

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	319
Land:	Belarus (Hviderusland)
Kilde:	International Center for Not-For-Profit Law
Titel:	Country profile on legal issues affecting NGOs – Belarus
Udgivet:	8. april 2024
Optaget på baggrundsmaterialet:	11. april 2024

Belarus

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LAST UPDATED: 3 APRIL 2024

Update

In February 2024, the UK [joined \(https://www.gov.uk/government/speeches/repression-in-belarus-joint-statement-to-the-osce-february-2024\)](https://www.gov.uk/government/speeches/repression-in-belarus-joint-statement-to-the-osce-february-2024) other participating OSCE states in “expressing concern regarding the absence of conditions for free and fair elections in Belarus, and the ongoing shocking human rights violations in the run up to the February elections.” The country’s parliamentary elections are widely considered to be a “sham.” Please see the News Items section below in this report for additional details.

Introduction

The legislation of Belarus and current law enforcement practices are not conducive to the development of not-for-profit organizations (NPOs). In contrast to the country’s Constitution and international obligations, they significantly restrict the freedom of association. Belarusian law has historically banned the activities of unregistered associations and established criminal (between 2005 and 2019) and later administrative responsibility (before reintroducing criminal responsibility in 2022) for illegally organizing unregistered associations and participating in their activities. Belarusian law still lists numerous grounds for denying registration and liquidating public associations. In addition, Belarusian law restricts access to foreign funding for NPOs, which makes conducting activities more challenging. Examples of restrictions to freedom of association and assembly were described in the [report \(https://undocs.org/A/75/173\)](https://undocs.org/A/75/173) by the Special Rapporteur on the Situation of Human Rights in Belarus, Mrs. Anaïs Marin, on July 7, 2020 that focused “on the administration of justice, in particular juvenile justice, and the judicial harassment of human rights defenders, journalists and other members of civil society in Belarus.”

Belarus is not a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms but has ratified the International Covenant for Civil and Political Rights (ICCPR). Multiple claims have been brought against the Government of Belarus for violating Article 22 (the freedom of association) of the ICCPR. Belarus has not, however, complied with any of the UN Human Rights Committee’s concluding observations relating to Belarus’s violations of Article 22 (e.g., see Communication No. 1383/2005, [Katsora et al. v. Belaru \(https://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/state/16/node/4/filename/belarus_iccpr_t5_1383_2005\)s](https://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/state/16/node/4/filename/belarus_iccpr_t5_1383_2005)s) (https://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/state/16/node/4/filename/belarus_iccpr_t5_1383_2005)). These observations do not appear in media reports in Belarus. In addition, in August 2022, Belarus’ government decided to withdraw from the Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR), which the government had ratified on September 30, 1992.

In March 2022, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released the findings of the [report to examine the human rights situation in Belarus \(https://undocs.org/en/A/HRC/49/71\)](https://undocs.org/en/A/HRC/49/71) in the run-up to and aftermath of the August 2020 presidential elections. The report, which was mandated by the UN Human Rights Council, documented multiple human rights violations, the protection of perpetrators of abuses by the state, and the obstruction of accountability for abuses

committed. Between May 2020 and May 2021, at least 37,000 people were detained, with many of them placed in administrative detention for up to 15 days. Some 13,500 people were arbitrarily arrested and detained between August 9-14, 2020 alone. By March 2022, at least 1,048 people were being held in prison on what OHCHR’s investigation suggests are purely politically motivated charges, with several activists given sentences of 10 years or more.

On October 18, 2022, President Alexander Lukashenko issued Decree No 368 on the interaction of telecommunication operators, telecommunication service providers, and owners of Internet resources with law enforcement and the secret service. The Decree institutionalizes surveillance and takes it to an unprecedented level. In addition to existing surveillance practices, the Decree forces online resources, such as email providers, messengers, online retailers, and taxi and car sharing services, to retain data about the users and provide the authorities with direct remote access to such data. This indicates that now law enforcement and the secret service can obtain and correlate telecom data with online service data. These powers are not limited by any reasonable safeguards and cannot be challenged in courts due to their covert nature and the impossibility to guarantee for a fair trial in Belarusian courts.

Since October 2022, arbitrary detentions of Belarusians for political reasons have continued, with human rights activists consistently documenting these detentions and court indictments of individuals who participate in protests, criticize the authorities on social media networks, and spread any information critical of the government by any other means. Repressive measures have also targeted any group of people that have protested or voiced concerns about the role of Belarus in the ongoing Russian invasion of Ukraine. Protesters have been placed under administrative arrest, and some of them have had criminal cases filed against them for anti-war actions and expressions, such as displaying posters, leaflets, and inscriptions saying “No to War”; writing anti-war letters to state institutions; making anti-war statements on social media networks; and wearing yellow-blue ribbons to represent the colors of the Ukrainian flag.

