harsh financial penalties and, in some cases, freezing of their bank accounts. The general pattern of such inspections and the way they are carried out strongly suggests that such measures are aimed at undermining the financial viability of this sector of the media. At the individual level,

²⁸ For more detail, see ARTICLE 19, September 1997, Section 11.

²⁹ For more detail on this, and on Russian broadcasters in Belarus generally, see ARTICLE 19, September 1997, Section 7.1.

media professionals have continued to be subject to harassment, obstruction, arrest and, in some cases, physical violence when attempting to report on demonstrations.³⁰

Public Statements by the Belarus Government

Despite all this and other overwhelming evidence to the contrary, the Belarus authorities have denied that there are infringements of media freedom, and have made public statements professing their commitment to freedom of expression and freedom of the media. They have asserted, for example, that the Constitution³¹ and legislation contain guarantees of freedom of expression, even though these provisions are largely ineffective in practice.

At the beginning of April 1998, less than three months after the enactment of the restrictive amendments to the Law on Press described above, and a little over four months after the closure of *Svaboda*, in a statement³² to the UN Commission on Human Rights, responding to the report on Belarus by the UN Special Rapporteur on freedom of opinion and expression,³³ the Belarus delegation stated:

[W]e regret to note a common mistake made by representatives of international bodies while evaluating the status of freedom of expression in the Republic of Belarus. Freedom of speech — a political and legal notion — is often confused with the level of the mass media development, which is primarily an economic notion. The Constitution and the legislation of the Republic of Belarus guarantee the right to freedom of opinion and expression. This is confirmed by the everyday practice of mass media work. ...

The delegation then stated that there had never been a single case where a printed media had been refused registration, and that the publishers of *Svaboda* had

³⁰ For more details of the harassment of journalists up to mid-1997, see ARTICLE 19, September 1997, Section 8.

³¹ For further details, see ARTICLE 19, September 1997, Section 4.1.

³² Statement by the Delegation of the Republic of Belarus at the 54th Session of the Commission on Human Rights on agenda item 8, 3 April 1998.

³³ See below, p. 23.

brought out a new newspaper, *Naviny*, which would continue to be published so long as its activities did not violate national legislation. However, as noted above, a number of the provisions of national legislation — for example, Article 5 of the Law on Press, which the authorities say was breached by *Svaboda* — are themselves in breach of international human rights standards on freedom of expression.

The delegation then went on to state that the majority of government controls imposed on the media are in fact for breaches of financial discipline:

The Government of the Republic of Belarus ... strictly abides [by] the principle [of] respect for freedom of speech and by no means prevents ... free dissemination of information through printing and electronic mass media. However, ... the major part of the claims coming from the control bodies to the ... mass media particularly involve violations of ... financial discipline. Very often these grounded claims of the state bodies are interpreted by the newspapers as pressure on the part of the state and violations of freedom of speech.

But, while a government is entitled to require payment of all due taxes, and to take reasonable steps to ensure compliance with these requirements, the way in which such measures have been applied against non-state media in Belarus strongly indicates that they are used as a form of harassment. In any case, the international obligation to ensure the public's right to freedom of information from a diversity of sources, and the importance of the media in giving effect to this, means that governments have an obligation to provide an environment in which a variety of media can operate freely. That is clearly not the case in Belarus.

The Belarusian government delegation concluded its statement to the UN Commission on Human Rights with reference to the Law on Press, which, as described above, less than three months previously had been amended in a restrictive direction:

Certain amendments to the Law on Press are being considered now in Belarus in order to bring it into conformity with [international] standards. This question will be cooperatively discussed within the framework of the cooperation of the Government of Belarus with the OSCE We are prepared for constructive consideration of all possible suggestions.

... [T]he Government of Belarus fully shares the thesis ... that mass media freedom is an essential component of freedom of expression and information We fully recognize the crucial role of freedom of opinion and expression in giving substance to democratic development and respect for human rights. The Government of the Republic of Belarus will further take all necessary measures in order to bring Belarusian legislation and law enforcement practice in the field of freedom of opinion and expression into conformity with international standards.

