

"ONE MORE MIRROR HAS BEEN BROKEN"

Suppression of freedom of expression
and media freedom in Belarus

Dear listeners, I did not want to touch upon any controversial subjects at the start of this programme and would much rather talk about the beginning of the autumn. However, as of today, the popular capital radio station, Radio 101.2, is off the air. I remember how, just over a year ago, I was the first to congratulate my colleagues on their launch on the FM band and wish them happiness on their way. Their road was truly good and happy but, unfortunately, rather short.

I don't think we need to talk about why this happened. Let us look at it in abstract terms. Many compare the media to a mirror, a kind of mirror which smart people turn to in order to rectify their faults and which others would rather hide, break or cover so as not to see the reflection of their faces. Radio 101.2 is silent. One more mirror has been broken. A bad omen, dear citizens, a very bad omen.

*Broadcast by Vladimir Dzuba, Chief Editor of Belarusian Radio 2,
1 September 1996*

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ARTICLE 19, the International Centre Against Censorship, was established in 1987. It takes its name and purpose from Article 19 of the Universal Declaration of Human Rights and works impartially and systematically to identify and oppose censorship worldwide. It monitors individual countries' compliance with international standards protecting freedom of expression and information, which are essential to the protection of all other human rights. It assists with litigation before international and regional bodies and national courts, and promotes the development of improved international standards on freedom of expression. It works in cooperation with local human rights groups and other bodies in more than 30 countries with the aim of strengthening local capacity to address these issues.

THE BELARUS LEAGUE FOR HUMAN RIGHTS is an independent non-governmental organization established in 1992. It aims to protect and promote human rights and, specifically, works for the implementation in Belarus of international human rights standards, with a particular focus on prison conditions, freedom of expression, minority rights and environmental rights. It provides a legal advice service, organizes seminars for human rights activists and government officials, and publishes a newspaper which it distributes free of charge to the public and to relevant government departments. It also distributes a regular English-language newsletter to a selected international readership including international human rights groups with whom it cooperates.

This report includes information which was available at the end of July 1997. It is based on monitoring of media and other local sources by ARTICLE 19 and the Belarus League for Human Rights, and research carried out by ARTICLE 19 on a visit to the country in March 1997 which included discussions with local activists, media professionals, eyewitnesses and others. On that visit, ARTICLE 19 appreciated having the opportunity to meet briefly with the Deputy Minister of Foreign Affairs and to take note of some points he made, which it has endeavoured to reflect in this report. The organization regrets that during that visit, despite several earlier assurances, it was not afforded the opportunity to have a substantive meeting with the Chairman of the State Committee on the Press to discuss these matters in more detail.

It is planned that the report will be translated and distributed in Belarus by the Belarus League for Human Rights. The English-language version is the definitive text.

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Preface

This report, ARTICLE 19's first on a country of the former Soviet Union, is part of ARTICLE 19's developing programme in central and eastern Europe, which has so far focused on Albania, Bosnia, Croatia, the Czech Republic, Moldova, Romania, Serbia, and Slovakia.

A number of features of the situation in Belarus described in this report are found also, to some degree and in different combinations, in other transitional states, including those of the former Soviet Union. Some such features are deep-seated in social, political and institutional structures and cannot be expected to change overnight. Indeed, it is clear from observing the situation in any transitional state, whether a former Soviet or other state, that the effective implementation of human rights principles not only requires the putting into place of constitutional and legal provisions, but needs to be addressed at all levels of government and administration. This requires adjustments to systems, practices and habits of thought which may have developed and become entrenched over generations.

This was stressed by a spokesman of the Belarus government who met with representatives of ARTICLE 19 and of the Belarus League for Human Rights in March 1997, and who remarked in particular that legislation may often not be effective because of deep-seated political and social attitudes — in short, that effective implementation of human rights requires a restructuring of the whole of society. He also put the view that Belarus should not be singled out for criticism of its human rights practice when similar features apply in other former Soviet states; indeed, to single out Belarus for criticism on these grounds, he suggested, could be regarded as an indication of double standards.

There are particular reasons, however, why ARTICLE 19 believes it is appropriate to focus its attention on Belarus. Media professionals and human rights activists in Belarus say that in recent years the degree of freedom of expression has deteriorated from that which existed under the liberalization process which began in the latter part of the 1980s in the Soviet Union. And there is clear evidence of a steady process of increasing restrictions coming into effect over the past two or three years. The government has passed a number of legislative and regulatory measures which have increased the level of its control over the media, and which have provided scope for opportunistic application in a way which suppresses the expression of opposition or alternative views. The tendency of the authorities to react to opposition by clamping down on freedom of expression has intensified in 1997 with the introduction of several new measures which will increase still further its controls on freedom of expression and media freedom. Overall, there is a clear pattern of systematic suppression of freedom of expression, in breach of Belarus's international and regional human rights commitments.

As a state party to the International Covenant on Civil and Political Rights (ICCPR) since 1973, as well as to a number of other international human rights treaties, Belarus has voluntarily accepted legally binding human rights obligations, in particular the specific obligations relating to freedom of expression as set out in the ICCPR. It is also a member of the United Nations Commission on Human Rights, and has served four previous terms since 1947 as a member of that body. At the regional level, it is a participating state in the Organization for Security and Cooperation in Europe (OSCE) and in that capacity has undertaken commitments to act in accordance with certain human rights standards. In March 1993 it applied for membership of the Council of Europe. If that membership were to be granted, Belarus would then be required to become a state party to the European Convention on Human Rights, under which treaty, as with the ICCPR, it would undertake legally binding obligations. Therefore, the implementation in Belarus of human rights should be assessed in terms of international human rights standards, and that is the purpose of this report.

The specific impetus for preparing this report on Belarus at the present time arose from the examination of Belarus's fourth periodic report to the United Nations Human Rights Committee, the body elected by states parties to the International Covenant on Civil and Political Rights to monitor the extent to which states are fulfilling their obligations under that treaty.* The ICCPR, like other major human rights treaties, requires states parties to submit written reports every few years on the measures they have adopted to give effect to the rights recognized in the treaty. Each government's report is then examined by the Committee at an oral hearing with representatives of the government concerned. The aim of this process is to establish a constructive dialogue with governments about measures which need to be taken to ensure the implementation in practice of their human rights obligations under the ICCPR. Non-governmental organizations can contribute to the process by submitting relevant information to the Committee. The present report is a revised version of the paper which ARTICLE 19, in association with the Belarus League for Human Rights, submitted to the Committee for that purpose.

This report is not intended to be a comprehensive assessment of human rights in Belarus. Its principal focus is on media freedom, referring where relevant to other aspects of freedom of expression and related matters such as restrictions on use of the telephone, border controls impeding the free flow of information, freedom of expression and information at elections, and the right of assembly. The events

* The oral examination of Belarus's fourth periodic report, which it submitted in April 1995, was due to take place at the Committee's July 1997 session. But, at the end of May, at the request of the Belarusian government, it was postponed to the following session in October and November 1997.

described in this report also touch on other areas of human rights such as the right to privacy, fair trial, and protection against arbitrary arrest and ill-treatment.

The introductory chapter summarizes the main restrictions on freedom of expression in Belarus which are described in more detail in the report as a whole. The following chapter comprises a brief historical summary and a description of recent political developments, in particular the constitutional crisis of 1996 and associated events. That is followed by an outline of the basic international and regional human rights standards relevant to freedom of expression generally, and some general observations about the role of free media in a democratic society. (International human rights standards on specific aspects of freedom of expression are described in the relevant chapters.) Then there is a description of some of the main constitutional and legal provisions and of the media structures in Belarus.

The subsequent chapters describe recent events where official controls in the state and the non-state sector, broadcasting and print media have been applied in ways which breach international human rights standards on freedom of expression. These include direct controls and censorship in the state sector, and indirect methods affecting the non-state sector such as the expedient use of legislation and other regulatory measures in a way which curbs freedom of expression; financial and other forms of harassment of media entities and individual media professionals; and the use of state control of technical and other facilities which the non-state media need in order to function. One section focuses on controls applied to foreign media, notably Russian broadcasters. There are chapters on the media and elections, freedom of assembly as a specific instance of freedom of expression, controls on the use of telecommunications, and border controls affecting the free flow of information.

The report recommends some basic measures which the government should take to improve respect for international human rights standards in the area of freedom of expression and media freedom, and in particular to improve its compliance with its specific obligations as a state party to the International Covenant on Civil and Political Rights and its commitments as a participating state in the OSCE. In keeping with the primary focus of the report on freedom of expression, in particular media freedom, the recommendations relate only to those specific areas. However, it will be clear to readers of the report that, in order to give full effect to such measures as are recommended here, other fundamental measures need to be taken also. These would include, for example, measures to ensure the independence of the judiciary, which would enable it to enjoy a greater degree of confidence among the population, and measures to establish in practice an effective constitutional balance between the executive, legislative and judicial branches of government along the lines provided for

in the 1994 Constitution. Such fundamental matters relating to the legal and political system are, however, outside the scope of the present report.

1 INTRODUCTION

The protection of the right to freedom of opinion and expression is not always adequately guaranteed through ratification by States of the International Covenant on Civil and Political Rights and other relevant international instruments. ... such protection requires a continuous political commitment that includes implementation of specific policies and programmes.

UN Special Rapporteur on Freedom of Opinion and Expression, Third Report to the UN Commission on Human Rights para. 155 (UN Doc. E/CN.4/1996/39) 22 March 1996

Belarus has been a state party to the International Covenant on Civil and Political Rights since 1973. But its implementation in practice of human rights in the area of freedom of expression falls far short of its obligations under that treaty, and of other international human rights standards, and, moreover, shows signs of severe deterioration over recent years.

At the time of his election in 1994, President Alexander Lukashenko gave assurances that he would end the state monopoly on mass media, political censorship and persecution of journalists, and allow the independent distribution of information. However, since then, the reverse has happened, and the government has stifled not only direct criticism but, more generally, the expression of any alternative views, particularly in the state sector of the media and in broadcasting. This has been most marked at times such as elections or referendums and at times of heightened political tension. These are the very times when the media have a crucial role to play in a modern democracy, providing the public with a well-balanced range of information and a forum for the expression and discussion of different viewpoints, so that voters have a chance to make a genuinely free and well-informed choice in elections or referendums.

While official censorship as such is no longer formally practised (and is expressly prohibited by the Constitution and the Law on Press), the internal administrative controls within the state sector amount to much the same thing. Media professionals working in the state sector who have produced material not meeting with official approval have been told that it is not acceptable. Those who have attempted to resist the restrictions have been dismissed or effectively forced to resign. Non-state media, while not subject to internal censorship in the same way, have had their printing and distribution obstructed by the authorities, and have been subjected to

economic and other forms of harassment including the constant threat of measures being taken to suspend their operations. Individual journalists have been subjected to obstructive measures, threats and physical violence in an apparent attempt to prevent them from carrying out their work.

The government is extremely sensitive about the broadcast media. The state broadcast media, which have an effective monopoly over domestic broadcasting of news and matters of public interest, have routinely been used, especially at election times, as a propaganda mouthpiece for the government. The government has prevented domestic broadcast media, in both the state and non-state sectors, from being used as a platform for not only directly critical views but, more broadly, any alternative information or points of view. The only broadcast media which have provided alternative information to that of the government on national news and matters of public interest are the Russian channels. But they use a studio belonging to the Belarusian State Television and Radio Company to transmit their video footage to Moscow, and are dependent upon retransmission agreements with the Belarusian authorities for broadcasting programmes within Belarus. At times the authorities have used their control over these facilities to obstruct the work of these broadcasters also.

While there have been cases where media have resorted to the courts against administrative measures or other penalties imposed by the authorities, in some cases with a measure of success, the courts on the whole appear to be ineffective in providing protection against excesses of executive authority. An analysis of the role of the courts and the judiciary is outside the scope of this report, but it should be noted that the lack of independence of the courts and the judiciary severely undermines the protection of human rights and the rule of law in Belarus, and there is still a strong perception that the courts act as a branch of the state and in deference to the authorities.

In any case, even though on rare occasions resort to the courts has resulted in some measure of compensation or restraint on an executive act, the constant threat of formal warnings, the broad criteria on which they are based, the wide discretion allowed to the authorities in issuing such warnings, and the additional and unpredictable restrictions which come into effect on an apparently *ad hoc* basis from time to time, are bound to have a chilling effect on media freedom. One media professional, contrasting the current situation with that under the Soviet system where, generally speaking, editorial staff knew where the boundaries lay and learned to operate within them, said that now it is not possible to operate within the rules because the rules are unclear and applied inconsistently.

Suppression of Freedom of Expression and Media Freedom in Belarus

During 1997 the authorities have introduced several measures to impose further restrictions on the operation of the media and on freedom of expression generally. A decree on border controls announced in mid-March placed formal restrictions on the import or export of materials which, in the judgement of the authorities, "could do harm to the political or economic interests of the republic, the security of the country, or the health and morals of its citizens". A new telecommunications contract issued in April explicitly prohibits use of the telecommunications network for purposes "contrary to state interests and public order". Amendments to the Law on Press, proposed by the authorities in June,¹ would provide for a further ominous tightening of state control over the media. The full effects in practice of these recent and proposed measures have yet to be seen. At one level, they merely codify and formally regulate a *de facto* situation, but in doing so they give additional and broadly defined powers to a government whose actions over the past few years have shown a propensity to use whatever legal and practical measures are available to obstruct not only direct criticism, but the dissemination of alternative views and information which it perceives as a threat.

The factors contributing to the suppression of freedom of expression in Belarus are varied and complex and operate at different levels in the law and in administrative and political structures. But while the task of addressing these factors is correspondingly complex, it is also vitally important because freedom of expression is crucial for the protection of human rights generally. Moreover, these issues need to be addressed urgently, in order to arrest the deterioration of the past few years, and to reduce the potential for conflict which is inherent in the kind of extreme polarization between pro-government and opposition groups which is evident in Belarusian society, and which is itself exacerbated by the suppression of freedom of expression.

The recommendations in this report are intended by ARTICLE 19 and the Belarus League for Human Rights as a constructive contribution to freedom of expression in Belarus. It is essential that the recommended measures are implemented 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 commitments.

The report makes 36 recommendations. They are set out at the end of relevant sections of the report. The key points are set out below.

¹ The proposed amendments were approved at first reading by the National Assembly at the end of June. Further stages in the legislative process were due to take place after the summer recess.

SUMMARY OF RECOMMENDATIONS

- The authorities should actively disseminate information about Belarus's obligations under international human rights law, to the public as well as to judges, law enforcement officials and all other government officials. They should take active steps to ensure, by means of training programmes and other appropriate measures, that all such officials are competent to incorporate these obligations into their work.
- Provisions in the Law on Press and other Mass Media and other provisions which breach Belarus's obligations under international human rights law should be amended or repealed. In particular the current powers of the authorities to refuse or withdraw media registration, or to close publications, on grounds of content should be removed.
- Legislation or other provisions offering special protection against insult or criticism to government institutions, officials, or the head of state should be repealed.
- Direct government control over the state-financed broadcasting media should be removed. The state-financed broadcasting media should be established as a public body independent of government. Its output should reflect principles of balance and impartiality and it should be run according to accepted principles of public service broadcasting. Supervision of the state-financed broadcasting media should be the responsibility of a public body, independent of government, established for this purpose.

... / ...