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ORGANIZATIONAL FORMS The development of Belarusian legislation in the sphere of freedom of association has been significantly influenced by European continental law. The Civil Code lists a number of organizational and legal forms for NPOs, as listed below. They can be divided into two categories: “membership-based associations” and “property-based associations.” • Public and religious organizations (associations) are voluntary, membership-based associations of citizens uniting on the basis of their common interests to fulfill their spiritual and other non-material needs in accordance with the legislation. [Belarusian law provides for the establishment of the following types of public organizations: political parties, trade unions, and public associations.] • National state-public associations are membership-based NPOs, their purpose being to implement tasks of state significance. • Associations of legal entities (coalitions and unions) are membership-based NPOs founded under an agreement by and between commercial organizations and/or individual entrepreneurs to coordinate their business activities, as well as to represent and protect common property interests or to unite NPOs or commercial and non-commercial organizations. • Foundations are property-based associations without membership, founded by one or more citizens and/or legal entities (or one legal entity) on the basis of voluntary property contributions. They pursue social, charitable, cultural, educational and scientific goals, the development of physical culture and sports, or other socially useful goals specified in their charters. • Institutions are organizations set up by a proprietor in order to exercise managerial, socio-cultural or other non-commercial functions, funded by the proprietor in part or in full. • Consumer cooperatives are voluntary, membership-based or property-based associations of citizens or citizens and legal entities for the purpose of fulfilling material (property) and other needs of their members. The Civil Code listing of organizational and legal forms of NPOs is not exhaustive. For example, the Law on Local Government and Self-Government in the Republic of Belarus of January 4, 2010, #108-Z (amended as of December 22, 2011) provides that a collegial body for territorial public self-government is also an NPO. Under the Law on Courts of Arbitration, a standing court of arbitration can be an NPO or a detached subdivision (subdivision) of a legal entity. In addition, “non-profit private establishments” are non-profit organizations with one founder and are a form of registration that has been in widely used by local activists due to an easier registration procedure. They are registered by local city councils, and not the Ministry of Justice. Statistics about them are not published, and they can be tracked from the news only.

An NPO seeking registration must correspond to one of the organizational forms included in the Civil Code or other laws. NPOs cannot operate without being registered.

According to the new amendments to the Law on Public Associations a common registry for NPOs and political parties will be created within the next three years.

Different types of NPOs are registered by different government bodies:

1. The Ministry of Justice and chief directorates of Justice at the oblast executive committees and Minsk Executive Committee register the following types of NPOs: public associations, political parties, trade unions, foundations, their unions (coalitions), national state-public associations, and courts of arbitration. Justice directorates are also the competent authority for state registration of structural units of political parties; oblast and inter-oblast structural units of public associations; and inter-oblast, oblast, and the city of Minsk structural units of trade unions, if the governing body of the structural unit is located within the jurisdiction of the justice directorate.
2. Oblast executive committees and the Minsk Executive Committee have the right to delegate a portion of their state registration authority to local executive and administrative bodies. Local executive and administrative bodies may register the following types of organizations: institutions, consumer cooperatives, gardening societies, unions (associations) of not-for-profit and/or for-profit organizations, individual entrepreneurs, and religious communities. Local executive and administrative bodies are authorized to consider applications from structural units of the associations, the registration of which is not within the competence of regional directorates of justice.
3. The National Department for Religious Affairs is responsible for the state registration of religious associations, monasteries and monastic communities, religious brotherhoods and sisterhoods, religious missions, and seminaries.

APPROXIMATE NUMBERS

As of January 1, 2021, there were 15 political parties, 25 labor unions, including 20 at the national level and one at the territorial level and four trade unions in organizations, and 3021 public associations, including 227 international, 789 national, and 2,005 local. There were 42 unions (associations) of public associations and 227 foundations, including 18 international, seven national, and 202 local.

PUBLIC BENEFIT STATUS

Belarusian law does not recognize concepts such as “socially oriented,” “charitable” or “public benefit” organizations. Tax benefits are extended to organizations based on their type of activity. For example, Presidential Decree #497 of November 3, 2011 on Supporting Physical Culture and Sports Organizations lists a number of such organizations that are entitled to government support, including tax benefits.

PUBLIC PARTICIPATION

The following national laws affect public participation in Belarus:

- Law of July 17, 2018 on Normative Legal Acts;
- Order No. 54 of January 25, 2019 with the Instruction on Predicting the Consequences of Adopting (executing) Normative Legal Acts; and
- Order No. 56 of January 28, 2019 on Public Discussion of Normative Legal Acts.