In a rather different setting a few weeks later, at the beginning of May, President Lukashenka stated to a meeting of journalists from the Belarusian state sector media and a number of media outlets in other CIS countries:

The constitution of Belarus and the law on the press and mass media guarantee freedom of speech and exclude censorship in any form or persecution for criticism. ... [T]he law on the press was discussed in Belarus ... not long ago, and the opposition tried really hard to show the allegedly nondemocratic nature of the amendments ... However, our deputies listened to and discussed all the proposed amendments.

But the President also gave a clear indication of the limitations which, in his view, apply to media freedom:

... [W]e fully support open access to information and true freedom of speech, but we also support order, civilized order, in all ... spheres of activity

Notwithstanding the closure of *Svaboda* only a few months earlier because of the content of their reporting, he stated, "In Belarus there has been no precedent of closing down a newspaper or magazine for either political or any subjective reasons", and, in similar vein to the Belarusian delegation's statement to the UN Commission on Human Rights, he asserted, "the opposition mass media should not try to describe those who violate tax laws as victims [of] political persecutions."³⁴ In the same

³⁴ Belarusian Radio, First Programme, Minsk, 1600 GMT 5 May 1998; BBC Worldwide Monitoring, © BBC.

speech the President explicitly stated his approval of the ban on provision of official information to the non-state media.³⁵

International Human Rights Standards

- Belarus is a party to the International Covenant on Civil and Political Rights (ICCPR), and so is legally bound to comply with its provisions. Article 19(2) of the ICCPR states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

It is particularly worth noting, in view of the recent measures in Belarus restricting access to and dissemination of official information, that this provision states explicitly that freedom of expression includes the freedom not only to impart, but also to seek and receive information. It also states that this freedom applies "regardless of frontiers". Article 10 of the European Convention on Human Rights is expressed in similar terms.³⁶ These treaties reflect a similar provision in Article 19 of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948.

- The fundamental right to freedom of expression and information is often regarded as a core human right, in that the effective protection and implementation of other human rights depends on it. UN General Assembly Resolution 59(I), adopted at its 1946 session, referred specifically to freedom of information as

a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of information

³⁵ See above, p. 3.

³⁶ In March 1993 Belarus applied for membership of the Council of Europe. This would entail it also becoming a party to the European Convention, which, like the ICCPR, is a legally binding treaty. But, following the suspension in January 1997 of its special guest status with the Council of Europe Parliamentary Assembly, no further progress has been made on its membership application. (For further details, see ARTICLE 19, September 1997, Sections 2.3 and 3.2.)

implies the right to gather, transmit and publish news anywhere and everywhere without fetters.

The UN General Assembly thus gave clear, if implicit, recognition to the essential role of the media in giving effect to this aspect of fundamental human rights.

- Article 19(2) of the ICCPR sets out the right of the public to seek and receive information and ideas of all kinds from a diversity of sources. This implies a corresponding obligation on governments to ensure an appropriate environment for the media to operate freely, and media freedom has been recognized by international human rights bodies as an important guarantee of the right to information. This means that the media must be allowed freely to report on matters about which the public have a right and a need to know, and includes the presentation of independent information about public affairs and the workings of government. This is of particular relevance with regard to recent measures in Belarus to restrict media access to official information, and to allow the distribution of legal information only under licence from the Ministry of Justice.

- It is well established in international human rights law that the right to freedom of expression includes in particular the freedom to criticize the government and to express political views. While the international human rights treaties contain no explicit provisions on this matter, the European Court of Human Rights has ruled on it in a number of cases, reiterating the importance of protecting freedom of speech which is critical of the authorities, and ruling that there must be more leeway to criticize government or public officials than may be allowed in criticism of private individuals.³⁷ The special provision to protect the honour and dignity of government officials included in the January 1998 amendments to the Law on Press is in clear breach of this important principle.