- Broadcasting licences for non-state broadcasters should be allocated by an independent body according to an open, fair and non-discriminatory system. The allocation criteria should be guided by the principles of ensuring media freedom and plurality and diversity in the broadcast media, and freedom of expression in the public interest and in compliance with Belarus's international human rights obligations.
- Urgent steps should be taken to remove the effective state monopoly over printing and distribution and to reduce state domination in the printed media.
- The authorities should respect in practice the right and professional duty of all journalists to observe and report on demonstrations and any other matters of public interest, and should not obstruct or impede them in any way from doing this.
- Border controls should comply in law and in practice with Belarus's international legal obligations not to interfere with the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.
- At times of elections and referendums the state-financed broadcasting media should allocate airtime to all parties on a fair and non-discriminatory basis, and the government should create conditions enabling the non-state media as a whole fairly to reflect a plurality of views and information from a variety of sources.

... / ...

- The right to peaceful assembly should be assured in law and in practice. No restrictions should be placed on the right of assembly other than those which are demonstrably necessary in a democratic society for the reasons permissible under international human rights law. In particular, provisions prohibiting the use of "unregistered" symbols or flags and "humiliating the dignity and honour of executive persons of state bodies" should be removed.
- Law enforcement officials engaged in policing demonstrations should at all times act in compliance with international standards on law enforcement. In particular, they should not engage in unprovoked or excessive use of force.

2 GENERAL BACKGROUND

2.1 Soviet Period

Belarus became part of the Russian Empire in the latter part of the 18th century, having formerly been a part of the Grand Duchy of Lithuania which had been united with Poland in the 16th century. After a turbulent few years around the time of the 1917 revolutions and shortly afterwards, which included a brief spell of independence, occupation by Germany, merger with Lithuania, and the granting of the western part of Belarus to Poland in 1921, the Byelorussian Soviet Socialist Republic (BSSR) became a constituent part of the Soviet Union (USSR) in 1922. It was under German occupation from 1941 to 1944, during which time it has been estimated that up to 25% of the population, including most of its sizeable Jewish population, perished. In 1945 the original western border was restored. In that year also, like neighbouring Ukraine, the BSSR was established as a nominally independent state with its own seat at the United Nations (UN) and, in this capacity, even before the dissolution of the Soviet Union in 1991, it became party in its own right to a number of international human rights treaties.

In the post-war period Belarus developed as an advanced industrial economy using raw materials from other parts of the Soviet Union. It produced large amounts of heavy machinery, optics, armaments and other goods, as well as agricultural products, for export to the rest of the Soviet Union and became one of its most prosperous regions.

Although at this time the Belarusian language was no longer formally suppressed, as it had been during the Tsarist period when its official use was banned, the close links between Belarus and the rest of the Soviet Union, and in particular with Russia, meant that the Russian language was heavily dominant, particularly in urban areas. By the early 1980s there were no schools in the capital, Minsk, teaching in the Belarusian medium.

Belarus received 70% of the fallout from the explosion at the Chernobyl nuclear reactor in neighbouring Ukraine in 1986, causing major public health problems and contaminating 20% of its cultivable land. Information about the environmental effects of the disaster was initially concealed by the Soviet authorities, emerging only two years later.

Another development of significant national importance in the latter part of the 1980s was the excavation of mass graves at Kurapaty, outside Minsk. It was estimated

that around 200,000 victims of Stalinist purges between 1936 and 1941 had been shot and buried at this site.

These elements, the Belarusian language, the effects of Chernobyl and, overall, an urge to dissociate from the Soviet past, have been significant factors in the development of the national consciousness in Belarus and, more generally, continue to have a significant influence on thinking in the country. In the latter part of the 1980s, in the context of the liberalization process that took place in the Soviet Union, Belarusian writers and intellectuals campaigned for greater use of the Belarusian language and, in January 1990, the authorities approved a law declaring Belarusian to be the state language. More specifically, the uncovering of the extent of the environmental and public health consequences of the Chernobyl catastrophe, and of the massacres fifty years earlier at Kurapaty, were in large part a result of the efforts of individuals and citizens' groups which in 1989 became established as the Belarusian Popular Front, which has continued to focus public attention on these issues.

2.2 An Independent State — 1991 Onwards

In August 1991, following the failed coup in Moscow, the Belarusian Supreme Soviet declared the political and economic independence of the republic (giving effect to a Declaration of State Sovereignty which it had adopted just over a year earlier), which it renamed the Republic of Belarus. The Republic adopted the traditional national symbol and white-red-white flag to replace the state symbol and flag of the Soviet era. In December that year, Belarus took a leading part in forming the Commonwealth of Independent States (CIS), at that time comprising eleven² states of the former Soviet Union, with its headquarters in Minsk.

Following the dissolution of the Soviet Union, Belarus has suffered severe economic decline. The economy contracted by an estimated 20% between 1991 and 1993, and has continued to contract since then. There has been a far lesser degree of privatization than in other former Soviet states, and the state sector continues to be heavily dominant, comprising an estimated 90% of the economy in 1995.

A new Constitution, replacing the Soviet-era Constitution, was adopted in March 1994. This provided for the state to be based on the separation of legislative, executive and judicial powers, with the relevant organs of state providing checks and

² Georgia, the twelfth CIS state, joined in December 1993.

balances on each other. It established a single-chamber Parliament (Supreme Soviet) of 260 deputies; an executive President directly elected by popular vote for a five-year term; and a Constitutional Court of eleven judges elected by the Supreme Soviet. In July 1994, Alexander Lukashenko was elected President by a large majority.

In the ensuing three years there has been a steady shift in power to the executive, with a corresponding marginalization of the judicial and legislative branches of government. One aspect of this has been the way the government has played down the importance of Supreme Soviet elections and emphasized the role of referendums, and inhibited the development of political parties at the national level.³ The concentration of economic and political power in the executive, and specifically in the Presidential Administration, known locally as "the vertical", has enabled the executive to exert close control not only over the state sector itself, but over the small non-state sector which is dependent on the state sector in order to function.

The 1994 Constitution provided that decrees of the President were subject to review by the Constitutional Court to determine whether they conform with the Constitution and the laws of Belarus. The first ruling on such a point by the Constitutional Court, in April 1995, was on an issue directly relating to media freedom, when the Court ruled that a 1994 presidential decree reorganizing the State Television and Radio Company breached the constitutional prohibition on media monopolies. By the end of November 1996, the Constitutional Court had ruled 19 presidential decrees unconstitutional. But all such rulings were disregarded by the President, who at times alleged that the Constitutional Court itself was becoming involved in political activity, thereby violating the Constitution. In November 1995, Belarusian state radio quoted the President as saying that, whatever the Constitutional Court may decide, the executive power must function on the basis of his decrees and orders. Towards the end of December 1995, a senior official of the Presidential Administration called for the resignation of the Chairman of the Constitutional Court. The following day, the President issued a decree obliging the government and local executive bodies to carry out all previous presidential decrees and to disregard the rulings of the Constitutional Court. In April 1996, the Court ruled that this decree, too, was unconstitutional, but this, like its other rulings, was disregarded and had no effect on the actions of the executive.

³ For further details, see Section 11 of this report.

2.3 "A Legal Chernobyl" — The Constitutional Crisis of 1996

In August and September 1996 there was a heated political debate about proposals for revisions to the Constitution which the President intended to submit to the vote at a referendum and counter-proposals put forward by the majority factions in the Supreme Soviet (members of the Supreme Soviet supporting the President were in the minority). Both these competing sets of proposals were put to the vote, along with several other questions, at the same referendum, held in November 1996. The legality of the referendum, its timing, the way it was conducted, and whether it should be treated as consultative or its results should be binding, were matters of intense dispute between the President and the Supreme Soviet.

During the run-up to the referendum, the information provided to the electorate by the state-dominated media was heavily weighted in favour of the presidential proposals, and spokesmen for the Supreme Soviet were prevented from making use of the domestic broadcast media to present the Supreme Soviet's proposals to the electorate.

The President had proposed that the referendum be held on 7 November, but the Supreme Soviet adopted a resolution scheduling it for 24 November, to coincide with elections to the Supreme Soviet. In the event, voting started early, on 9 November, and spread over the two weeks up to 24 November. The Chairman of the Central Electoral Commission protested that early voting had begun without the draft texts of the constitutional proposals having been made available to the voters, and with a massive campaign in the state-owned media in favour of the presidential proposals. Two days later, he was dismissed from office by the President, despite having been elected by the Supreme Soviet for a five-year term in accordance with the provisions of the Constitution and relevant legislation. He was replaced by the President's own appointee.

The outcome of the referendum was, according to official figures, a large majority in favour of the President's proposals.

The constitutional arrangements implemented following the referendum, while making no formal change to the provision setting out the general principle of separation of legislative, executive and judicial powers, significantly enhanced the status of the President and extended his formal powers. A new provision (Article 79) was added, explicitly stating that the honour and dignity of the President shall be protected by law. The President's own five-year term, of which he had already served well over two years, was renewed with effect from the time of the referendum.

The Supreme Soviet was replaced by a two-chamber National Assembly, comprising the Council of the Republic (the upper house) and the House of Representatives. The legislative initiative of the National Assembly is effectively subject to veto by the President, since any draft legislation which may reduce state resources or increase state expenditure can be introduced only with the President's consent. The President also has the power to dismiss the House of Representatives if it passes a vote of no confidence in the government or for the second time does not agree to a presidential nominee for the post of Prime Minister.

Of the 64 members of the upper house, 56 are elected from among their own members by local soviets in the regions and the city of Minsk, and eight are directly appointed by the President. A transitional measure included in the new constitutional arrangements provided for the members of the House of Representatives to be selected by the President and the Supreme Soviet from among the members of the Supreme Soviet. With only 110 members in the House of Representatives, who were selected from those members of the Supreme Soviet who had supported the President in the run-up to the referendum, a substantial number of Supreme Soviet deputies were therefore unable to fulfil the duties to which they had been elected. Indeed some were unwilling to serve in the new National Assembly which they do not regard as a legitimate body. Some of them who continue to assert their position as legitimately elected deputies, but are effectively ignored by the government and play no formal part in political life, have become a focus for public opposition to the 1996 constitutional changes.

Under the 1994 Constitution, the members of the Constitutional Court and the Electoral Commission were elected by the Supreme Soviet. Under the constitutional changes introduced after the 1996 referendum, the President appoints half the members of each of these bodies, with the remaining members being appointed by the Council of the Republic. The provisions in the 1994 Constitution that decrees of the Constitutional Court are final and subject to no appeal, and prohibiting pressure being placed on the Constitutional Court and its members in relation to their role of constitutional supervision, have been removed. The Constitutional Court's power to issue rulings on its own initiative has been removed also.

Most members of the Constitutional Court, including the Chairman, resigned shortly after the referendum. The Chairman stated that he did not recognize the new Constitution and could not serve under it. He described the developments of late 1996 as "a legal Chernobyl" and "an act of legal vandalism".

At the international level, the outcome of the referendum was promptly recognized by the Russian government, but it has not been recognized by regional and

other bodies. A summit meeting of the Organization for Security and Cooperation in Europe (OSCE) early in December in Lisbon, Portugal, stated that the referendum "was conducted in contradiction with constitutional procedures and cannot be considered as legitimate". On 13 January 1997 the Parliamentary Assembly of the Council of Europe announced that the Belarusian Parliament's special guest status had been suspended because the way in which the new legislature came into being deprived it of democratic legitimacy. A European Union fact-finding mission, which visited Belarus at the end of January, stated that "the establishment, execution and implementation of the referendum cannot stand the test of criticism on minimal democratic standards and general principles of the rule of law".⁴ In April, the governing body of the Inter-Parliamentary Union (IPU) suspended the affiliation of the National Assembly of Belarus stating that it did not meet the democratic requirements for IPU membership.

Since that time these bodies have continued their efforts to press for a solution to the political crisis in Belarus. At the end of May 1997, the Belarusian authorities agreed to allow the OSCE to establish a mission in Belarus which would, among other things, advise the authorities on ways to promote democracy. But on 18 July the Belarusian authorities suspended indefinitely the negotiations on this proposal after the Parliamentary Assembly of the OSCE had invited a delegation of the Supreme Soviet, but not members of the National Assembly, to its session in Warsaw earlier that month. In June, the President of the Parliamentary Assembly of the Council of Europe, at a joint session with the Council of the Interparliamentary Assembly of the CIS held in St Petersburg, reiterated that Belarus would have to meet the democratic and human rights standards required by the Council of Europe if it wished to join that body. Also in June, the European Union undertook to act as mediator in closed talks between representatives of the Supreme Soviet and of the government, with the aim of finding a consensus on amendments to be made to the Constitution. But at the end of July, after only five days in session, and following failure to reach agreement on whether the 1994 Constitution or the amendments of 1996 should form the basis for discussion, the talks were suspended indefinitely.

⁴ Report of the European Union fact-finding mission to Belarus, 26-31 January 1997, I.

2.4 Relations with Russia

Another factor in the recent political upheaval has been the question of union with Russia, which President Lukashenko has strongly promoted. Since the dissolution of the Soviet Union, some political leaders in Belarus have called for the restoration of closer links between the two countries, possibly with the eventual participation of other CIS states. This position appears to have considerable popular support in Belarus, where many people evidently still identify closely with Russia and see the restoration of the former links with it as a way of reviving the economic situation. But there is also a vigorous opposition to such developments, led by the Belarusian Popular Front, particularly among some younger people and those living in Minsk and other large towns. Some people evidently fear that restoring links with Russia will undermine the new-found independent identity of Belarus, and see it as a retrograde step towards re-establishing the structures of the former Soviet Union, rather than looking to a future where Belarus would establish itself as an independent state with links to the rest of Europe.

A Belarus-Russia treaty establishing a Community of Sovereign Republics was signed in April 1996. This established a joint parliamentary assembly and executive committee, and envisaged moves to create a common market with free movement of goods, services, capital and labour, with the eventual development of a common foreign policy and cooperation in defence and security matters. It was planned to conclude a second treaty one year later, in April 1997, taking the process forward. But, with growing opposition among liberals and others with influence in the Russian government, together with a growing, albeit minority, opposition to it in Belarus, only a scaled-down document was signed at that time by the two presidents. After further discussions, a revised treaty, omitting an earlier disputed provision envisaging an eventual single federation, was signed at the end of May. Following ratification this came into effect in mid-June 1997.

2.5 Stifling of Democratic Debate

The two broad strands in recent political events in Belarus, on the one hand the concentration of power in the presidency and the constitutional crisis of 1996, and on the other hand the development of closer links with Russia, are reflected in the political opposition. This comprises broadly constitutional and nationalist elements, but with much overlap between the two.

As political tension over these issues has intensified during 1996 and 1997, the government has shown an increasing intolerance of criticism or expression of alternative views, and has taken measures apparently aimed at restricting the activities of non-state media and of bodies participating in efforts to develop independent institutions of civil society.

With the stifling of opportunities for democratic debate and exchange of information and expression of opinion, there has been an increasing and dangerous polarization between pro-government and opposition elements. As the conflict between them has become more intense, one of the few remaining means of political expression has been public demonstrations. But these too, and the government's response to them, have heightened political tension. Hundreds have been beaten and detained by the police and security forces, and in many cases fined or imprisoned by the courts, for participating in or organizing demonstrations, and new provisions regulating such events were issued by presidential decree in March 1997.

3 BELARUS'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19, Universal Declaration of Human Rights, adopted by the United Nations General Assembly, 10 December 1948

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

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

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

Belarus has obligations to the international community, to other states, and to individuals within its territory and subject to its jurisdiction, to comply with the requirements of international human rights law.