Other relevant laws affecting access to information include:

- Law of the Republic of Belarus dated November 10, 2008 r. № 455-3on Information, Informatization and Protection of Information;
- Law of the Republic of Belarus dated 17.07.2008 N 427-3on Mass Media;
- Law of the Republic of Belarus dated 18.07.2011 N 300-3on Appeals by Citizens and Legal Entities;
- Decree of the Soviet Ministers of the Republic of Belarus dated July 23 2012 # 667 on Some Issues of Working with Appeals by Citizens and Legal Entities;
- Regulation on the Procedure of Operation of Internet- cites of State Bodies and Organizations approved by the Decree of the Soviet Ministers of the Republic of Belarus dated 29.04.2010 № 645.

The Law of July 17, 2018 on Normative Legal Acts stipulates that the following documents are subject to public consultations: draft legal acts and governmental orders affecting rights, freedoms, and duties of citizens and legal entities or introducing new approaches towards the legal regulation of a specific area of social relations; draft legislative acts, which can significantly influence conditions for entrepreneurial activity; or other draft legislative acts on the initiative of state agencies. At the same time, certain drafts cannot be brought up for public discussion, such as draft laws relating to taxes and state secrets. This legislation contributed to an increase of draft laws being published on the national legal portal. For example, 195 drafts were published for online consultations in 2020 while only one draft law was published online in 2013 (*See CSO Meter Belarus Country Update 2020* ([https://csometer.info/sites/default/files/2021-02/CSO%20Meter%20Country%20Update%202020%20Belarus%20-%20ENG%20\(Final\).pdf](https://csometer.info/sites/default/files/2021-02/CSO%20Meter%20Country%20Update%202020%20Belarus%20-%20ENG%20(Final).pdf))).

According to Order No. 56 of January 28, 2019 on Public Discussion of Normative Legal Acts, the public consultation period should not be less than 10 calendar days. However, this norm is not always followed in practice. If a public consultation of a draft law has been announced, then the results should also be published for the public, but the scope and details of such a report have not been prescribed.

In practice, CSOs are not routinely invited into working groups on draft laws. When they are invited, the invitations are for only certain CSOs based on a special decision by a state agency to organize the development of the draft law. Rarely is there an open invitation for all affected CSOs. For example, in 2020, CSOs requested the Ministry of Justice to hold a public consultation in order to discuss draft regulations stemming from the newly adopted law against anti-money laundering and counter-terrorism financing. However, the Ministry of Justice adopted the law without any public consultation.

Due to the post-August 2020 election violence, many CSOs have decided to suspend their advocacy activities and cooperation with the authorities. As of January 2022, more than 200 CSOs are in the process of voluntary deregistration and more than 300 are in the process of involuntary liquidation. During the 2020 protests, at least four demonstrators were killed, and some died later in custody, and 30,000 peaceful protesters were arrested in the immediate aftermath of the presidential elections. More than 1,500 cases of abuse in police custody were also documented, and thousands of criminal investigations were launched against critics of President Lukashenka. As of January 2022, there are 969 political prisoners in Belarus, and at least 14,000 people have fled into exile. This data exemplifies how Belarusian authorities severely limit people's rights and public participation.

Lastly, the judicial system routinely ignores the standards of a fair trial. Having lost the main features of an independent self-governing institution, the legal profession itself has become an instrument of repression against lawyers themselves. In general, lawyers carry out their activities under constant pressure, threats, and harassment. Moreover, the most active lawyers are subject to criminal and administrative prosecution, and many have lost their right to work.

BARRIERS TO ENTRY

Prohibition of unregistered associations. Unregistered associations are banned from all activities in Belarus. Under Article 193.1 of the Criminal Code, the organization of or participation in activities of unregistered associations is punishable by a fine, arrest for up to six months, or imprisonment for up to two years. Courts have sentenced at least 18 individuals for these actions, and the Prosecutor's office issued hundreds of official warnings under article 193.1 between 2005 and 2019.

Minimum membership requirements. An NPO may be considered an international, nation-wide (republic-wide), or local public organization, depending on the territory where the NPO carries out its activities. For each type, Belarusian law places strict requirements on the number of founders. At least 50 founders are required to establish a nation-wide public association, who should reside/represent majority of oblasts (at least four out of six) and Minsk. A local public association must have at least ten founders representing at least two administrative-territorial subdivisions of the territory in which it is planning to operate. (The law refers to village councils as administrative-territorial subdivisions.)

Initial capital requirements. To set up a foundation, the founders must have capital. Local foundations must have 100 basic amounts (one basic amount equals 27 Belarusian rubles or \$12.1) or \$1,210. International or nationwide foundations must possess 1,000 basic amounts or \$12,100.

Registration fees. State registration of local public associations and foundations costs the same as for commercial organizations. A national or international association or foundation, however, is required to pay twice the fee of the national commercial entity (approximately USD 145). In general, Belarusian legislation discriminates against public associations and foundations in comparison with for-profit and some other not-for-profit organizations, which effectively only need to apply to get registered.