- Article 19(3) of the ICCPR states explicitly that any restrictions placed on the rights provided for in Article 19(2) "shall only be such as are provided by law and are necessary" for achieving certain specific purposes, notably "a) for respect of the rights and reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals". A similar provision is included in Article 10(2) of the European Convention.

³⁷ For further details, see ARTICLE 19, September 1997, Section 3.5.

Over the years, international and regional courts and human rights bodies have developed extensive jurisprudence on the permissible extent of such restrictions. For example, the European Court of Human Rights, which has considered numerous cases involving these questions, has ruled that the notion of necessity contained in these provisions requires a demonstrable "pressing social need". And the UN Human Rights Committee has stated that "when a state party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself". It is hard to see how the restrictions in Belarus which are outlined in this paper meet these or similar criteria.

• The Organization for Security and Cooperation in Europe (OSCE) (formerly the CSCE) has over the years adopted by consensus a number of commitments relating to freedom of expression and information, with particular reference to the media. While not legally binding in the same way as treaties, they represent clear political commitments by participating states. Belarus acceded to the CSCE in January 1992, when it accepted in their entirety all commitments and responsibilities contained in CSCE documents and declared its determination to act in accordance with their provisions.

The Concluding Document of the CSCE 1989 Vienna meeting declared states' commitment

... in accordance with the International Covenant on Civil and Political Rights ... and [participating states'] relevant international commitments concerning seeking, receiving and imparting information of all kinds, [to] ensure that individuals can freely choose their sources of information.

It is hard to see how, if non-state media are to be denied or restricted in their access to and dissemination of official information, the population of Belarus will be able to "freely choose their sources of information", as the Belarus government has undertaken to ensure here.

Comments by International Human Rights Bodies

UN Special Rapporteur on freedom of expression

At the end of May 1997 — that is, before any of the developments described in the present paper — the UN Special Rapporteur on freedom of opinion and expression visited Belarus. His report³⁸ submitted to the UN Commission on Human Rights noted:

[W]hile the right to freedom of opinion and expression, including the right to seek, receive and impart information, is formally guaranteed in the [Belarus] Constitution and the Law on the Press, certain provisions in the latter are ambiguous and based on an unduly broad view of the legitimacy of restrictions, so as to allow for impermissible infringements on the freedom of expression and the press. The Special Rapporteur finds that broad discretionary power is left to the authorities, for instance in issuing warnings, and he fears their arbitrary exercise, resulting in an inhibition on the necessary freedom of the press.

The Special Rapporteur was informed on several occasions of the efforts of the Government to bring the law into line with European and international standards. However, the information he has received fails to demonstrate a serious effort on the part of the Government to move in this direction. Specifically, recent developments, including the nature of several presidential decrees and the implementation of existing laws ... raise some doubt as to the commitment of the Government to guarantee the right to freedom of opinion and expression, including the right to seek, impart and receive information, and the full compliance of Belarus with its obligations under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights

... [A]rticle 19 of the International Covenant on Civil and Political Rights ... states not only that citizens have the right to impart,

³⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, submitted pursuant to Commission resolution 1997/27 - Addendum: Report on the mission of the Special Rapporteur to the Republic of Belarus (28 May - 1 June 1997), UN Doc. E/CN.4/1998/40/Add.1 (19 December 1997), Part III: Concluding Observations.

but equally the right to seek and receive information of all kinds, regardless of frontiers. ... [T]he right to receive information and ideas is not simply a reverse of the right to impart information, but is a separate freedom on its own. Indeed, the right to receive complete and reliable information and the free flow of information and ideas are among the most fundamental human rights and are indispensable ingredients of a functioning democracy. This is equally valid during the transition period that many countries of the former USSR are undergoing and is indeed reaffirmed in the [OSCE] Charter of Paris [for a New Europe], which stipulates that the free flow of information and ideas are crucial for the maintenance and development of free societies and flourishing cultures. The free flow of information and exchange of ideas through the media and other public forums, including the public discussion of international human rights, is thus indispensable.