Freedom of expression has a double dimension. It applies not only to imparting information and ideas but also to receiving them. This is explicit in international standards on freedom of expression, such as in the Universal Declaration of Human Rights, noted above, and in treaties such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

The fundamental right to freedom of expression and information is the cornerstone of a democratic society. It is often regarded as a core human right, in that the effective protection and implementation of other human rights depend on it and it is an essential requirement for exposing and challenging violations of other human rights.

At its 1993 session, the United Nations (UN) Commission on Human Rights, comprising representatives of 53 governments, adopted a resolution appointing a Special Rapporteur on the subject of the promotion and protection of the right to freedom of opinion and expression. The Commission's resolution stated that "the right to freedom of opinion and expression is interrelated with and enhances the exercise of all other human rights".⁵ Belarus is currently a member of the UN Commission on Human Rights.

3.1 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) elaborates on the civil and political rights set out in the 1948 Universal Declaration of Human Rights. It is an international treaty which places legally binding obligations on those states which are party to it. Belarus has been a state party to the ICCPR since 1973. Article 19 of the ICCPR states:

19(1) Everyone shall have the right to hold opinions without interference.

19(2) 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.

⁵ UN Commission on Human Rights Resolution 1993/45, adopted 5 March 1993.

Belarus is also a state party to the first Optional Protocol to the ICCPR. This means it recognizes the competence of the UN Human Rights Committee, the body established under the Covenant to monitor states parties' compliance with it, to receive and consider complaints from individuals claiming to be victims of violations by Belarus of any of the rights set out in the Covenant.⁶

3.2 European Convention on Human Rights

Belarus applied in March 1993 to become a member of the Council of Europe, although, following the suspension in January 1997 of its special guest status with the Council of Europe Parliamentary Assembly,⁷ no further progress has been made on its application. On becoming a member of the Council of Europe a state is required to make a statement of intent to ratify the European Convention which, like the International Covenant on Civil and Political Rights, is a legally binding treaty. The European Convention, in Article 10, states:

10(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

3.3 OSCE Commitments

The Organization for Security and Cooperation in Europe (OSCE) — up to the end of December 1994 the CSCE⁸ — has, over the years, adopted by consensus a number

⁶ The Optional Protocol requires that an applicant must first exhaust all available national remedies before bringing a complaint to the Committee.

⁷ See Section 2.3.

⁸ The original formal name for the "Helsinki process", established in the early 1970s, was the Conference on Security and Cooperation in Europe (CSCE). At the CSCE Budapest Summit in December 1994, it was decided to change the structure of the "process" to that of an organization, to be called the Organization for Security and Cooperation in Europe (OSCE), with effect from 1 January 1995.

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, OSCE documents 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 to

make further efforts to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and to improve the working conditions for journalists ... [and] in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, [to] ensure that individuals can freely choose their sources of information.⁹

At the CSCE Council¹⁰ meeting in Rome at the end of 1993, the Ministers of the CSCE participating states "reiterated their commitment to safeguard freedom of expression, a basic human right, and stressed the necessity of independent media for a free and open society".¹¹ And the 1994 Budapest Summit declared that

The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government.

⁹ CSCE Concluding Document of Vienna: The Third Follow-up Meeting (19 January 1989) Cooperation in Humanitarian and Other Fields, para. 34.

¹⁰ The CSCE Council (since 1995 the Ministerial Council) comprises the Foreign Ministers of participating states.

¹¹ Fourth Meeting of the CSCE Council (Rome, 1 December 1993) The Human Dimension, para. 6.

They take as their guiding principle that they will safeguard this right.¹²

3.4 The Role of the Media in a Democratic Society

Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights set out the right of the public to receive information and ideas from a diversity of sources. This implies also a corresponding obligation on governments to ensure an appropriate environment for the development of media pluralism.

Freedom of the media is 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. This includes the presentation of independent information about public affairs and the working of government, and having the freedom to give voice to alternative opinions. While the question of media freedom as such is not explicitly addressed in international human rights treaties, it has been recognized by international human rights bodies as an essential element in giving reality to the right to freedom of information, which is of crucial importance for participation in the democratic process.

This has been recognized at the judicial level in the Council of Europe in a number of judgments of the European Court of Human Rights. While the judgments of the European Court of Human Rights are formally binding only on the state party involved in the specific case, they constitute authoritative interpretations of the obligations imposed by the Convention which states parties must abide by.

The European Court of Human Rights has stated that:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus

¹² CSCE Concluding Document of Budapest: Towards a Genuine Partnership in a New Era (6 December 1994) VIII: The Human Dimension, para. 36.

enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.¹³

In a democratic society the media have two specific public functions: to inform the public and to act as a "watchdog" of government. As stated by the European Court of Human Rights:

It is incumbent on [the press] to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".¹⁴

This means that, as part of their obligation in international law to ensure the right to freedom of information, governments have an obligation to ensure that the media are able to carry out these functions. This entails taking steps to ensure media pluralism and to encourage a diversity of information sources. On this point, the Committee of Ministers of the Council of Europe has declared that:

states have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions.¹⁵

In particular, governments should refrain from taking any measures which interfere with the editorial independence of the media. Penalties or sanctions of any kind taken against the media for publishing material on matters of public interest are unacceptable, except in the narrow circumstances of the restrictions permitted under international human rights standards.

¹³ *Castells v. Spain*, Judgment of 23 April 1992, Series A, No. 236, para. 43. See also *Lingens v. Austria*, note 18, below, at para. 42.

¹⁴ *Thorgeir Thorgeirson v. Iceland*, Judgment of 25 June 1992, Series A, No. 239, para. 63. See also *The Observer and The Guardian v. UK*, Judgment of 26 November 1991, Series A, No. 216, para. 59; *Sunday Times v. UK*, Judgment of 26 November 1991, Series A, No. 217, para. 50(b); and *Lingens v. Austria*, see note 18 below, at para. 44.

¹⁵ Declaration on the Freedom of Expression and Information, 29 April 1982.

The obligation to ensure freedom of expression does not only mean that governments should not interfere with the media. It also places positive obligations on government to create an environment in which an independent and pluralistic media will flourish and to ensure that the public has access to a wide variety of information sources. The European Court of Human Rights, holding that a state monopoly over the broadcast media was contrary to freedom of expression, noted that the right to receive information "cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor".¹⁶

With regard to broadcasting in particular, the preamble of the European Convention on Transfrontier Television, a Council of Europe Convention which came into force in 1993, affirms

the importance of broadcasting for the development of culture and the free formation of opinions in conditions safeguarding pluralism and equality of opportunity among all democratic groups and political parties.

In recognition of the importance of free media, the heads of state and government of the member states of the Council of Europe, at the Vienna summit conference held in October 1993, declared that

guaranteed freedom of expression and notably of the media ... must remain, in our view, decisive criteria for assessing any application for membership.¹⁷

3.5 Freedom of Political Speech and Criticism of Government

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

¹⁶ *Informationsverein Lentia and others v. Austria*, Judgment of 24 November 1993, Series A, No. 276, para. 38.

¹⁷ Vienna Declaration, adopted by the heads of state and government of the member states of the Council of Europe, 9 October 1993.

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. The Court has ruled that there must be more leeway to criticize government or public officials than may be allowed in criticism of private individuals. For example, in its 1986 landmark judgment in the case of *Lingens v. Austria*, the Court stated:

Freedom of the press ... affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society ...

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. [A politician] knowingly and inevitably lays himself open to close scrutiny of his every word and deed by both journalists and the public at large Article 10(2) [of the European Convention] enables the reputation of others ... to be protected, and this protection extends to politicians too, ... but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.¹⁸

And in a later case, the Court stated:

In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion.¹⁹

The Court has also noted the dangers of the chilling effects on media freedom if sanctions are applied against those who criticize political figures, because such sanctions are "liable to hamper the press in performing its task as a purveyor of information and public watchdog".²⁰

¹⁸ *Lingens v. Austria*, Judgment of 8 July 1986, Series A, No. 103, para. 42.

¹⁹ *Castells v. Spain*, note 13 above, para. 46.

²⁰ *Lingens v. Austria*, para. 44.

3.6 Permissible Restrictions on Freedom of Expression

While there is some variation among international instruments in the precise wording of the reasons for which restrictions may legitimately be placed on freedom of expression, all make clear that any such restrictions must be narrowly defined and applied.

The International Covenant on Civil and Political Rights states:

19(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (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 set out in Article 10(2) of the European Convention on Human Rights. Article 20 of the ICCPR also requires states to prohibit "any propaganda for war [or] any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

Freedom of expression limits the way that any such restrictions are applied in practice. The UN Human Rights Committee has stated that "It is the interplay between the principle of freedom of expression and ... limitations and restrictions which determines the actual scope of the ... right."²¹ The European Court of Human Rights has developed an extensive body of jurisprudence on the permissible scope of any restrictions. As a basic point it has stressed that evaluating any particular restriction involves "not ... a choice between two conflicting principles but ... a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted".²²

²¹ General Comment 10(19) on Article 19 of the International Covenant on Civil and Political Rights, para. 3 (UN Doc. HRI/GEN/1/Rev.2 (1996), 11).

²² *Sunday Times v. United Kingdom*, Judgment of 26 April 1979, Series A, No. 30, para. 65.

Both the ICCPR and the European Convention require that any restrictions on freedom of information must meet essentially the same three-part test.²³ First, any restriction must be provided by law. According to the European Court of Human Rights, this means that a restriction must be "adequately accessible" and foreseeable, that is, "formulated with sufficient precision to enable the citizen to regulate his conduct".²⁴ Second, the restriction must serve one of the specific purposes stated in the treaty. Third, any restriction must be necessary (or, in the words of the European Convention, "necessary in a democratic society"). On this point the European Court of Human Rights has ruled that this requires a demonstrable "pressing social need", that the restriction must be proportionate to the legitimate aim pursued, and that relevant and sufficient reasons must be given to justify the restriction.²⁵ And, as an overriding consideration, 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."²⁶

The UN Special Rapporteur on freedom of opinion and expression has expressed concern that "Governments continue to place undue emphasis on permissible restrictions relating to the right to freedom of opinion and expression", and emphasized "the importance of the principle of proportionality in the process of establishing whether any limitation of the right to freedom of expression is legitimate. ... [I]n general, protection of the freedom is the rule and restriction of such freedom should be the exception to the rule".²⁷

The limitations on permissible restrictions of human rights were reiterated by the CSCE at its Copenhagen meeting of June 1990, where the participating states made a commitment to ensure that any restrictions on fundamental rights and freedoms must be

²³ For example, the UN Human Rights Committee, in its General Comment 10(19) on Article 19 has stated: "Paragraph 3 [of Article 19] lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be 'provided by law'; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being 'necessary' for that State party for one of those purposes." (UN Doc. HRI/GEN/1/Rev.2 (1996), 11).

²⁴ *Sunday Times v. United Kingdom*, note 22 above, para. 49.

²⁵ *Sunday Times v. United Kingdom*, note 22 above, para. 62. See also *Handyside v. UK*, Judgment of 7 Dec. 1976, Series A, No. 24, para. 48-50.

²⁶ General Comment 10(19) on Article 19 of the International Covenant on Civil and Political Rights, para. 4 (UN Doc. HRI/GEN/1/Rev.2 (1996), 11).

²⁷ Report to the UN Commission on Human Rights (UN Doc. E/CN.4/1997/31, 4 Feb. 1997) para. 3.

provided by law and ... consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.²⁸

In the same document, the CSCE participating states expressly recognized the "important expertise" of the Council of Europe in the area of human rights.²⁹

RECOMMENDATION

- The authorities should publish and widely disseminate the texts of international human rights treaties to which Belarus is a state party, as well as other relevant international human rights standards and information about Belarus's obligations under international human rights law. They should make this information fully accessible to the public in general, in public libraries and educational institutions. The authorities should also take active steps to ensure that judges, law enforcement officials and all other government officials are properly aware of Belarus's international human rights obligations and, by means of training programmes and other appropriate measures, should ensure that all such officials are competent to incorporate these obligations into their work.

²⁸ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990) para. 24.

²⁹ Document of the Copenhagen Meeting, para. 28.

4 CONSTITUTIONAL AND LEGAL PROVISIONS

Several provisions in the Constitution and in the Law on Press and other Mass Media appear at first sight to provide a measure of protection for freedom of expression. But they are ineffective, being contradicted or outweighed by other provisions or regulations, or simply ignored or not applied in practice, with the result that they amount to little more than statements of principle and provide little or no effective protection. Moreover, a large number of presidential decrees and other executive orders have been issued on an apparently *ad hoc* basis and without prior consultation or public debate. These play a prominent role in the regulatory framework. Many of these measures effectively undermine constitutional and other legal provisions which appear to provide guarantees for the protection of human rights.

4.1 Constitutional Provisions

The 1994 Constitution, in Article 33, deals with freedom of expression. It states that every person has the right to freedom of opinion and expression. It states also that censorship and the monopolization of news media by the state, public associations or individuals is prohibited.

Article 34 deals with freedom of information. It states that citizens have the right to obtain, store and disseminate full, reliable and timely information about (among other things) the activities of state authorities and political life; it also states that state organs and officials are obliged to give citizens access to material affecting their rights and legitimate interests. A proviso to this article, added by the 1996 constitutional amendment, states that "the use of information may be restricted by law with the aim of protecting the honour, dignity, private or family life of citizens and the full implementation of their rights".

4.2 The Law on Press and other Mass Media

The Law on Press and other Mass Media, adopted in January 1995, with amendments in June 1996, states in its preamble that it secures the constitutional rights of citizens for freedom of speech, press and information. But, if anything, it tends towards the reverse. In fact, a number of its provisions set out stringent state controls, and in

practice are applied in a way which severely curbs freedom of expression in the media.

Some articles of the Law on Press contain statements about freedom of expression which reflect similar statements in the Constitution and provisions set out in relevant international standards. Article 3 states, among other things, that citizens are guaranteed the right of freedom of the press and other mass media; have the right to seek, obtain, use and disseminate information through the press and other mass media; and have freedom of expression of their thoughts, attitudes and beliefs. It also says that the state recognizes the mass media as the basis for achieving the constitutional rights of citizens for freedom of the press and information. Article 4 specifically prohibits state or other bodies from exercising censorship over editorial staff and attempting to prevent the printing or broadcasting of any reports or materials, and also specifically prohibits the creation of organizations, institutions, bodies or posts with a censorship function. (The law does not, however, contain any statement reiterating the constitutional prohibition on monopoly of the news media.) Article 44 states that citizens have the right to obtain reports and materials from foreign mass media.

But apart from statements simply reiterating these constitutional rights, the law contains no measures to give effect to them, and in any case these statements are entirely undermined by its numerous restrictive provisions. The broad-ranging terms of these restrictions on freedom of expression, which leave wide discretion to the authorities, and the way they are applied in combination with the law's regulatory provisions, means that the Law on Press is, in practice, a means of restricting, rather than protecting, media freedom.

Amendments to the Law on Press proposed by the authorities in June 1997³⁰ would, if adopted, reinforce its restrictive aspects and increase the level of state control over the operation of the media. The proposed amendments would add several substantive restrictions to those already contained in the current law, as well as a number of more stringent regulatory provisions, which would considerably increase the scope for the authorities arbitrarily to refuse registration or to suspend media bodies on wide-ranging grounds without the media bodies concerned having effective recourse against such decisions.