Limits on eligible founders. Citizens under the age of 18 cannot be founders of legal entities in Belarus with the exception of children and youth public associations that can be founded by citizens from the age of 16. Foreign citizens cannot be founders of public associations, with the exception of international public associations established in Belarus. By law it is not possible for natural persons to create associations with legal persons, with the exception of consumer cooperatives; by contrast, both associations of natural persons and associations of legal persons are allowed.

Documentation requirements. Public associations and foundations must prepare and submit a formidable package of documents for registration. If the documents meet the requirements, the entity will be registered within one month from the submission. The responsible authorities have broad powers to check the documents and have them examined by experts. A public association may be denied registration for insignificant breaches of the legislation in its charter as well as for submitting other documents and/or information that do not meet the requirements of applicable legislation, including forged or invalid documents. Since the legislation regulates even the font size in the registration documents and demands that every founder indicate their place of employment and home and business telephone numbers, it is not uncommon for a public association to be refused registration because of minor mistakes.

Limited rights of appeal. If denied registration, the governing body of a public association may go to court. Since 2001, however, no court has allowed a claim of this kind. Furthermore, national and international public associations and foundations have no right to appeal against the decision of a court of first appearance because in their case the Supreme Court of Belarus is prescribed as the court of first appearance.

Foreign organizations. A foreign-based organization may not operate in the Republic of Belarus before it has registered its branch with the Voblast Executive Committee (or Minsk Executive Committee).

BARRIERS TO OPERATIONAL ACTIVITY

Limits on educational activity. Since the Education Code of the Republic of Belarus took effect on September 1, 2011, the ability of NPOs to pursue educational activity has been open to question. This legislation classifies a very broad range of activities as educational (including training programs, thematic seminars, popular lectures courses, and personal empowerment workshops) and limits the list of entities allowed to carry out educational activity to those explicitly granted that right by law. With the exception of educational institutions, NPOs are not included in that list.

Interference in internal affairs. The Law on Public Associations provides that interference of state bodies and officials into the activity of public associations is not allowed. However, such interference takes place even at the registration stage, as the registration official may modify the goals, tasks, methods of activity, and the internal structure of public associations.

The same law authorizes registration officials to participate in any activities conducted by foundations, public associations, their structural units or unions for statutory purposes, as well as to demand and obtain information related to an organization's statutory activity and examine their documents and decisions.

A foundation, public association or union must notify the registering body about an upcoming meeting of its highest level governing body not less than seven days in advance.

Reporting requirements. The law also requires foundations, associations, and unions to submit mandatory annual reports to registering bodies, including information about their continuing operation and the location of the governance body; statutory activities in the past year; the membership of the public association and its structural units; its composition; and lists of the members of elective bodies, with minutes of the election attached. In case of non-compliance with the reporting requirements in three subsequent years, the organization can be liquidated. Foundations must also publish reports in nationwide print media on an annual basis. The report shall include information on number of founders; assets and property, including property transferred by founders; income from events, income from economic activities, and other income; expenditures on public benefit activities as provided by the organization's statute; the number of for-profit organizations created by the foundation or where the foundation participates to carry out economic activities.

Sanctions, suspension, liquidation. Registering bodies may impose sanctions on public associations, including written warnings, suspension of activity, and liquidation.

The activity of a public association or union may be suspended for one to six months by a court decision based on an application of the appropriate registering body. First, the registering body must issue a written warning. Then the public association or union has an opportunity to eliminate the violations within the established deadline and inform the registering office in writing with documented proof. When a public association or union is suspended for a term specified by a court decision, the public association or union is forbidden from carrying out any activity, except for those aimed at eliminating the violations. In practice, registering bodies rarely initiate the suspension procedure.

A public association or union may be liquidated by decision of the court if:

- it conducts propaganda for war or extremist activity;
- it violates the law and/or its constituent documents within a year after the receipt of a written warning;
- in the course of state registration of the public association or union, its founders commit violations of legislative acts that cannot be corrected;
- the number of members and composition of the association do not meet the requirements provided by law, according to its status and activities; or
- the organization is suspended and fails to correct the violations within deadlines set by the relevant court decision.
- In accordance with the recent amendments to the law on public associations, in case of failing to submit the reporting documents to the registering body for three years in sequence, the organization can be liquidated.

A public association or union can also be liquidated by a court decision for a single violation of the Law on Mass Events, as well as for violations of the requirements established by applicable law for use of gratuitous foreign aid. A public association may also be liquidated for unlicensed or prohibited activity or other repeated or gross violations of applicable laws (this usually gives grounds for the liquidation of an "undesirable" organization).

GONGOS. The Belarusian government has set up its own NPOs (GONGOs), such as the Public Association Belarusian Republican Union of Youth and the Republican Public Association Belaya Rus.