Finally, the Special Rapporteur emphasized that:

[T]he promotion and protection of the right to freedom of opinion and expression cannot be seen in isolation. Rather, it can be described as an essential test right, and a deterioration in the freedom to express one's own opinions, particularly in cases where they do not reflect the mainstream, often provides an indicator of the deterioration of other human rights as well. Indeed, it is the respect for the right to express the 'other view' which tests the general safeguard of the right by the State.

*Human Rights Committee*³⁹

On 30 October 1997, the Human Rights Committee examined the fourth periodic report of Belarus on its implementation of the ICCPR. The Committee's concluding observations⁴⁰ stated:

The Committee notes with concern that the remnants of the former totalitarian rule have not been overcome, and that the human rights situation in Belarus has significantly deteriorated since the Committee's consideration of the State party's third periodic report in 1992. The Committee notes in particular the persistence of political attitudes that are intolerant of dissent or criticism and adverse to the promotion and full protection of human rights, the lack of legislative limits on the powers of the executive, and the growing concentration of powers, including legislative powers, in the hands of the executive, without judicial control. ...

The Committee expresses its deep concern about the numerous and serious legal and factual infringements of the right to freedom of expression. In particular, the fact that most publishing, distribution and broadcasting facilities are State-owned, and that editors-in-chief of State-supported newspapers are State employees, effectively subjects the media to strong political pressure and undermines its independence. The many restrictions imposed on the media, and in particular the vaguely defined offences, are incompatible with article 19, paragraph 3, of the Covenant. The Committee also notes that, as a result of the provisions of ... Decree No. 218 of 18 March 1997, the freedom to import and export information ... is severely restricted. Furthermore, the Committee expresses concern about reports of harassment and intimidation of local and foreign journalists by the authorities and the denial of access to public broadcasting facilities by political opponents to the Government. The Committee urges the State party to take all necessary measures, legislative as well as administrative, in order to

³⁹ The Human Rights Committee is a body of 18 independent experts established under Part IV of the ICCPR to monitor compliance by States parties with their obligations under that treaty.

⁴⁰ Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee — Belarus (Human Rights Committee 61st session, Geneva, 20 October - 7 November 1997) UN Doc. CCPR/C/79/Add.86, paras. 7 and 16.

- remove these restrictions on freedom of expression, which are incompatible with its obligations under article 19 of the Covenant, as a matter of priority.

Recommendations

In its September 1997 report, ARTICLE 19 made 36 recommendations which it urged the Belarus authorities to implement urgently in order to enable the media to operate free of direct or indirect pressure by the authorities, and in order for Belarus to comply with its international human rights obligations. The recommendations below are based on those it made in 1997, and are intended to address in particular the specific developments since early 1998 which are described in the present paper.

- The Law on Press and other Mass Media should be amended to bring it into conformity with Belarus's international human rights obligations on freedom of expression and to give effect to its stated purpose of securing the constitutional rights of freedom of speech, press and information. Those of its provisions which breach international standards on freedom of expression should be amended or repealed.
- All laws or other provisions, and in particular the January 1998 amendment to Article 5 of the Law on Press, providing special protection against insult or criticism to government institutions, their members, officials, or the head of state should be repealed. Such individuals should have, at the maximum, no greater degree of protection against defamation than private individuals. In applying defamation laws, due account should be taken of rulings by international human rights bodies on the importance for a democratic society of allowing free political debate and, accordingly, that public figures must expect to tolerate a greater degree of criticism than private individuals.
- Border control measures and any other relevant provisions should be amended so as to ensure that they do not interfere with the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, as set out in international human rights law. In particular, the January 1998 amendments to the Law on Press, which restrict the import and export of materials and the

distribution of foreign periodicals, should be radically amended to comply with international human rights law, or repealed altogether.