Article 5 of the Law on Press sets out the purposes for which mass media may not be used: criminal activities, disclosure of material which is the property of the

³⁰ The proposed amendments were passed at first reading by the National Assembly in the last week of June. It is expected that further stages in the legislative process will take place after the summer recess. (The present report went to press in mid-August.)

state or other confidential material; calling for the usurpation of power, the forcible change of the constitutional order or a breach of territorial integrity of the state; incitement of national, social, racial or religious intolerance or strife; propagation of war and aggression; distribution of pornography or infringing the morals, honour and dignity of citizens. Article 5 also prohibits the disclosure of material relating to uncompleted inquiries, unauthorized publication of information relating to pending legal proceedings, or materials obtained as a result of carrying out operational investigations. Article 40 sets out responsibilities which journalists must comply with, which include the provision of objective information.³¹

While a number of the prohibitions set out in Article 5 are similar to the purposes for which international human rights law permits that, in certain circumstances, restrictions may be imposed on freedom of expression,³² there is no indication in the law that the other essential element of the requisite three-part test, namely, necessity, is to be applied in applying this provision in any particular case. Moreover, the potential consequences of infringing this provision are extreme, in that it can lead to the closure of the media body concerned. The scope of the restrictions in Article 5 would be increased by one of the proposed amendments to the law, which would prohibit also the publication of information damaging the honour and dignity of the President. Such a restriction is in clear breach of established principles of international human rights law.³³

The requirement in Article 40 that journalists provide "objective" information is dangerously open-ended and open to abuse, and provides the authorities with wide scope to suppress and penalize the expression of opinion. Since the assessment on this point apparently lies with the authorities, it could be used to prohibit a journalist from voicing any views or opinions which do not meet the authorities' approval. Such questions as "objectivity" are a matter of professional standards, not a subject for government regulation. In so far as journalists are to be encouraged to observe professional standards, this is a matter for self-regulation by professional bodies, such as associations of media professionals, applying professional criteria, independent of any government influence or control.

³¹ For some examples of cases where these provisions have been applied, see Section 7.2 of this report.

³² For information about restrictions which may be permissible under international human rights law, see Section 3.6 of this report.

³³ See Section 3.5 of this report.

The law sets out provisions for the registration and regulation of the media by the authorities. All printed media with a circulation of 500 or more, or audio-visual media providing services for ten subscribers or more, must register with the authorities. If the proposed amendments to the law are adopted later in 1997, this exemption for small-circulation printed media would be removed, so that all of them, however small their circulation, would have to register. The provisions on regulation and registration include provisions for suspending and discontinuing activities of mass media. For example, a publication can be refused registration or suspended if, in the view of the authorities, it infringes the prohibitions in Article 5.

These provisions allow wide scope for the authorities to suppress freedom of expression in the media, in breach of international human rights standards. The right to freedom of expression and information includes the right to publish a newspaper, periodical or other publication without government approval. 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 grant power to the authorities to refuse registration or ban publication on the grounds of content.

In March 1997, the authorities informed the media that they would shortly be required to re-register. The only reasons set out in the Law on Press for which re-registration is required are if the publication in question has been reorganized or has changed its nature or its founder, if more than a year has elapsed since it was last published, or if the nature or the form of the publication has changed. The authorities indicated, however, that in this instance the re-registration was required because they intended to apply stricter requirements relating to the legal status of media entities and their founders. These indications appear to be borne out in the proposed amendments to the Law on Press, which would impose additional requirements, such as that an applicant provides documentary proof that relevant local authorities approve the location of the media entity's offices, and that the tax authorities certify that the founder has no outstanding tax liabilities. Under the proposed amendments, in the case of a media entity which has been banned, its founder would be prohibited from establishing any other media entity for the following two years.

Moreover, the proposed amendments appear to increase the scope for the authorities to delay, or not to grant, registration. Under the law as it currently stands, the authorities are supposed to make a decision on registration within a month of an application being submitted, but the proposed amendments apparently would make formal provision for the authorities to delay registration, apparently indefinitely, in

vaguely defined circumstances where, according to their own estimation, such delay is warranted.

The law provides that the authorities can issue formal warnings to media which have, in the authorities' estimation, infringed Article 5. Multiple warnings in the course of one year can lead to the closure of the publication concerned. The law does not appear to specify how many warnings constitute "multiple" warnings, although it is commonly understood by media professionals to mean that more than one warning in the course of a year puts a publication at risk of closure. This is just one example of the lack of clarity in the operation of the Law on Press — in common with other legal provisions and regulations — which leaves wide discretion to the authorities. This lack of clarity also makes it particularly difficult for those subject to a particular provision to comply with it, or to rebut any decision by the authorities that they have infringed it.

While to date no publications have formally been permanently closed for infringing Article 5, the media work under the constant threat of receiving formal warnings for alleged infringements, with no procedures or opportunity to rebut the allegations without resorting to the courts. There have been a few cases where media have appealed successfully to the courts on such matters, but the courts have not generally proved to be effective in limiting the excesses of the executive. In any case, the constant implied threat of such measures being taken against the media, and the need to engage in time-consuming and expensive litigation in order to attempt to rebut the authorities' allegations, is bound to have a chilling effect not only on those media directly subjected to them, but also on others who can never be sure whether or not these measures will at some stage be applied to them.

The proposed amendments to the law would apparently further limit the role of the courts, so reducing even this limited possibility for review of executive decisions in such matters. As the law currently stands, a decision by the authorities to declare a registration certificate invalid, or to suspend the operation of a media entity, has to be confirmed by a court. But the proposed amendments would apparently remove the role of the courts in such matters, providing for the registration authority itself to suspend the operation of a media entity for up to a year or to rule that its registration certificate is invalid.

In addition to the points mentioned above, the proposed amendments to the Law on Press would reinforce other measures introduced in recent months which restrict freedom of expression. For example, a proposed amendment to its provisions on distribution of the media reflects the provision contained in a March 1997 decree

of the Cabinet of Ministers on border controls³⁴ prohibiting the import or export of material deemed likely to "do harm to the political or economic interests or security of the country, or the health and morals of its citizens". Another proposed amendment provides that, with certain exceptions covered by international agreements, foreign periodicals could be distributed in Belarus only with the permission of the authorities. This would appear to contradict Article 44 of the Law, which states that citizens are guaranteed the right to obtain reports and materials from foreign mass media. It would also appear to amount to an infringement 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 proposed amendments would also confer a formal role on the regulating body, the State Committee on the Press,³⁵ acting under the authority of the Cabinet of Ministers, in creating and implementing state policy with regard to the media. The amendments therefore appear to envisage active intervention in the formulation of policy by the same state body which has the task of regulating the press and of granting (or withholding) registration, and making decisions on alleged infringements of, among other things, Article 5 and Article 40, and which would also have the power to suspend the operations of media without reference to the courts.

Taken all together, the wide-ranging and vaguely-formulated substantive restrictions in the Law on Press, together with its provisions dealing with regulation and registration, subvert the provisions on press freedom and freedom of expression set out in the law itself and the Constitution, and amount to flagrant violations of international standards on freedom of expression. The already restrictive nature of this law, and the scope provided by its substantive and procedural provisions for the authorities to deny freedom of expression and to suppress the free operation of the media, will be heavily reinforced if the proposed amendments are formally adopted later in 1997.

³⁴ See Section 9 of this report.

³⁵ An executive body with the status of a Ministry, established in 1995, which took over some of the functions of the former Ministry of Culture and Information.

4.3 Prohibitions on Criticism of Government

Article 188 of the Criminal Code prohibits, among other things, insulting a representative of the authorities, a worker in the police or armed services, or any other person in connection with the execution of their official duties of maintaining public order. This offence is punishable by up to one year's corrective labour or a fine.

Several measures introduced within the past year contain provisions similar to those set out in Article 188 of the Criminal Code. Some of them explicitly prohibit such insults directed against the President. Article 79 of the revised version of the Constitution adopted after the 1996 referendum states that the honour and dignity of the President shall be protected by law. There is a parallel provision in a proposed amendment to Article 5 of the Law on Press, which would prohibit the use of the mass media to publish information damaging the honour and dignity of the President. A similar provision is included also in new regulations on the activities of foreign journalists in Belarus, issued in mid-July 1997.³⁶ Article 9 of Presidential Decree No. 5 regulating demonstrations, issued in early March 1997, prohibits "humiliating the dignity and honour of the executive persons of state bodies".

These provisions breach the principle, which is well established in international human rights law, and reiterated in numerous decisions of, for example, the European Court of Human Rights, that, far from benefiting from a special degree of protection against defamation, politicians and members of the government must tolerate a greater degree of criticism, and accordingly, must be afforded a lesser degree of protection, than private individuals or the population as a whole.³⁷

³⁶ See Section 7.1 of this report.

³⁷ See Section 3.5 of this report.

RECOMMENDATIONS

- 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.
- 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 function of the State Committee for the Press in regulating the press should be removed. In particular, matters such as the provision of "objective information" are not a matter for government regulation.
- The government should foster the necessary environment in which media professionals can establish independent voluntary professional bodies to develop methods and systems of voluntary self-regulation such as ethical codes of conduct for the profession and training programmes, as well as to protect the interests of journalists in exercising their right to freedom of expression.
- 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. Members of the body should be representative of the different sectors in society, and include experienced media professionals and people with judicial and international legal experience. The terms of members' 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.

... /...

- All laws or other provisions 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 ordinary people. 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.

5 MEDIA STRUCTURES

The state sector of the media remains heavily dominant, despite a prohibition on media monopolies by the state or other bodies which is set out in Article 33 of the Constitution.

The government exercises close control over media structures, either directly, as in the state sector of the domestic media, or by licensing and registration requirements or controls over printing and distribution facilities and other means by which the non-state media reach the public. This has enabled it to force non-state broadcasters off the air and to obstruct the printing and distribution of non-state printed media.

While the non-state printed media are, on the whole, readily available in Minsk and the main towns, where most of the population can also receive one or more Russian broadcasting channels, the population in other parts of the country is largely denied effective access to media independent of government control, except for the Russian television channels ORT and RTR, which have coverage over much of the country.

5.1 Broadcasting

The National State Television and Radio Company of the Republic of Belarus has a virtual monopoly over domestic broadcasting and is the only domestic broadcasting service with national coverage. It was brought under the direct control of the Presidential Administration by presidential decree in August 1994. The following month another decree was issued reorganizing it as a regulatory body for other broadcasters, as well as a broadcaster on its own account. The Constitutional Court ruled in April 1995 that this dual role as a body of mass media and of state management breached the constitutional prohibition on media monopolies, but, despite that ruling, no steps were taken by the authorities to separate the two functions.

The directors of the company are presidential appointees. The programming content of the state television and radio channels is subject to internal regulations and other management controls. This has enabled the authorities to obstruct attempts by individual media professionals working for the company to present public-interest material with an independent standpoint.

There are a few non-state domestic broadcasting channels, but none has nationwide coverage and many broadcast only a few hours a week. They carry light entertainment, music, films, and retransmissions of satellite television material, with little or no political, news or current affairs content. The government has direct control, through the Ministry of Communications and the State Television and Radio Company, over allocation of licences and wavelengths to non-state broadcasters and over their use of essential broadcasting equipment. This has enabled the authorities to force off the air stations which have attempted to broadcast material expressing opposition or alternative views.³⁸

There are currently four Russian television channels which, as well as broadcasting within Russia, broadcast also to Belarus: the publicly owned channels ORT and RTR, which can be received in most areas of the country; the St Petersburg channel; and the non-state channel NTV, which can be received in Minsk and a few other places. They provide the main sources of broadcast news and information not controlled by the Belarusian government, and appear to be preferred viewing for those of the Belarusian population who can receive them.

In order to relay their material to Moscow and to transmit programmes from Russia into Belarus these channels rely on studio and other technical facilities controlled by the Belarusian State Television and Radio Company. The Belarusian

³⁸ See Section 7.3.

authorities have used their control over such facilities to exercise prior censorship on these broadcasters' material and, on occasion, simply to block their transmissions. Moreover, their correspondents in Belarus, who report on Belarusian affairs, are dependent on obtaining official accreditation from the Belarusian authorities. In 1997, two journalists working for these channels have had their accreditation withdrawn following complaints by the authorities about the content of their reporting.

In early 1997, the government announced plans for a second national television channel which would use the broadcasting wavelength currently used by ORT. This proposed measure would not only significantly increase the capacity of the Belarusian state broadcaster, but also drastically reduce the access of most of the population to the few remaining alternative sources of information.

5.2 Printed Media

In the latter part of 1996, around 700 publications were registered with the authorities, but this figure is not, as it might seem, indicative of a strong non-state sector. It includes state-owned publications and others of local or specialized interest or which are published only occasionally. The printed sector is dominated by the main mass-circulation state-owned dailies, which are distributed throughout the country. The state also controls printing, distribution and other facilities used by the non-state media.

The major mass-circulation dailies, such as *Sovietskaya Byelorussia*, *Narodnaya Gazeta*, and *Respublika* are state-owned. Other major state-owned publications are *Zvyazda* (which publishes in the Belarusian language) and the youth newspaper *Znania Yunisti*.

The chief editors of most state-owned publications are official state employees. Presidential Directive No. 3RP on state information policy, issued in January 1996, stated that editors-in-chief of most state-financed periodicals would from then on be appointed by the Cabinet of Ministers in consultation with the Presidential Administration or, in the case of local state periodicals, would have to be approved by local executive committees and would become members of those committees.

Non-state publications carrying news and general information are only a small proportion of the total media registered with the authorities. Moreover, their circulation figures are much smaller and their distribution more restricted than state sector publications, and they are generally more expensive since they do not benefit from the various forms of subsidy afforded to the state press. Local media professionals have estimated that the non-state media, taken together, have about a

10% share of the total circulation. While these publications 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.

The main non-state publications include *Belaruskaya Gazeta*, *Belaruskaya Delovaya Gazeta*, *Imya*, *Narodnaya Volya*, *Nasha Niva*, *Pagonya*, *Svaboda*, *Svobodnye Novosti Plus*, *Zdravyi Smysl*, and the youth newspaper *Belaruskaya Maladezhnaya*. There is also a non-state news agency, Belapan.

While non-state media are not subject to internal administrative controls in the same way as the state-owned media, they are dependent on state-controlled printing and distribution facilities which have in the past been unpredictably withdrawn. They are also vulnerable to the continual implied or explicit threat of withdrawal of official registration, and to harsh financial sanctions and other pressures which have been imposed by the authorities from time to time. All these act as a powerful curb on their ability to publish freely.

Most printing facilities in Belarus are state-controlled. A decree of August 1994 brought the state printing house in Minsk under the direct control of the Presidential Administration, and printing facilities elsewhere in the country, controlled by regional and district executive committees, were instructed in October 1995 that they could conclude printing contracts with non-state media only with the authorization of the Presidential Administration. Following refusals by state-controlled facilities to print them — or, at best, the risk that printing facilities, if restored, might be withdrawn at any time — a number of the non-state media have resorted to printing in neighbouring Lithuania. This has increased the scope for interference by the authorities at the border.

State control over the post office and other distribution systems has obstructed the distribution of non-state printed media outside Minsk and the main towns. People living outside the main towns who wish to subscribe to these publications must make payment through the post office, but non-state publications are often not included on the subscription lists made available to them by the post office, and at times the state distribution system's delivery of non-state publications to readers and subscribers has been suspended.

The buildings where non-state media have their offices are, in many cases, owned by public authorities, and the ownership of many buildings has been transferred to the Presidential Administration. This gives the authorities the scope, which at times they have used, to harass non-state media by summarily issuing them with eviction orders, forcing them to seek other premises at short notice.