Lastly, in 2021, Belarus' State Security Committee (KGB) updated the list of "organisations and individuals connected to terrorist activities." There are 18 new names on the list now, including:

- Former presidential candidate and politician, Sviatlana Tsikhanouskaya;
- Former diplomat and head of the National Anti-Crisis Management (<https://belarus-nau.org/en>), Pavel Latushka;
- Blogger and author of a popular Telegram channel, 'MotolkoHelp', Anton Motolko;
- Former law enforcement officer, Igor Makar;
- Former law enforcement officer and one of the co-founders of the 'BYPOL' initiative, Andrey Ostapovich;
- Former state investigator, Svetlana Khilko; and
- Former law enforcement officer, Stanislav Luponosov.

The ability to engage in free expression and advocacy is severely curtailed in Belarus. There are effectively no independent media organizations registered in Belarus. As of January 2022, there are 32 journalists in prison for carrying out their professional activities.

Severe restrictions on freedom of speech impede the work of journalists, including through arrest and criminal prosecution; the media generally, including through bans on newspaper printing and the blocking of internet sites; and also bloggers, members of election commissions, and whistle-blowers. Criminal charges relating to defamation and insult to the president, inciting violence against the police, insult to the symbols of the state, and the spread of extremism are widely used as pretexts to prevent the spread of unwanted opinions.

The Law of the Republic of Belarus on Changes to Laws on Issues with Mass Media #110-Z dated May 24, 2021 (Changes to Law on Mass Media) establishes new requirements for media outlets and applies the same requirements to both mass media editorial offices and the owners of internet resources and online publications. Among other issues, the law:

- expands the list of reasons for refusal of state registration of mass media, which may now include, for example, instances where the name of the media coincides with or is confusingly similar to the name of a publication which was previously terminated;
- expands the list of reasons for suspending the publication of mass media to include the issuance of two or more written warnings for any violation of legal requirements within a year, as well as the adoption of a decision by the Interdepartmental Commission on Security in the Information Sphere (ICSIS) identifying the presence of messages or materials in media products, the dissemination of which could threaten national security;
- establishes new reasons for relevant government agencies to restrict access to internet resources and online publications. Access to an internet resource may be restricted, for example, for the publication of prohibited information; issuance of two or more notifications to the internet site's owner within a year; failure by the site's owner to comply with the requirements of the authorized government body; or decision of the ICSIS on the presence of content on an internet site which could threaten national security;
- prohibits mass media and internet sites from publishing the results of public opinion polls concerning the socio-political situation in the country, republican referenda, and elections, when such polls are conducted without appropriate accreditation;
- establishes new requirements for journalists, for example, to inform the editor-in-chief of the media outlet about possible lawsuits and other legal requirements in connection with the distribution of material they are preparing, and to observe restrictions established by electoral legislation; and
- prohibits journalists from using their rights and position for the purpose of concealing or falsifying information, spreading false information under the guise of reliable reports, collecting information in favor of a third party or organization that is not a media outlet, as well as spreading information in order to defame someone on the grounds of profession, place of residence or work, in connection with political beliefs, or discredit government agencies and other organizations.

Failure to comply with these requirements is equivalent to gross violations of labor duties, and the journalist in violation may be fired under labor law. Additionally, a journalist can be deprived of accreditation if he/she or the editorial office of the media outlet violated the accreditation procedure or disseminated information that "does not correspond to reality and discredits the business reputation of the organization that accredited the journalist, or committed a deliberate illegal act in the course of carrying out professional activities."

Additional restrictions are introduced by the Law of the Republic of Belarus on Prevention of Rehabilitation of Nazism # 103-Z dated May 14, 2021 (Law on Prevention of Rehabilitation of Nazism) and by the Law of the Republic of Belarus on Amendments to Laws on Issues of Counteracting Extremism # 104-Z dated May 14, 2021 (Law on Extremism). These laws label people who protested against the fraudulent results of the August 2020 presidential elections, and those who support them, as "extremists" and "Nazi collaborators" and impose harsh penalties, including imprisonment, for exercising the right to freedom of expression, such as singing songs about freedom of Belarus, posting information critical of the government, or merely covering protests in Belarus. Criminal penalties apply for:

- financing, assisting with, undergoing training or other preparation for extremist activity, which is punishable with a prison term of up to eight years; and
- "discrediting," which is a vaguely defined term, the Republic of Belarus, including, for example, distributing false information about the social or economic condition of Belarus, or the legal status of Belarus citizens in mass media or in other ways with "intention to substantially harm state and public interests," which is undefined but punishable by a prison term of up to four years with or without a financial penalty.