- Any provision in the law which restricts freedom of expression should be kept to the minimum, as required under international human rights standards, and applied in a way which is fully consistent with those standards. Any such restrictions should be narrowly defined and applied, imposed only for the specific purposes permitted under international human rights law, and subject to the overriding test of their being necessary in a democratic society.
- The authorities' power to refuse or withdraw registration or close a publication on the grounds of content should be removed.
- Any requirement for the media to register should serve only an administrative function. Registration should be granted to all media which apply for it, without discrimination, and subject only to reasonable administrative requirements. The authorities should have no discretion to refuse registration once the necessary formalities have been fulfilled.
- The March 1998 regulations on licensing dissemination of legal information should be withdrawn. There is no justification under international standards for a government to impose such regulations on the media. By discriminating adversely against non-state media, these regulations contain the scope for severely hampering media freedom, and for restricting the right of the public to receive information from a diversity of sources, in breach of international standards.
- The function of the State Committee on the Press in regulating the media should be removed.
- Any official body whose function is to liaise between the authorities and media, such as a Media Council, should be independent of government. The role of such a body should be to promote freedom of expression and information on matters of public interest, in accordance with international human rights standards. The body should have the authority to consider and adjudicate on complaints from all parties about infringements of the right to freedom of expression and information, or of professional standards. Its

- members should be representative of the different sectors in society, and include a range of experienced media professionals and people with judicial and international legal experience. Their terms of tenure should provide the strongest possible guarantees of their independence from government. The members should be appointed for a fixed term, with strict safeguards against arbitrary removal.
- The authorities should respect in practice the right of the media and of individual journalists to report freely and without hindrance on all matters of public interest. No journalist should be denied the opportunity to practise his or her profession, and no media should be closed, suspended, refused registration, or otherwise hindered or prevented from publishing, or refused access to information, on the grounds of the content of their reporting or the nature of the particular media body. There should be no restrictions on the content of their reporting except in so far as they are narrowly defined, only for the specific purposes permitted under international human rights law, and subject to the overriding test of their being necessary in a democratic society, as required under international human rights standards, and applied in a way which is fully consistent with those standards.
- In order to promote media pluralism and diversity and so to protect freedom of expression and information, the government should take urgent steps to reduce substantially the state dominance of the printed media. This requires also that any administrative or similar requirements on the media should apply to the state and non-state sectors alike. Any such measures which in intention or in effect apply in a discriminatory way against the non-state media, or which place adverse financial, administrative or other burdens on those media by comparison with the state sector media, should be annulled.
- The ban on providing official information to the non-state media should be removed immediately, and instructions should be given without delay to all officials to give the media full access to information without discrimination between those in the state sector and the non-state sector. The authorities should take active steps to ensure an appropriate environment for all sectors of the media to operate freely, in order that they can effectively carry out their essential function, as recognized by international human rights bodies, of giving effect to the right of the public under Article 19 of the ICCPR to seek

and receive information of all kinds from a diversity of sources. This applies in particular to matters relating to the workings of government and other matters of public interest or concern.

- The March 1998 instruction prohibiting state institutions and enterprises from placing advertisements in non-state media should be annulled. The placing of advertisements by state institutions and bodies should be done on a fair and equitable basis without discrimination against non-state media, according to appropriate professional or commercial criteria. Such measures are particularly important in Belarus in view of the dominance of the state sector in the economy.

ARTICLE 19 is submitting this paper to the Belarus authorities and drawing their attention to the recommendations it contains, as well as to the more extensive range of recommendations in its September 1997 report. All these recommendations are intended as a constructive contribution to improving the protection of freedom of expression in Belarus. It is essential that the authorities take urgent steps to implement them, in order to bring about the improvements which are necessary for Belarus to comply with its international human rights commitments.

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