6 CENSORSHIP IN THE STATE-CONTROLLED MEDIA

6.1 Broadcasting

... You work for a state radio-television company ... and this obliges you to do everything for the benefit of the state.

President Lukashenko, meeting with staff of the State Television and Radio Company, February 1995

The state-controlled media have been used as a mouthpiece for the government and have denied access to those advocating other points of view. The programming output is under the control of senior officials who are directly appointed by and responsible to the government. Media professionals who have endeavoured to work according to principles of public service broadcasting have been obstructed in their work by these officials and, in a number of cases, effectively forced to resign.

Because of the importance of broadcasting, and in particular publicly funded broadcasting, as a source of information for the public, governments have a particular responsibility to ensure that a public broadcaster serves the twin functions of the media: to inform the public and to act as a watchdog of the government. In order to fulfil those functions they should have full editorial and operational independence from government. As a basic minimum, this requires a statutory guarantee of independence and a prohibition on any government interference. Editorial independence means that editors and journalists must be free to make decisions on the basis of professional criteria such as the newsworthiness of a subject or its relevance to the public's right to know. This means not only that the government must not interfere directly in editorial matters, but also that it must not interfere indirectly — for example by calling for the removal of particular broadcasters, by cutting financial support (or threatening to do so), by appointing the directors of the broadcasting body, or by the directors being responsible to the government.

The independence of public broadcasters can be safeguarded if they are governed by a board that is itself independent of government and which is charged with representing the public interest. The selection process for members of the board should contain safeguards to ensure that the members represent a diversity of interests and are broadly representative of society as a whole, and that no single interest or group of interests predominates. The directors with managerial responsibility for the day-to-day operation of the broadcasting body should be appointed by and responsible to that board.

There is a clear distinction between the public interest, which is the underlying principle governing public service broadcasting, and the interest of the government: the public interest requires the broadcaster to take account of the information needs of the public as a whole. In order to properly serve the public interest, public broadcasters should offer a diversity of views and information from a variety of sources. In cases of political controversy, when a public broadcaster airs programmes that give one side or set of opinions, the duty of balance requires it to give similar prominence to alternative viewpoints. While there may be times when the public interest requires it to give airtime to government spokesmen, its responsibility to the public requires it also to give an equal opportunity for other points of view to be heard. In short, the principles of public service broadcasting require public broadcasting channels to be a forum for the exchange of a diversity of views and balanced political debate.

However, far from complying with the special responsibility on public broadcasters to provide information impartially and to reflect a balance of views, the state-controlled broadcast media in Belarus have been used as a mouthpiece for the government, denying access to alternative sources of information or those advocating other points of view.

The directors of the National State Television and Radio Company are presidential appointees. Their management function includes supervision of the programming output, although, according to one senior broadcasting professional, this practice contravenes a formal provision that officials of the company should not interfere in its programming content. In numerous instances, plans by editorial staff for broadcasting particular programmes have been refused management approval and prevented from going ahead. Such decisions are not effectively open to discussion by the editorial staff.

The second radio channel, Radio 2, was established as a channel of information, news and analysis broadcasting in Russian and Belarusian. During the May 1995 referendum the channel was closed for three days on the personal instructions of the senior director, and broadcast classical music. On some occasions when programmes have been cut they have simply been dropped, leaving blank spots in the schedules. One project barred was a series of programmes on 16th century Belarusian history, based on sources other than the pre-1991 history books which, according to the terms of a 1995 presidential instruction to the Ministry of Education, were once again the officially approved texts for use in Belarusian schools.

In April 1996, the editorial team planned a broadcast on the unauthorized demonstration which was to take place in Minsk to commemorate the tenth

anniversary of the Chernobyl disaster. But the management prohibited the editorial team from going ahead with this plan. The team was required to report instead on an official government-sponsored commemorative rally to be held that day. However, in an effort to maintain some degree of balance, the chief editor decided, when the planned report on the unofficial demonstration was prevented from going ahead, to report on neither. In September 1996, as the dispute over proposals for the referendum was intensifying, the editorial team intended to broadcast an interview with the Chairman of the Supreme Soviet, who was one of the President's principal critics, but they were prevented from doing so on the order of the management.

In keeping with their perception of the public service role of this channel, one of the original aims of the editorial staff had been to provide information of political, economic or social interest, with, where possible, live discussions providing listeners with the opportunity to telephone the broadcasting station to provide feedback or to obtain further information. But in mid-1996, the management prohibited any further live programming on such issues. Subsequently, most programmes on these matters were presented by an announcer reading material prepared by the journalists. In the words of one media professional, "in that situation the journalist is like a waiter who brings a dish to the announcer".

In some instances even entertainment programmes have been prohibited, such as retransmissions of a BBC show of vintage pop music, which Belarusian Radio had been broadcasting on a regular basis since the early 1990s. In mid-1996, Radio 2 was instructed by the management that there should be no more of these BBC programmes. When the chief editor asked the reason for this decision, he was told that it was because the songs were in English and people in Belarus did not properly understand it, making the Belarusian people look foolish.

Apart from prohibitions on or drastic cuts in programmes, administrative sanctions have, from time to time, been applied against the staff. For example, individual editorial staff have often had their salary in a particular month arbitrarily reduced by the management, without explanation. At one point in May 1996 security guards were instructed by the management to prevent the senior editor and some of his staff from gaining access to their offices.

In the state television channel similar forms of management control over editorial matters have been applied, and independent studios producing news and current affairs programmes have had their material denied approval for transmission. According to media professionals producing material for the state television channel, the management has discretion to edit their film without consultation. While formally the law on copyright prohibits amendment without the author's consent, and Article

39 of the Law on Press states that journalists have the right to withdraw their material if it is altered during editing, in practice there are few effective opportunities to challenge such amendments because it entails taking the case to court, and ultimately the authorities have the discretion to terminate the production contract.

To begin with, there were no formal requirements for management approval of individual programmes, but by mid-1995 a requirement that material be checked for hidden advertising was clearly being used for political reasons. In May 1995, an edition of the magazine programme *Couloirs*, which had already been advertised in advance to viewers, was rejected as "not suitable". One of the subjects included in it was an account of the forcible eviction the previous month of opposition deputies who had staged a sit-in in the Supreme Soviet building in protest at the President's plans for a referendum. During the following three months, six similar programmes produced by that studio were refused authorization for transmission.

Such measures have systematically obstructed efforts by media professionals in the state broadcast media to work according to principles of public service broadcasting. Even without being formally dismissed from their posts, media professionals have found that the cumulative effect of such measures has made it impossible for them to continue trying to carry out their professional duties. For example, following well over a year of professional obstruction and personal harassment, the chief editor of Radio 2 resigned his post at the end of 1996.

An alternative view of the role of a public broadcaster has been expressed by President Lukashenko. In a February 1995 meeting with staff of the State Television and Radio Company, he reportedly said, while stating that he recognized the importance of the freedom of the press, "When one watches or listens to your programmes the question unfortunately arises too often: where does this ... obvious reluctance to support the political course of the President of this nation come from? You work for a state radio-television company ... and this obliges you to do everything for the benefit of the state".

RECOMMENDATIONS

- Direct government control over the state-financed broadcasting media should be removed.
- The state-financed broadcasting media should be established as a public body independent of government with its independence guaranteed by law. Its function should be to serve the public interest, that is, the needs of the population as a whole, and it should work according to established principles of public service broadcasting. Its object and purpose should be to ensure the implementation of freedom of expression and information in compliance with international human rights standards and Belarus's obligations under international human rights law.
- The output of the state-financed broadcasting media should reflect the principles of balance and impartiality. For example, airtime given to spokesmen of the government should be balanced by time given to other points of view. Editorial staff should be free to use information from a variety of sources according to their professional judgement.
- In order to safeguard its independence, the state-financed broadcasting media should be adequately funded by a means that protects it from arbitrary interference with its budget.
- An independent governing board should be established for the state-financed broadcasting media. The function of the board should be to serve the public interest, to promote freedom of expression and information in the state-financed broadcasting media, and to ensure that it is run according to accepted public service principles. Members of the board should be individuals

... /...

with media, judicial and other professional experience. The appointments process should ensure that no particular political or other interest predominates in the board. The terms of members' 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 managers of the state-financed broadcasting media should be appointed by and responsible to the governing board. The managers should be responsible for day-to-day operations, but should not have authority over editorial decisions, which should be the responsibility of editorial staff on the basis of professional criteria.

6.2 Printed media

Several editors of state-owned media who have attempted to assert a measure of editorial independence, or whose newspapers provided alternative information or carried reports of statements made by others which were critical of the government, have been dismissed from their posts by presidential order or forced to resign.

In December 1994, a deputy made a statement in the Supreme Soviet criticizing corruption in the Presidential Administration. According to the editors of two state-owned newspapers, the printers were instructed not to print reports of the deputy's statement. The largest circulation state-owned newspaper, *Sovietskaya Byelorussia*, as well as *Zvyazda* and *Respublika*, were published with blank spaces in the place where the editors had intended to report the deputy's statement, and the relevant issue of *Narodnaya Gazeta* failed to appear. Shortly afterwards, the editors of *Sovietskaya Byelorussia* and *Respublika* were dismissed.

In March 1995 the editor of *Narodnaya Gazeta*, which was at that time owned by the Supreme Soviet, was dismissed by the President. This followed the publication in the newspaper of a letter from a reader criticizing the pro-Russian policies of the Presidential Administration which, it was alleged, incited violence and civil unrest.

When asked whether the President had the authority to dismiss the editor of a newspaper not formally under his own control, a presidential spokesman stated that the Constitution authorizes the President to take measures to ensure political and economic stability. (The dismissed editor, Iosif Seredich, then went on to establish a new non-state newspaper, *Narodnaya Volya*.)

One year later, in March 1996, the succeeding editor of *Narodnaya Gazeta*, Nikolai Galko, was dismissed by the President for "a failure to carry out his duties". The newspaper had, among other things, been critical of the steps taken by the President towards reuniting Belarus with Russia.

At the end of June 1996, *Narodnaya Gazeta* was reorganized into a company with a controlling share held by the government, and the remainder belonging to the collective of workers. This reorganization was ordered by presidential decree despite the stipulation in the newspaper's charter that it could be reorganized only by resolution of the Supreme Soviet. At the request of the Supreme Soviet, the Constitutional Court reviewed the presidential decree and in October 1996 ruled that it amounted to an intrusion on the legislative branch by the executive and so was not in accordance with the Constitution. But this ruling, like the Constitutional Court's rulings that certain other presidential decrees breached the Constitution, was disregarded by the President.

RECOMMENDATIONS

- 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.
- For so long as any state-financed printed media continue to exist, the editors of those media should have full editorial and operational independence, with the authority to make their own professional judgments about content and presentation of news and matters of public interest, and to publish the views of a variety of contributors. They should not be subject to dismissal or other disciplinary measures on account of the content of their newspapers.

7 CONTROLS AFFECTING NON-STATE MEDIA

While the non-state media are not subject to direct government control in the same way as those in the state sector, the government has made use of a range of regulatory and administrative measures in a way which severely inhibits their freedom and ability to operate. They are subject to government control through the regulatory provisions of the Law on Press, and have been threatened with closure for alleged breaches of that law. Non-state broadcasters which have given voice to alternative views have been closed down. Non-state printed media, which are heavily dependent on state-controlled facilities such as printing works and the distribution system (including the post office and state-run sales kiosks), have had these facilities arbitrarily withdrawn, forcing them to print abroad and severely obstructing their distribution outside the main towns. The government has also used administrative measures such as unannounced tax inspections resulting in the imposition of harsh financial penalties in what appears to be a concerted move to undermine the financial viability of this sector of the media.

7.1 Registration and Accreditation Requirements

In March 1997 the authorities informed the media that they would shortly be required to re-register, indicating that this was necessary because they intend to apply stricter requirements relating to the legal status of media entities and their founders. These indications appear to be borne out in the proposed amendments to the Law on Press which, if adopted, would impose additional requirements and require stricter qualifications from those applying to register media entities.³⁹

In the current climate of increasing restrictions and widespread harassment, even before the announcement of the proposed amendments to the law, media professionals feared that the re-registration process would be used by the authorities to refuse, delay, or simply not to grant, re-registration, so preventing or obstructing newspapers or other media from functioning. In view of the recent administrative and other measures taken against the press, described below, such fears would appear to be well-founded. The proposed amendments to the law reinforce such fears.

Early in 1997, the government announced plans to require the re-accreditation of journalists working in Belarus on behalf of foreign media. No clear reasons have

³⁹ For details, see Section 4.2 of this report.

been given for this requirement apart from repeated references by government spokesmen to the allegedly biased reporting on Belarusian affairs by Russian television channels. Up to now, journalists working for foreign media have been accredited with the Ministry of Foreign Affairs, but the proposed amendments to the Law on Press would require them to be approved also by the State Committee on the Press, the executive body which wields extensive powers of supervision over the media as a whole. New regulations on the activities of foreign journalists, issued by the Cabinet of Ministers in mid-July, will require them to renew their accreditation annually and will place new limitations on individuals who can be accredited as correspondents of foreign media. For example, an individual journalist can be accredited as a correspondent of only one foreign media organization, and staff of mass media registered in Belarus will not be permitted to be accredited as correspondents for foreign media. The new regulations also cover the content of journalists' reporting, for example prohibiting the use of the media for, in particular "... spreading reports discrediting the honour, dignity and working reputation of the President of the Republic of Belarus". This provision exceeds the restrictions on freedom of expression which are permissible under international law.⁴⁰

7.2 Formal Warnings and Threats of Closure

There have been numerous cases where the government has used its powers to issue formal warnings on the grounds set out in Article 5 of the Law on Press.⁴¹ These warnings carry the threat of suspension or withdrawal of registration, which would in effect deprive media of their licence to publish. Like many other legal provisions described in this report, the determination as to whether a publication has infringed these provisions is left largely to the discretion of government officials, with no clear criteria for making the determination and no possibility for the publication concerned to rebut the allegations without resorting to the courts. Moreover, even though on occasion appeals to the courts have resulted in some measure of success, the courts can by no means be relied on as a protection against the arbitrary exercise of executive power.

⁴⁰ See Section 3.5 and Section 3.6.

⁴¹ For more details about Article 5 and other restrictive provisions of the Law on Press, see Section 4.2.

For example, in June 1996 *Belaruskaya Delovaya Gazeta* was suspended from publication, having received a warning about "divulging state secrets" in violation of Article 5 of the Law on Press. It had published an article about the special armed forces under the President's command. It was able to resume publication later but the warning itself remained in effect, in that a further warning within one year would bring the risk of its registration being withdrawn.

Later that month, the State Committee on the Press issued a warning to *Pagonya* for an alleged "infringement of public morals, honour and dignity" and in relation to Article 40 which obliges journalists to provide objective information. A further warning was issued to the same newspaper in early August for two articles published in March and May which allegedly "inflamed national, social, racist or religious intolerance or hatred".

In July 1996, the State Committee on the Press issued a warning to *Svaboda* for an alleged breach of Article 5. The newspaper appealed to the court for the warning to be declared invalid, pointing out that the article they had published had not resulted in any libel claim or any other legal action against the newspaper, but in October the court refused the newspaper's claim. In September 1996, the State Committee on Press issued a further warning after *Svaboda* published an article which allegedly insulted the President and other senior officials.