Internet disruption is also broadly used, including during mass demonstrations. On the presidential election day on August 9, 2020, and in the days following, internet access was broadly disrupted throughout the country. In that same year, due to the post-August election violence, many CSOs decided to suspend their advocacy activities and cooperation with the authorities. As of March 2022, 382 CSOs are in the process of being liquidated or have been liquidated by an official decision, and at least 271 have shut down by themselves preemptively. According to OHCHR's recent **report to examine the human right situation in Belarus** (<https://undocs.org/en/A/HRC/49/71>), in the run-up to and aftermath of August 2020 presidential elections, between May 2020 and May 2021, at least 37,000 people were detained, with many of them placed in administrative detention for up to 15 days. Some 13,500 people were arbitrarily arrested and detained between August 9-14, 2021 alone. By March 2022, at least 1,048 people were being held in prison on what OHCHR's investigation suggests are purely politically motivated charges, with several activists given sentences of 10 years or more. The report also documented multiple human rights violations, intentional protection of perpetrators of abuses by the state, and the lack of accountability.

BARRIERS TO INTERNATIONAL CONTACT

The Belarusian authorities hinder NPOs' communication with organizations abroad. Since 2011, the number of representatives from foreign advocacy organizations who were denied entry to the country increased. The prohibition was extended even to those foreign nationals who do not require an entry visa under Belarus' international agreements, including even citizens of its Allied State, the Russian Federation.

Foreign citizens and stateless persons, except those who have a permanent/temporary residence permit in Belarus, have been denied entry by land into the Republic of Belarus as part of a **temporary suspension** (<https://gpk.gov.by/covid-19/en/>). Belarusian citizens and foreigners who have a permanent/temporary residency permit in Belarus have also been denied travel outside of Belarus by land as part of a **temporary suspension** (<https://gpk.gov.by/covid-19/>).

BARRIERS TO RESOURCES

There is a prohibition on the use of foreign aid prior to its registration. Only social support and social services to specific disadvantaged groups are recognized as eligible purposes for CSOs to receive foreign aid. Government bodies also have a broad discretion to deny registration of foreign aid and to decide whether to exempt it from taxes. Even a single violation of rules on receipt of foreign aid results in the liquidation of a CSO. Further, local businesses are only permitted to donate funds to CSOs for a limited list of activities, which excludes most traditional CSO activities, with harsh penalties for related violations.

The 2020 Decree #3 of the President made regulation of receiving foreign aid and local support even more restrictive. Prior to Decree # 3, the law prohibited the use of foreign gratuitous aid (FGA) prior to its registration and for typical CSO activities, such as "the production and distribution of propaganda materials, organization of events, designated to conduct political and propaganda-mass work amongst the population"; provided government bodies broad discretion to deny registration of FGA and to decide on whether or not to exempt FGA from taxes. Decree #3 substantially changed the already very complex procedure for registration of and reporting on the use of FGA in terms of both technical and substantive details. Even a single violation of Decree #3's provisions results in liquidation of a CSO. Key changes include reducing the list of purposes for which FGA can be received. Decree #3 de facto only kept provision of social support and social services to specific disadvantaged groups as eligible purposes for CSOs to receive FGA.

Other Issues

The legislation of the Republic of Belarus lists the purposes for which NPOs may receive aid from Belarusian legal entities and individual entrepreneurs. A violation of the procedure of rendering and using such aid triggers administrative responsibility.

Belarus lacks an open and transparent system of funding NPOs from the state budget and of informing the public about such funding.

Belarusian law forbids public associations and unions (coalitions) of public associations from engaging in independent entrepreneurial activity. They may do so only by participating in or founding a for-profit entity. Consumer societies and sports societies entered in a special list are exceptions to this rule.

There are no tax benefits for donations to NPOs.

BARRIERS TO ASSEMBLY

The Constitution of Belarus guarantees the freedom of assembly in Belarus as follows:

Article 35. The freedom to hold assemblies, meetings, street marches, demonstrations and pickets, which do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State. The procedure of holding the above-mentioned events shall be determined by law.

The specific law governing assemblies is the **Law on Mass Events (LoME)** (https://www.icnl.org/wp-content/uploads/Belarus_law-on-mass-events-RU.pdf) No. 114-3 of December 30, 1997, with amendments. The law defines several types of "mass events," such as: (a) assembly, (b) meeting, (c) street rally, (d) demonstration, (e) picketing, and (f) other mass event.

Among other key issues are that non-citizens of Belarus, citizens not permanently resident in the country, and minors are restricted from organizing certain assemblies. Prior approval by state authorities is also required for all public actions or mass events, and there are wide-ranging legal restrictions on where assemblies may be held. Local authorities further use their power to force assemblies to be held on the outskirts of a city or in places far from the target audience. Excessive force is also used on all peaceful protests and other mass events if not sanctioned by the government.

In addition, the law prohibits collecting funds and providing support to individuals for the purpose of paying penalties for violating rules on organizing mass events. Journalists present at a mass event are further subject to the same public order requirements that apply to organizers and participants. At the same time, the law prohibits live mass media and online coverage (livestreaming) of mass events that have been allegedly conducted in violation of the law.

Furthermore, non-citizens of Belarus, citizens not permanently resident in the country, and minors are restricted from organizing certain assemblies; prior approval by state authorities is required of all public actions or mass events; there are wide-ranging legal restrictions on where assemblies may be held; and local authorities often use their power to force assemblies to be held on the outskirts of a city or in places far from the target audience ; and excessive force is used on all peaceful protests that the government does not itself organize. The law also prohibits collecting funds and providing support to individuals for the purpose of paying penalties for violating rules on organizing mass events. Journalists present at a mass event are also subject to the same public order requirements that apply to organizers and participants. At the same time, the law prohibits live mass media and online coverage (livestreaming) of mass events.

Limits on Eligible Organizers

According to Article 4 of the LoME:

Citizens of the Republic of Belarus permanently resident on its territory, of 18 years of age and over, and eligible to vote, and organizations registered in the prescribed manner, excluding organizations whose activities were terminated by legislative acts, may be organizers of an assembly of no more than 1000 participants.

Thus, non-citizens of Belarus, citizens not permanently resident in the country, and minors are restricted from organizing certain assemblies.

In addition, the new amendments to the Law on Mass Events also restrict the right to organize the assembly by the individuals who are serving a suspended sentence and people who violated the Law on Mass Events in the previous year or who have committed crimes against peace, public order, and morality. Moreover, the amendments require the organizers to cover the cost of the public expenses for holding the event, such as police and medical stand-by assistance. The fees are highly prohibitive and serve as a deterrent to the exercise of the right. For example, to organize an assembly with more than 1,000 participants such cost is 250 basic amounts (approximately 3,125 USD). As a result, this year the organizers of the traditional Chernobyl Way, a mass rally to commemorate the Chernobyl catastrophe, did not submit their request for authorization of the assembly. The rally took place regardless and participants were fined for taking part in an unauthorized assembly. There are also numerous examples of local authorities denying the organizers' requests for holding assemblies in their locations of choice and directing instead to the pre-approved non-central locations, as stipulated by the law.

Vague Provisions

In the LoME the term “picketing” is defined so broadly that on many occasions citizens do not know that their actions are classified as “picketing” and that they may be held criminally liable for seemingly innocuous actions such as holding artistic or charitable events in public places. Article 2 of LoME defines picketing as:

public expression by a citizen or a group of citizens of socio-political group, personal or other interests, or a protest (without rally) on problems, including a hunger strike, with or without using posters, streamers, or other means. The joint mass presence of citizens in a public place set in advance (including open space), at a specific time, for conducting a planned action, organized (including through global computer Internet network or other information networks) in order to publicly express social and political interests or a protest, equals to picketing.

Advance Permission

The Law of the Republic of Belarus on Changes to the Law of the Republic of Belarus on Mass Events in the Republic of Belarus # 108-Z dated May 24, 2021 replaced the notification procedure for organizing and holding mass events with a prior approval procedure. In truth, the previous notification procedure was also, de facto, a prior approval procedure, but much simpler than the procedure in the amended law. The law prohibits collecting funds and providing support to individuals for the purpose of paying penalties for violating rules on organizing mass events. Journalists present at a mass event are subject to the same public order requirements that apply to organizers and participants. At the same time, the law prohibits live mass media and online coverage (livestreaming) of mass events, which violate the established procedure for their organization or conduct.

Spontaneous Assemblies and Counter-Demonstrations

The law provides for no exceptions to the application requirement; spontaneous assemblies are thus prohibited. In conformity with Article 9 of the LoME, counter-demonstrations are also prohibited: “Holding several mass events in one place or on the same route simultaneously is prohibited.”

Time, Place, Manner Restrictions

Article 9 of the LoME prohibits the staging of mass events in certain locations, including:

- (a) in places that are prohibited to use for this purpose by local authorities;***
- (b) in facilities belonging to metro, railway, air or water transport;***
- (c) within 200 meters distance from the official residence of the President of the Republic of Belarus, the National Assembly or the Council of Ministers of the Republic of Belarus, underground road crossings and metro stations;***
- (d) within 50 meters from the buildings of state administration authorities, local authorities, diplomatic agencies and consulate buildings, courts, prosecution offices, territories of the organizations that provide security, state defence and vital functions for people (public transport, factories providing water, heat, energy, nurseries and schools); [...]***

Notably, the prohibition does not apply to events organized by state authorities.

Local authorities create additional ‘place restrictions’ by using their authority to prohibit mass events in certain places and therefore forcing organizers to hold mass events in designated areas, such as on the outskirts of a city or in places far from the target audience.

Also, the LoME includes limitations on the timing of mass events:

(a) mass events held five or less days prior to the elections, referendum, and deputy recall are permitted only in specially designated places for holding mass events, excluding mass events organized by state authorities.
(b) holding assemblies, meetings, street rallies, demonstrations and picketing is prohibited between 10pm and 8am.