While the Law on Press provides that multiple warnings within a year can lead to the suspension of a publication, to date the authorities have not permanently closed a publication on those grounds. Nevertheless, the media work under the constant possibility that at some stage the authorities might go so far as to make use of the full potential of this provision in the Press Law. And, even without the authorities going to those lengths, it is clear that the implicit threat that such measures might be implemented is sufficient to seriously hinder the free operation of the press.

7.3 Enforced Closure of Non-state Broadcasters

While international standards permit governments to regulate technical aspects of broadcasting, such as licensing and allocation of wavelengths, any controls on broadcasters based on other than technical criteria are permissible only if they comply with the restrictions permissible under international standards on freedom of expression in general. But in Belarus the few attempts by non-state domestic broadcasters to cover political issues or matters of public interest have led to their being denied access to the airwaves.

One broadcaster which attempted to provide a range of programming including news and information was the Minsk-based Radio 101.2FM. It was summarily closed down by the authorities, ostensibly for technical reasons, at the end of August 1996.

Radio 101.2FM had been established in July 1995, with substantial assistance from the Belarusian Soros Foundation, and provided a mix of music and news including, in addition to its own material, retransmissions of BBC, Deutsche Welle and Polish Radio programmes. In August 1996, at a time of heated controversy about the President's proposal for a referendum on constitutional changes, and when spokesmen of the Supreme Soviet had been unable to obtain airtime on public broadcasting channels to put their views across to the public, it gave airtime to Semyon Sharetsky, the Chairman of the Supreme Soviet. On 31 August, the Ministry of Communications notified the station that, "in order to eliminate interference" in the reception of a government frequency used by the police and other official bodies, it should cease to use the 101.2FM frequency with effect from the next day. The station had received no previous complaints about interference. Nevertheless, it took all the necessary steps to have its equipment checked. It was given a clean bill of health, but despite this Radio 101.2FM has not been able to obtain permission to resume broadcasting.

The real reason for the closure of 101.2FM was revealed a few weeks later, when the President, speaking to participants in a youth forum in the latter part of September 1996, reportedly stated that "neither Radio 101.2FM nor anybody else [would] be allowed to pursue anti-state policies on the state radio waves", and referred to "dirty tricks on the radio and television financed by 'Soros' and others". In January 1997, a government memorandum on establishing a government-sponsored youth organization in Belarus stated the intention to make use of the frequency of 101.2FM for a youth channel linked to that organization.

At the time Radio 101.2FM was established, the law did not permit equipment such as radio transmitters to be held by any bodies except the state. This meant that the transmitter provided for them by the Belarusian Soros Foundation had to be made over to the Ministry of Communications. Although the law on this matter was changed in 1995, by June 1997 the Ministry had made no response to repeated requests by the directors of Radio 101.2FM for the return of their transmitter, which has thereby, in effect, been confiscated without any legitimate basis.

At the end of September 1996, in circumstances similar to those surrounding the closure of Radio 101.2FM, NBK, a local non-state radio channel in Grodno, in western Belarus, was forced to close. After it had broadcast a statement by the Chairman of the Supreme Soviet which was critical of the presidential proposals for

constitutional changes which were to be put to the referendum, it was given two days' notice to quit the premises it rented from the regional state radio station. The authorities also initiated a check on the station's financial and commercial operations — although there had been no earlier suggestions of malpractice — and ordered its bank account to be frozen for alleged "serious breaches". The management of NBK appealed in court against the closure of the bank account, but without success.

RECOMMENDATIONS

- Broadcasting licences for non-state channels should be allocated by a body independent of government. This could be either the same independent body as is established to govern the state-financed broadcasting media, or a separate body, similar in composition and operating principles, specifically for regulating the non-state broadcasting media.
- Licences and broadcasting wavelengths should be allocated by means of an open, fair and non-discriminatory system, according to clear and publicly known criteria. The guiding principle should be to ensure freedom of expression and information in the public interest and in compliance with Belarus's international human rights obligations. Overall, one of the main criteria in allocating licences should be to ensure plurality and diversity in the broadcast media as a whole. There should be proper provision for an effective and meaningful review of any decision to refuse a licence.

... / ...

Broadcasting licences should not impose any restrictions on media freedom beyond those which are permissible under international standards. Licences should be for a fixed term, which should be a reasonable period of time. Licences should not be withdrawn except in cases of gross infringement of licence conditions. Full safeguards should be provided against arbitrary cancellation or withdrawal of licences, including withdrawal on technical pretexts. There should be proper provision for an effective and meaningful review of any decision to withdraw a licence.

7.4 Controls Over Printing, Distribution and Other Facilities

The authorities have used their control over technical and other facilities in a way which has obstructed, and in some instances entirely prevented, non-state media from operating. For example, state-controlled bodies have summarily cancelled contracts for printing and distribution, and media bodies have been issued with notice to quit or have been summarily evicted from the premises where they work.

Obstruction of printing and distribution

In October 1995, the state printing works in Minsk cancelled its printing contract with *Narodnaya Volya*, and the state printing works in Gomel, in eastern Belarus, notified two other newspapers, *Belaruskaya Delovaya Gazeta* and *Imya*, that, because of a need to carry out preventive maintenance at the plant, it could no longer print them. Around this time the Presidential Administration notified local executive committees that state-owned printing facilities in the regions would be authorized to conclude printing contracts with non-state media only with the agreement of the Presidential Administration. As a result of these measures, several non-state publications arranged for their printing to be done in Lithuania. The editorial board of *Narodnaya Volya* challenged the cancellation of its printing contract in court, seeking compensation and an order for fulfilment of the printing contract, but without success.

Around this time also, the state distribution services were ordered not to carry newspapers printed outside Belarus, and several newspapers were notified by the state distribution agency that their distribution contracts were cancelled. One of the

publishers affected took the matter to court but, while the court ordered the post office to pay compensation for losses incurred, it did not order it to fulfil the contract. Similarly, when a group of subscribers took action in court against the suspension of delivery of *Narodnaya Volya* the court ordered compensation to cover the loss of their postal fees, but made no order for deliveries to be resumed. Subsequently, the newspapers concerned were able to make other arrangements for distribution, but their distribution, especially outside Minsk, is severely hampered by the state monopoly over distribution structures, with the attendant risk that, as before, any arrangements they are able to make could be cancelled at any time.

Summary evictions

One aspect of the increasing centralization of political and economic power in Belarus is the acquisition of properties by the Presidential Administration. These include buildings occupied by non-state media. This has put them at risk of eviction with little or no advance notice. In January 1996, *Svaboda* was notified that the Presidential Administration had taken over the building housing its offices; it received notice to quit the premises within a month, although its occupation of the offices was based on a leasing agreement running until 1997. (*Svaboda* appealed to the courts against this eviction. The case was still pending as of late April 1997.) The following month the non-state news agency Belapan, which leased part of a building owned by the Presidential Administration, was ordered to vacate the premises the next day because the building was needed for "state purposes". Other tenants of the building (including the state news agency) did not receive any such notice to quit.

Such evictions are not confined to properties owned by the Presidential Administration. In early April 1997, *Pagonya* was forcibly evicted from its offices in premises owned by the local executive committee in Grodno, western Belarus. According to reports, officials and police officers ordered staff of the newspaper to leave the building, and when the editor refused to leave his office he was forcibly removed. Despite protests by staff, their computer and other equipment was removed from the building and dumped in the street. *Pagonya* was offered alternative premises, but without a telephone line or other essential facilities.

RECOMMENDATION

- In view of the potential for a state monopoly over printing and distribution to be used in a way which obstructs the exercise of the fundamental human right to freedom of expression and freedom of the media, urgent steps should be taken to remove the effective state monopoly over printing and distribution and to enable non-state bodies to establish their own printing and distribution facilities. In so far as the state retains control of any such facilities, it has a responsibility to ensure that they facilitate rather than obstruct media freedom. As a basic minimum, printing and distribution services should be provided on a non-discriminatory basis to all media, and all efforts made to ensure timely printing and distribution of media.

7.5 Financial Pressures

With the difficult economic situation in Belarus, non-state media are in a precarious financial situation. While the economic situation affects all sectors of the economy, the non-state press is at a disadvantage when compared with the state sector of the press, which benefits from state subsidies and preferential printing and distribution rates, and can sell at a lower price and has proper access to state-controlled distribution channels without obstruction by the authorities.

The precarious situation of the non-state media has been further threatened by the authorities' imposition of special tax inspections with little or no advance notice, often resulting in extremely harsh financial penalties, imposed with immediate effect, for technical infringements of tax regulations. Given the complex, unclear and sometimes conflicting tax and other regulations which must be complied with, it is likely that a newspaper can be found in breach of some technicality. For example, in September 1996 *Imya* was penalized for selling subscriptions for cash rather than through the post office according to the established practice, even though it had been

constrained to do that because the authorities had prevented the post office from accepting readers' subscription payments.

There was a spate of such inspections affecting a number of non-state media in August and September 1996. Some publications were inspected several times in this way in the latter part of 1996. It was clear that these inspections were undertaken at the instigation of the Presidential Administration and they amounted to a concerted act of harassment. One editor stated that he was explicitly told by the tax inspectors that they had been sent to uncover any breach of tax regulations they could find, and would keep searching till they found it. Such inspections have continued from time to time since then. In mid-May 1997, it was reported that *Nasha Niva* and *Zdravyyi Smysl* were subjected to inspections. In late May, *Pagonya* reportedly had to pay the equivalent of more than US\$9,000⁴² following such an inspection (this was within a few weeks of its being evicted from its offices, mentioned above).

The penalties imposed on some newspapers in September 1996 were reported to range from \$42,000 to \$118,000. However, the newspapers' actual losses as a result of such penalties are likely to have been much greater. For example, in one more recent case a newspaper had to pay a penalty of \$25,000 for minor violations. This had to be paid immediately, and the newspaper was accordingly unable to pay its other bills on time, incurring financial penalties in respect of those. Taking account of such consequential effects, the basic penalty of \$25,000 in this case amounted to an estimated total loss of \$60,000 — about six weeks' running costs for the newspaper. Following that, it had to cut its number of pages by 25% and its circulation by half, so reducing its income potential. According to one editor, such economic pressure is more destructive than direct political pressure because it threatens the newspaper's very existence. Indeed, it is difficult not to conclude that this — or at least the implied threat — may be its purpose.

As well as punitive taxation measures, the authorities can exert subtle forms of financial pressure on non-state media with regard to their advertising revenue. Most advertisers are within the state sector and are subject to government direction as to where they place their advertising. Given the already precarious financial position of many non-state media, the knowledge that what advertising they have may be withdrawn for political reasons is likely to add to the overall chilling effect on the ability of the media to operate freely.

⁴² For ease of reference, this report gives figures in US dollars. In March 1997, US\$1.00 = approximately 24,000 Belarusian roubles.

Because of the difficulties of securing economic viability in such a climate, many non-state media have relied heavily on voluntary funding from international agencies. The most active has been the Belarusian Soros Foundation which, like its counterparts in several other countries in the region, has undertaken a major programme of support for projects in Belarus working in the area of freedom of expression and free media. But similar punitive measures have been taken against this body also. When it commenced its activities in 1995, the government granted it tax exempt status as a charitable organization. Since then, the Foundation has made grants in Belarus totalling around \$13 million. But the government has shown an increasing sensitivity about its activities, particularly its support for bodies which the government perceives as linked to its critics and opponents. This was evidenced in the President's remark following the closure of Radio 101.2FM,⁴³ which had been a major beneficiary of Belarusian Soros Foundation support.

In mid-March 1997 the Belarusian Soros Foundation's local representative was refused entry to Belarus after a trip abroad, and the organization was subjected to a tax inspection. At the end of April, the authorities claimed that a number of the grants made by the Foundation were not covered by its tax-exempt status, and that it had infringed certain foreign currency regulations (although in fact the Foundation had been granted exemption from those regulations also). The authorities imposed a penalty on the Foundation amounting to \$3 million. Despite the Foundation's notification to the authorities that it planned to appeal against this, the authorities ordered its bank to transfer the funds without awaiting the result of the appeal. This meant that any money transferred into the Foundation's bank account would immediately be forfeit to the authorities. In mid-May the Foundation announced that, as a result, it could no longer operate and would have to suspend its activities in Belarus. In a letter to President Lukashenko, George Soros, the Chairman of the Foundation's US-based parent body, protested strongly against the arbitrary seizure of the Foundation's assets, describing the government's accusations as inflammatory and unfounded. He repeated the Foundation's view that the penalties imposed on it were politically motivated and had no basis in law.

It is not at this stage possible to assess what will be the full consequences of these events for media freedom in Belarus. But it seems very likely that the withdrawal of what has been, for some of the non-state media, a vital source of economic support will only increase their vulnerability to financial and other pressures by the authorities.

⁴³ See Section 7.3.

7.6 Russian Broadcasters

[CSCE participating states] will refrain from taking restrictive measures such as withdrawing a journalist's accreditation or expelling him because of the content of the reporting of the journalist or of his information media.

CSCE Concluding Document of Vienna: The Third Follow-up Meeting (19 January 1989) para. 39

The authorities have taken measures to obstruct the work of media professionals working for Russian broadcasters, which have been openly critical of some of the policies of the Belarusian government, in particular those of the President. The government has shown extreme sensitivity to their output, alleging that they provide selective and distorted news coverage and that they focus unreasonably on public unrest and demonstrations. One reason for the government's objections to the content of their broadcasts is that the government evidently believes they are detrimental to relations between Belarus and Russia.

These broadcasters' dependence on the Belarusian State Television and Radio Company for essential technical facilities leaves them ultimately subject to control by the Belarusian authorities. Media professionals working for Russian channels have been intimidated and threatened, their material has at times been subjected to prior censorship and, on occasion, they have been prevented outright from transmitting video footage to their broadcasting stations in Moscow. In 1997, two correspondents for these channels have had their accreditation withdrawn after official complaints about the content of their reporting; one of them was summarily expelled from the country.

Such measures are violations of international standards on freedom of expression and of commitments on freedom of the media made by participating states of the OSCE. In particular, the International Covenant on Civil and Political Rights explicitly states, in Article 2, that states parties will "respect and ... ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the ... Covenant". This means that foreign nationals or media professionals working for foreign media have the same rights to freedom of expression as citizens. The OSCE commitments on freedom of expression, which Belarus explicitly agreed to accept and comply with when it became a participating state in the CSCE in January 1992, include a specific commitment that journalists should not be penalized for the legitimate pursuit of their professional activities and, in particular, should not have

their accreditation withdrawn or be expelled because of the content of their reporting.⁴⁴

On 2 April 1996 Russian television channels reported on a protest in Minsk involving over 10,000 people, against the treaty with Russia signed that day. Two days later the President stated that he had started "active talks" with Russian television channels whose journalists had broadcast reports from the demonstration, and said that "these journalists will not be working here for many more days".

At a 1996 May Day rally in Minsk, it was reported that men believed to be plainclothes agents confiscated an NTV film crew's videotapes of the rally, beating one of the cameramen; another Russian television correspondent travelling home afterwards was forced to stop his car and threatened by unidentified men. Shortly afterwards, a spokesman for the President stated that Russian television journalists were filing inflammatory reports and the most serious measures would be taken against them.

During the run-up to the 1996 referendum, the Russian television channels were the only broadcasters which put across the Supreme Soviet's point of view. On more than one occasion their wavelengths were taken over for several hours by Belarusian television to broadcast speeches by the President. At times during this period their correspondents were also prevented from transmitting their video footage to Moscow. In one instance, in September, the official reason given was that the control room was closed for maintenance. On another occasion, in November, the studio's communications line was simply cut off. In September, Pavel Sheremet, the correspondent for ORT, was reportedly warned by a senior official of the Presidential Administration that ORT's Minsk bureau would be closed if his material was broadcast on that channel. In mid-November, the President publicly condemned the allegedly biased coverage by ORT and NTV of public protests taking place at that time in connection with the referendum, and the deputy head of the Presidential Administration, in a public statement, accused these channels of waging what he described as a dirty tricks campaign.

Such threats continued after the referendum. In February 1997 NTV carried a report about the Presidential Administration taking over ownership of buildings housing a kindergarten for the children of Interior Ministry personnel. The NTV correspondent, Alexander Stupnikov, was summoned to the Belarusian Foreign Ministry and given an official warning concerning his allegedly unobjective coverage. The Foreign Ministry also sent a protest note to the Russian Foreign Ministry, and a

⁴⁴ CSCE Concluding Document of Vienna: The Third Follow-up Meeting (19 January 1989) Cooperation in Humanitarian and Other Fields, para. 39.

spokesman of the Belarusian Foreign Ministry, speaking on Belarusian television, described the correspondent as detrimental to Belarus/Russia relations.

Towards the end of March 1997, around the time of a number of demonstrations protesting against the expected signing of the second treaty with Russia,⁴⁵ NTV was prevented from transmitting video footage from the Belarusian television studio to Moscow. An NTV crew tried to take the videotape to Lithuania for transmission from there but they were prevented from taking it across the border. (A new decree on border controls had been issued by the Cabinet of Ministers a few days previously,⁴⁶ although it was not to formally come into effect until a month afterwards.)

The following day, Alexander Stupnikov's accreditation was withdrawn by the Foreign Ministry. According to the Foreign Ministry this was because he had systematically distorted information about Belarus. The withdrawal of his accreditation meant that any material which he had prepared could no longer be transmitted by NTV from the Belarusian television studio to Moscow. He also received personal threats that his physical safety would be at risk if he did not cease his activities. A senior official in the Presidential Administration made it known to other NTV staff that, if NTV provided information distorting the situation in Belarus or attempted to broadcast any material prepared by Alexander Stupnikov, the authorities would regard this as a provocation not only by the journalists concerned but by the company, and would accordingly consider cancelling their retransmission agreement. Correspondents of the other Russian channels were also informed that their accreditation, too, might be withdrawn.

Three days after the withdrawal of his accreditation, Alexander Stupnikov was notified that he was to be expelled from the country and given four days to leave. He did not receive this notification until after it was announced on Belarusian television. The Interior Ministry's official letter stated that his activities were "undermining the atmosphere of trust, good neighbourliness and friendship that has developed between Belarus and Russia". He had spent many years in Belarus and his wife and children are Belarusian citizens. Having had his own Soviet citizenship withdrawn some years ago he is an Israeli citizen; he had applied in September 1996 for restoration of Russian citizenship, but it was not until after his expulsion from Belarus, in early April, that he was told it had been granted with effect from the end of February.

⁴⁵ See Section 2.4.

⁴⁶ See Section 9.

Restrictions, including prior censorship, were also imposed on the other Russian channels around this time. At one point, according to NTV, media professionals working for each of these channels received a call from a senior official in the Presidential Administration telling them that it was forbidden to transmit footage of opposition marches and rallies, and the following day security guards denied them access to the building, so preventing them from transmitting any material from the Belarusian television studio to their broadcasting stations in Moscow. Shortly afterwards, internal instructions were issued within the Belarusian State Television and Radio Company that, among other things, there must be a preliminary viewing and a copy made of all material before its transmission to Moscow, and a duty officer must be present throughout the transmission.

Although there was apparently no formal notification of any change in these arrangements, after a few weeks the correspondents of the Russian TV channels were no longer having their material routinely submitted to prior censorship before being allowed to transmit, although in mid-June, almost three months after these controls were imposed, journalists reported that official monitoring, in the form of recording a copy of all material transmitted to Moscow, was still in place. However, even with this partial relaxation, there remained the constant possibility that prior censorship could be re-imposed at any time as and when the authorities decide it is necessary or opportune to do this, with the additional implied threat that the authorities may summarily withdraw the accreditation of the individual correspondents or terminate the retransmission agreements with any of the Russian TV companies.

Such threats were given effect in early July 1997, when Pavel Sheremet, the correspondent for ORT, was informed by the Foreign Ministry that his accreditation had been withdrawn. This led to protests from Russian Prime Minister Victor Chernomyrdin and First Deputy Prime Minister Boris Nemtsov, the latter stating that the measures taken against Pavel Sheremet violated provisions in the Russia-Belarus Union Charter. The Belarusian Foreign Ministry, in justification of the measures it had taken, issued a public statement protesting about the "information war" which it said was being waged against Belarus by certain elements of the Russian mass media. A few days earlier, Pavel Sheremet's accreditation to cover special events, including official Independence Day commemorations on 3 July, had been temporarily suspended. That temporary suspension followed an edition of ORT's *Vremya* current affairs programme in which he apparently depicted a "day of voluntary labour" (*subornik*) declared by the government as being required by the state to pay for the damage from the hurricane which had recently afflicted parts of Belarus, and described the new independence celebration date as President Lukashenko's idea. (At the

November 1996 referendum, voters had been asked if they agreed to the President's proposal to change the commemoration of Independence Day from 27 July, the anniversary of the 1990 Declaration of State Sovereignty, to 3 July, the anniversary of the end of the German occupation in 1944.) A few days after the withdrawal of Pavel Sheremet's accreditation, other ORT staff were reportedly denied access to the transmission facility at the Belarusian television studio which they use to transmit their video footage to ORT in Moscow; following that, they had to file their reports by telephone.

Pavel Sheremet, however, continued to carry out his professional activities as far as he could, and on 26 July he and his camera crew were taken into custody by the authorities in connection with their filming at the Lithuanian border a week previously. (They had been briefly detained at the time by border guards, but released shortly afterwards.) Despite a protest by Russian President Boris Yeltsin, a few days later Pavel Sheremet and the cameraman were charged with illegal crossing of the border under Article 80 of the Criminal Code. For an aggravated offence, which the authorities apparently hold to be applicable in this case, this carries a penalty of up to five years' imprisonment. President Lukashenko was quoted as having told reporters on 31 July that Pavel Sheremet had received remuneration from what he described as "foreign special services", and a spokesman for the Belarusian security service (KGB) indicated that they would investigate these reports. The crew's driver was charged a few days later with the offence of assisting others with illegal crossing of the border, and then released on condition that he did not leave the country. The two other members of the crew remained in detention awaiting court proceedings.

On 31 July, 15 journalists participating in and reporting on a protest action in Minsk, attempting to hand in a petition at the building of the Presidential Administration in support of the detained ORT journalists, were detained by the authorities. The next day they were brought to court on charges of violating Presidential Decree No. 5 which places restrictions on public demonstrations. Eight were given a formal warning by the court and six were fined; the hearing of the case of the remaining journalist was postponed.

At the end of May, President Lukashenko announced in the House of Representatives that the government would soon establish a new procedure for the accreditation of foreign journalists, a measure which had been intimated to the Russian television journalists at the end of March. On this occasion, once again, the President singled out NTV for their critical coverage, alleging that they distorted and falsified facts. Under amendments to the Law on Press proposed in June 1997, foreign journalists would, in addition to registering with the Ministry of Foreign Affairs, have

to be approved by the State Committee on the Press, and new regulations issued by the Cabinet of Ministers in mid-July, shortly after the removal of Pavel Sheremet's accreditation, set out stricter requirements governing the accreditation and activities of foreign journalists.⁴⁷

ORT, which is the Russian television channel with the widest coverage in Belarus, now faces the prospect of going off the air. In early 1997, a spokesman for the Presidential Administration announced plans for a second national television channel which would take over the wavelength currently used by ORT. If this measure goes ahead, it would significantly increase the capacity of the Belarusian state broadcaster at the same time as drastically reducing the access of most of the population to the few remaining alternative sources of information.

RECOMMENDATIONS

- There should be due recognition, in law and in practice, that the right of freedom of expression applies to non-citizens in Belarus, as well as to citizens. This applies also to media professionals working for foreign media. Accordingly, no special measures should be taken to restrict the freedom of expression of journalists working for foreign media.
- In order to comply with Belarus's explicit OSCE commitments, the accreditation of journalists working for foreign media should not be withdrawn, nor should such journalists be expelled or subject to any other penalties, nor threatened with such measures, because of the content of their reporting.

⁴⁷ See Section 7.1.

8 HARASSMENT AND INTIMIDATION OF MEDIA PROFESSIONALS

[The participating states] condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.

CSCE Concluding Document of Budapest: Towards a Genuine Partnership in a New Era (6 December 1994) VIII: The Human Dimension, para. 37

Media bodies or individual journalists who are intimidated, harassed or threatened are likely to exercise a degree of self-censorship based, not on their own judgement as to matters which may, for responsible professional reasons, need to be treated with discretion, but resulting from a wish to avoid future harassment or even violence. In its March 1993 resolution establishing the post of the UN Special Rapporteur on freedom of opinion and expression, the UN Commission on Human Rights emphasized that "professionals in the field of information play a major role in the promotion and protection of freedom of opinion and expression, and [expressed] in this regard its concern at the growing number of reports of detention ... [and] ... threats and acts of violence and harassment, including persecution and intimidation, directed at such professionals". The Commission appealed to states to "take the appropriate steps to ensure the immediate cessation of these acts and to create the conditions under which these acts may be less liable to occur".⁴⁸

In Belarus there has been systematic harassment, including physical attacks, against individual journalists, and repeated attempts to obstruct them from carrying out their work. This applies in particular to video- and photojournalists attempting to carry out their professional duties in reporting on demonstrations, who, despite taking no part themselves in the demonstrations and despite showing their press identity cards, have been detained, beaten or charged with public order offences. Journalists attempting to report on demonstrations have also had their equipment and film damaged, confiscated or destroyed by unidentified men in plain-clothes who are believed to be members of the presidential security service.

At the end of April 1996, during police dispersal of an unauthorized demonstration in Minsk on the tenth anniversary of the Chernobyl disaster, those

⁴⁸ UN Commission on Human Rights Resolution 1993/45, adopted 5 March 1993, para. 4 and para. 7.

beaten and detained included several journalists reporting on the demonstration, one of whom received a serious head injury.

A few days later, several journalists were obstructed from reporting on an authorized and generally peaceful May Day rally in Minsk, when the authorities prevented them from getting pictures of the event. A freelance photojournalist was prevented by men in plain-clothes from photographing them; they exposed his film. It was reported also that a film crew of the Russian channel NTV were similarly stopped by men believed to be plainclothes security agents who confiscated three of their videotapes containing footage of the rally, and one of their cameramen was beaten. After the rally, a correspondent for another Russian television channel was followed on his way home by several men in a car who forced him to stop and threatened to smash his windows.

Such obstruction of journalists attempting to report on demonstrations has continued into 1997. A Baltic News Service correspondent was arrested half an hour after the end of a demonstration on 14 February, despite showing his foreign press correspondent's card. The police seized his recording equipment and erased his recordings, and he was charged with a public order offence.

Twelve journalists and observers for local human rights organizations were among those detained at a demonstration in Minsk on 14 March. Some were held for several days before being brought to court on public order charges. Following a protest by journalists to the Foreign Ministry, there were no journalists reported detained at a demonstration the following weekend, but at subsequent demonstrations the obstruction of journalists resumed.

Several journalists were reportedly detained and beaten, three of them severely, when reporting on an unauthorized demonstration on 2 April on the occasion of the planned signing of the second treaty on union with Russia, at which there were violent clashes between police and protesters. One was later sentenced to ten days' detention on public order charges. Following further protests by journalists to the Foreign Ministry, the Minister of Foreign Affairs, Ivan Antonovitch, was reported to have criticized foreign journalists for conducting what he described as "an information war" against Belarus, saying that their accreditation might be withdrawn because of their lack of objectivity, and to have indicated that their safety could not be guaranteed if they continued to cover unauthorized demonstrations.

Such harassment of media professionals is not confined to those observing and attempting to report on rallies and demonstrations. Late in the evening after the Chernobyl demonstration in April 1996, Vladimir Dzuba, the chief editor of Radio 2 whose intention to broadcast a news story about it had been obstructed by the

management of the State Television and Radio Company, was detained on his way home from work. He had not been present at the demonstration which by then had finished some time ago, but his detention was apparently one of several similar detentions of passers-by in its aftermath. The following morning, he, with eleven others, was placed into a cell where he was held for two more days. The detainees had to share one metal drinking cup. On the first day they received bread and water; the second day they were given some lunch. On the third day a judge was brought to the detention facility to conduct trials. Vladimir Dzuba was convicted of "petty hooliganism" under Article 156 of the Administrative Code, on the evidence of a police officer whom he did not recognize as having seen before. He was sentenced to three days' administrative arrest, and returned to the cell for a few hours to serve the remainder of the sentence.

Up to that point, what happened to him was comparable with what has happened to others detained in the vicinity of demonstrations, but it seems likely that subsequent events were linked to his professional activities. On his release he was immediately re-detained without explanation. The next day he was brought to court again, apparently for the same alleged offence as before. He was sentenced to 15 days' administrative arrest (the maximum sentence under the Administrative Code), again on the evidence of two police officers he did not recognize as having seen before, but who claimed to have been the officers who detained him. After he went on hunger strike and international protests were made on his behalf he was released after eight days' detention. He protested to the Procurator General and to the Supreme Court about his detention, but the Supreme Court ruled that his arrest and detention were legitimate. He did not feel it was worth attempting to pursue the matter any further.

There have also been personal threats and attacks by unknown assailants on journalists and their families in their homes, with the apparent purpose of intimidating them from exercising their professional right and duty to inform the public. While to date it has not been possible to establish with certainty the responsibility for such attacks, they are widely believed to have been carried out by people linked to the authorities.

Towards the end of June 1996, two intruders forced their way, in the middle of the night, into the apartment of Yury Drakokhrust, a correspondent for the Russian Service of Radio Free Europe/Radio Liberty. In recent months he had been covering the suppression of the opposition and the non-state press and the beating of journalists at demonstrations. At the time of the incident he was away from home. The intruders assaulted his wife, telling her "tell your husband about this". No money or valuables were taken from the apartment.

In mid-February 1997, shots were fired into the home of Igor Hermanchuk, the editor of *Svaboda*, through the window of the room where he usually works in the evenings, although that particular evening he was not at home. In another incident the same month, Anatol Lyabedska, a deputy of the Supreme Soviet known for his writings in the non-state press, was attacked and beaten up by two unknown assailants at the entrance to his home.

RECOMMENDATIONS

- The authorities should respect in practice the right of journalists to observe and report on demonstrations and any other matters of public interest. At a minimum, police or security forces or other agents of the authorities should not in any way obstruct media professionals from carrying out their right and professional duty to inform the public about such matters.
- The government should take active steps to investigate all acts or threats of violence, intimidation or harassment against media personnel and bring those responsible to justice. This applies particularly where there is any reason to believe that the act was motivated by an intent to interfere with media freedom.

9 "... REGARDLESS OF FRONTIERS ..." THE USE OF BORDER CONTROLS TO IMPEDE THE FLOW OF INFORMATION

The International Covenant on Civil and Political Rights and the European Convention both state that the right to freedom of expression includes the right to receive and impart information and ideas regardless of frontiers. But in Belarus, this aspect of the right to freedom of expression is breached both in law and in practice.