Article 11 of LoME also states that:

During an assembly, meeting, street rally, demonstration or picketing, the organizers and participants are not allowed to:

(a) hamper the movement of transport and pedestrians;
(b) interfere with the continuous functioning of organizations; or
(c) set up tents or other temporal structures.

The LoME also includes media restrictions. Prior to receiving authorization to hold the mass event the organizer(s) or other individuals shall not be entitled to announce the date, place and time of the event in the media, on the Internet global computer network or on other information networks, or to produce and disseminate leaflets, placards, or other materials for this purpose. Liability is a fine or arrest for up to 15 days.

Besides LoME, the Law of the Republic of Belarus on Amendments to Laws on Issues of Counteracting Extremism # 104-Z dated May 14, 2021 (Law on Extremism) broadens the definition of and increases penalties⁴ for “extremism,” which allows the government to charge any individual or organization, local or foreign, for participation in an unapproved peaceful gathering, possessing or giving away any “extremist” merchandise, such as items containing the “pogonia” national symbol, provision of any support to people participating in unapproved protests, calls to resist the regime, actions such as singing songs about free Belarus, or posting “knowingly false” information about the situation in Belarus, even in foreign media, among others. These activities are now considered an administrative offense or crime. The administrative penalties for violating these restrictions result in a fine of up to 2,000 Euros, and/or up to 30 days in detention, and/or a prohibition on conducting professional activity for up to one year.

In addition, financing, assisting with, undergoing training or other preparation for extremist activity is punishable with a prison term of up to eight years. Further, “discrediting,” which is vaguely defined, the Republic of Belarus, including, for example, distributing false information about the social or economic condition of Belarus or the legal status of Belarus citizens in mass media or other ways when it is “intended to substantially harm state and public interests,” which is undefined, is punishable by a prison term of up to four years with or without a financial penalty.

The main purpose of the Law of the Republic of Belarus on Prevention of Rehabilitation of Nazism # 103-Z dated May 14, 2021 (Law on Prevention of Rehabilitation of Nazism) is to identify “Nazi criminals” and their “collaborators,” and prohibit and penalize their activities. The term “collaborator” is important, as it is defined in such a way to tie Belarus protesters’ symbols (the “pogonia” symbol and white-red-white flag) to Nazi collaborators. While during the Second World War, these symbols were used by some Belarussian Nazi collaborators, these are historic symbols of independent Belarus, including independence from the Soviet Union, unlawful dictatorship. The law connects all protesters using these symbols and flag to Nazis. This law will raise divisions among the people and limit their engagement in protests under these symbols, as many Belarussians still remember the damage from the Second World War and Nazis. Under this law, the use of a white-red-white flag makes one not only an “extremist,” but also someone who “supports collaborators with Nazi criminals.” The law is connected to the Law on Extremism, with administrative and criminal penalties applicable to extremist activities, such as those of “Nazi criminals” and their “collaborators.”

Even before the fraudulent August 2020 election, according to “Spring’96” monitoring carried out in 2019, there were 234 documented cases of protesters being administratively prosecuted for exercising their right to peaceful assembly, including 13 people sentenced to short terms of detention. In January 2020 alone, according to the same source (<https://spring96.org/en/news/95897>), 92 people were charged under Art. 23.34 of the Administrative Code, with 87 of them subject to heavy fines and five facing administrative detentions. There are also numerous examples of local authorities denying the organizers’ requests for holding assemblies in their locations of choice and instead directing them to pre-approved non-central locations, as stipulated by the law.

Stigmatization

The authorities labeled people who protested against the fraudulent results of the August 2020 presidential elections, and who support them, as extremists and “Nazi collaborators” and established harsh penalties, including prison time, for their exercising the right to freedom of expression by singing songs about freedom of Belarus, posting information critical of the government, or just reporting on the protests in Belarus.

Excessive Force and Criminal Punishment

Belarusian police have used excessive force against all peaceful protests and other mass events that are not sponsored by the government. Violent crackdowns on demonstrators are also common during and immediately after electoral campaigns. For example, in the wake of the August 2020 presidential elections, at least four demonstrators have been killed and over 30,000 peaceful protesters have been arrested in protests against the fraudulent election results.

The Law of the Republic of Belarus on Changes to Laws on Issues of Provision of National Security to the Republic of Belarus #106-Z dated May 17, 2021 (Changes to Laws on National Security) changed a number of laws regulating the legal status of various government agencies including law enforcement (police), state border guard, internal military forces, state guard forces, state security service (KGB), and others. All these state bodies are authorized to use weapons and other force depending on “established circumstances” (undefined), nature of the crime or administrative offense, and personality of a person violating the law. The law states that such an official using weapons or other force is not liable for damage caused by the use of such force if he/she did so in compliance with the law. The requirements in the law, however, are not strict and allow employees of authorized bodies to use weapons essentially at their discretion.

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