Controls imposed by the authorities at the border have brought into sharp relief one particular potential problem for the non-state press of printing in Lithuania. On several occasions around the time of the April 1996 Chernobyl demonstration,

newspapers being brought into Belarus from printers in Lithuania were reported to have been held up for several hours by border control authorities, apparently for political reasons. In mid-November 1996, in the run-up to the referendum, Belarusian customs officials at the Lithuanian border detained the publisher of *Nasha Niva* and seized the print-run of a special edition of the newspaper containing a digest of articles critical of the policies of the President. On that occasion, customs officials reportedly said a presidential decree had been issued recently ordering the confiscation of material critical of the President.

The scope for the authorities to obstruct the flow of information at the border was increased in mid-March 1997 when the Cabinet of Ministers issued its Decree No. 218 dealing with border controls. This, among other things, prohibits the import or export of materials, whether in printed, video, audio or other form, which, in the view of the authorities, could "do harm to the political or economic interests or security of the country, or the health and morals of its citizens". The decree does not set out any criteria for how such an assessment should be made, and in practice such decisions are left largely to the discretion of individual border control officers. The wording of this provision is far broader than the scope of the restrictions on freedom of expression that are permissible under international human rights standards.⁴⁹

Although the decree on border controls was not supposed to formally come into effect until 18 April, one month after it was announced, the authorities were already intercepting certain material crossing the border, as they had done from time to time before. In the early morning of the day the decree was announced, that day's print-run of *Belaruskaya Gazeta* was held up at the border and its contents inspected before it was allowed through. A few days later, a crew from the Russian television channel NTV, having been prevented from transmitting footage to Moscow from the Belarusian television studio, were prevented from taking their videotape across the border to Lithuania for transmission from there. A few days after that, on 25 March, the editor of *Narodnaya Volya* was held up at the border for several hours when bringing back that day's edition from the printer in Lithuania.

A parallel provision is included among the proposed amendments to the Law on Press, expected to be formally adopted into law later in 1997. The proposed amendments also include a provision which would restrict the distribution of foreign-registered periodicals.⁵⁰

⁴⁹ See Section 3.6.

⁵⁰ See Section 4.2.

Such measures as these are clear breaches of Belarus's obligations under the International Covenant on Civil and Political Rights, according to which no restrictions may be placed on the flow of information across frontiers, other than those restrictions which are permitted under international law on freedom of expression generally.

RECOMMENDATIONS

- The March 1997 decree and other border control measures should be amended so as not to 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.
- Customs and border control officials should be instructed that Belarus's obligations under international law strictly limit government interference with the free flow of information. In particular, border controls should not be used by the authorities as a pretext for interfering, directly or indirectly, with the free flow of information on matters of public interest in contravention of international law.

10 CONTROLS ON TELECOMMUNICATIONS

The participating States reaffirm that everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 29 June 1990) para.

In April 1997, telephone subscribers in Minsk received a revised telephone contract issued by the Minsk City Telephone Network, which falls under the authority of the Ministry of Communications. It includes a clause stating that "telephone communication shall not be used for purposes contrary to state interests and public order". The contract also provides that the City Telephone Network retains the right to cancel the contract if the subscriber breaches that condition.

Like a number of other restrictive provisions described elsewhere in this report, this provision is drawn in terms much broader than the reasons for which freedom of expression may, in certain circumstances, be restricted under international human rights law, and leaves a wide discretion to officials with regard to its interpretation. There is no indication of the criteria that would be used by the authorities in applying this provision, or of how, if at all, the essential requirement of "necessity" would be applied. Nor is there any indication of how a telephone subscriber could challenge a decision to withdraw telephone services on these grounds.

The notion "contrary to state interests and public order" is an extremely broad one, and potentially dangerous to leave to the discretion of the authorities. The potential for abusive interpretation of the notion of "public order", in particular, has been underlined by the UN Special Rapporteur on freedom of opinion and expression in his 1997 report to the UN Commission on Human Rights:

As regards restrictions ... on the basis of protecting public order, the danger exists, in light of the vagueness inherent in the notion of public order, that the application of such restrictions undermines the right to freedom of expression itself. ... [A]ny appeal on the part of the State to restrict the exercise of the freedom of expression on the grounds of protecting public order should ... meet strict requirements indicating its necessity.⁵¹

Moreover, the provision also raises the question of how the authorities would know that — in their view — the subscriber is using the telephone network for such purposes. This has disturbing implications for the right to privacy set out in Article 17 of the International Covenant on Civil and Political Rights which states:

⁵¹ Report to the UN Commission on Human Rights (UN Doc. E/CN.4/1997/31, 4 Feb. 1997) para. 4.

17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation.

17(2) Everyone has the right to the protection of the law against such interference or attacks.

The UN Human Rights Committee, commenting on this article of the ICCPR, has stated:

Compliance with Article 17 requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Correspondence should be delivered to the addressee and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited.⁵²

By mid-1997, there were strong indications that telephone calls to and from non-governmental organizations and media professionals in Belarus were being subjected to increasingly intensive surveillance by the authorities.

RECOMMENDATION

- No restrictions should be placed on the use of telecommunications other than such as would be permitted under international human rights standards on freedom of expression and information. In particular, due regard should be given to Belarus's specific OSCE commitments stating that freedom of expression includes the right to communication.

⁵² General Comment 16(32) on Article 17 of the International Covenant on Civil and Political Rights, para. 8 (UN Doc. HRI/GEN/1/Rev.2 (1996), 22).

11 FREEDOM OF EXPRESSION AND INFORMATION WITH REGARD TO ELECTIONS AND REFERENDUMS

To ensure that the will of the people serves as the basis of the authority of government, the participating States will ... provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990) para. 7

Democracy depends on all contesting points of view being fairly and equitably communicated so that the electorate can make informed choices. The ability freely to express views in opposition to the *status quo* is essential to effective elections or referendums. The ability of opposition parties as well as the government to make use of the mass media in order to reach the electorate is crucial in this regard.

But, in Belarus, the government's refusal to allow the state broadcasting media to give any voice to alternative views has been particularly marked at times of elections or referendums. These media have been used as a mouthpiece for the government viewpoint, instead of providing a channel for information and acting as a forum for public debate of the issues at stake.

Attempts by advocates of alternative political viewpoints to obtain access to state broadcasting media to put their views across to the voters have been consistently denied. This is despite the constitutional provision that political parties are entitled to make use of official news media, provisions in the Law on Elections that candidates should have equal access to state media, and a June 1996 amendment to the Law on Press requiring state-owned media to give airtime to the Supreme Soviet as well as to other organs of government. The few attempts by domestic broadcasting media to provide a means for the expression of viewpoints other than that of the government and to give effect to the electorate's right to information have been suppressed by the authorities, and non-state broadcasters giving voice to alternative viewpoints have been summarily closed down.

In the printed sector, while the small-circulation non-state media have provided some alternative sources of information, the government has made use of the dominant state-owned media, including special editions printed at public expense, to deliver their own message to the electorate, with no such facility being provided for other parties in the elections or for alternative points of view in the referendums.

While the human rights treaties do not expressly include the right of political candidates to disseminate their opinions through the media, or the right of the public to have access to the views of political candidates, these rights are clearly inherent in the right to express opinions and to impart and receive information set out in Article 19 of the International Covenant on Civil and Political Rights, and the right set out in Article 25 of the ICCPR to vote at "genuine elections ... guaranteeing the free expression of the will of the electors". And in his 1997 report to the UN Commission on Human Rights, the UN Special Rapporteur on freedom of opinion and expression drew special attention to

the important link between the ability of people, both individually and collectively, to participate in the public life of their communities and country, and the rights to freedom of opinion and expression, including freedom to seek and receive information.⁵³

Three sectors of the population have free expression rights in the context of elections: the population generally who, as voters, depend on the right to receive full and accurate information; the news media, who must be able to report the facts and the views of the contending forces free of intimidation, censorship or political pressure; and the political forces seeking to persuade the electorate to vote for them, who each need to be able to present their message to the voters without distortion or manipulation and with sufficient time for their message to be understood. The mass media is therefore crucial in enabling the contending parties to put their programmes before the electors, and in supplying the electors with the information they require in order to be able to make an informed choice, both of which are essential elements if an election or referendum is to be genuinely free and fair.

The crucial role of the mass media in elections was recognized by the participating states of the CSCE who, in the Copenhagen Document of June 1990, pledged themselves to "provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process".⁵⁴

In the run-up to elections or referendums, public interest requirements place a particularly strong obligation on state-funded media to provide balanced coverage

⁵³ UN Doc. E/CN.4/1997/31, 4 Feb. 1997, para. 64.

⁵⁴ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990) para. 7.8.

and fair access to all parties. As an extension of the state's obligation to ensure conditions for freedom of expression and information and genuine elections, they must be accurate, balanced and impartial in their current affairs and news programmes, and grant airtime to all parties in the election (or to both sides in the referendum) on a fair and non-discriminatory basis. This obligation is all the stronger in areas where the state sector is dominant, particularly in broadcasting.

In May 1995 and in November 1996, elections to the Supreme Soviet took place concurrently with referendums. In both instances the media virtually ignored the elections, as they did also at the time of the elections held in December 1995 to fill the seats in the Supreme Soviet which, under the stringent majority rules required by the election law, had not been filled in the earlier round of elections. This lack of attention paid to the elections, focusing almost exclusively on the referendum questions, should be seen in the context of the general process of marginalization of the legislative branch of government over the past three years.

May 1995 elections and referendum

The May 1995 referendum was announced in the latter part of March when the arrangements for the elections were well under way. There were four questions: whether Russian should be given the same status as Belarusian (the 1994 Constitution had declared Belarusian to be the official language); whether voters supported the introduction of a new state flag and emblem to replace the national flag and emblem adopted in 1991 (the proposed new state symbol was based on the former Soviet one, but omitting the hammer and sickle, and was vehemently opposed by the Belarusian Popular Front); whether voters supported the President's moves towards economic integration with Russia; and whether the Constitution should be amended to give the President power to dismiss the Supreme Soviet if it were to systematically or grossly violate the Constitution.

A presidential decree issued on 30 March ordered that candidates' speeches and election platforms could be covered only by local media in their own constituencies. As a result, the national media gave virtually no coverage to the parties and candidates and the political issues at stake in the elections. This effectively prevented any systematic national coverage of the policies of various political parties which could present an alternative to the policies of the government.

The State Television and Radio Company focused almost entirely on the referendum. According to the European Institute for the Media, which undertook

detailed monitoring of media coverage at the time,⁵⁵ an internal document of Belarusian State Radio set out two main goals for the campaign: to encourage the population to take part in the referendum, and to encourage an affirmative vote on all the questions put forward. A discussion programme broadcast simultaneously on radio and television four days before the referendum included ten people who almost all expressed the same point of view in favour of the four questions. State television was also used in an apparent attempt to discredit the opposition when, shortly before the election date, there were two broadcasts over a period of three days of a film depicting the Belarusian Popular Front as successors to fascism.

December 1995 elections

During the election campaign towards the end of 1995, the Chairman of the Supreme Soviet, Myachoslav Gryb, was denied access to Belarusian television in order to address the electorate and encourage them to vote. The reason for the refusal given by a senior official of the State Television and Radio Company was that "We believe that additional appeals to the electorate would be unwise, because they can provoke an undesirable and negative attitude towards the [Supreme Soviet], and also because we need to ensure the mass media is not used to create bias". Accordingly, Myachoslav Gryb had to resort to Russian television channels who agreed to give airtime for his appeal to the electorate. But shortly before the broadcast was due, the Belarus Ministry of Communications ordered the closure of the transmitters, ostensibly for preventive maintenance.

November 1996 elections and referendum

During the run-up to the referendum and elections in November 1996, the government used its virtually complete domination of the broadcast media to focus on the referendum, particularly the questions about the proposed constitutional amendments, and to persuade the public to vote for the presidential proposals. (Little or no media attention was paid to the Supreme Soviet elections.) Where the Supreme Soviet's proposals for constitutional amendments were mentioned at all, they were presented in a distorted way. Even voter-education programmes, which should be neutral, were strongly slanted towards encouraging voters to opt for the presidential proposals.

⁵⁵ *The May 1995 Belarusian Parliamentary Elections: Monitoring of the Election Coverage in the Belarusian Mass Media - Final Report* (Dusseldorf: European Institute for the Media, July 1995). Much of the information in this section of the present report is drawn from the results of that monitoring.

According to a survey by the European Institute for the Media,⁵⁶ over 90% of time on the state broadcast media in the run-up to the referendum was strongly in favour of the presidential position; the rest was neutral. None supported the position of the Supreme Soviet.

Despite an amendment to the Law on Press, adopted by the Supreme Soviet in June 1996, requiring state broadcast media to provide airtime for addresses and statements by the Supreme Soviet as well as by the President, the Supreme Court, the Constitutional Court and the Cabinet of Ministers, spokesmen for the Supreme Soviet were obstructed from putting their point of view across on domestic broadcast media. It was intended by the second state radio channel, Radio 2, to give some airtime to a spokesman for the Supreme Soviet, but this was stopped by the radio's management. The Supreme Soviet filed four written requests with the State Television and Radio Company for an opportunity to appear on television to explain their position on the proposed referendum. They received no reply. At the end of September, the Supreme Soviet, for their part, annulled the parliamentary accreditation of the State Television and Radio Company, noting its lack of objectivity and tendentiousness in covering sittings.

Although denied access to the state broadcast media, Semyon Sharetsky, the Chairman of the Supreme Soviet, was given airtime on two domestic non-state radio channels, 101.2FM and NBK. But in each case, shortly afterwards, these channels were summarily closed down.⁵⁷

The only broadcasters which carried the point of view of the Supreme Soviet were the Russian television channels. But on more than one occasion, these channels were taken over for several hours and their wavelengths used by the State Television and Radio Company to relay speeches by the President. On other occasions local correspondents of Russian television channels were prevented from transmitting their footage to Moscow.

The government similarly made use of the printed media to put its own message across to the voters and to obstruct the presentation of alternative information and viewpoints. The presidential proposals for the constitutional amendments were printed and distributed at public expense in a special edition of four million copies of the state-controlled daily *Sovietskaya Byelorussia* distributed to every voter, although this was not until a few days after early voting had started on 9 November. The

⁵⁶ *Monitoring the media coverage of the Belarusian referendum in November 1996: Final Report* (Dusseldorf: European Institute for the Media, Feb. 1997).

⁵⁷ See Section 7.3.

Chairman of the Electoral Commission requested *Sovietskaya Byelorussia* to print the Supreme Soviet's proposals also, but the newspaper asked for payment in advance, for which the Electoral Commission did not have the funds. It was not until 19 November, ten days after voting in the referendum had started, and five days before the final day of voting, that the Supreme Soviet's proposals were made available to the electorate, in *Zvyazda*, a Belarusian-language state-owned newspaper. But this had to be purchased in the normal way, was a much smaller print-run (*Zvyazda*'s normal circulation is in the region of 175,000), and was in the Belarusian language, which is read by only a minority of the population.

A leaflet distributed free of charge to voters, while presented as an official information leaflet, gave a distorted and out of date account of the Supreme Soviet's proposals. Voter-information programmes on television were presented in a way which assumed that voters would vote for the presidential proposals and against those of the Supreme Soviet, and informed them how to complete their voting papers accordingly.

Government officials have reportedly sought to defend the bias in the domestic broadcasting coverage by citing the strong support for the Supreme Soviet's viewpoint provided by the Russian television channels.⁵⁸ But this cannot justify the blatant partiality of the state-owned domestic media, the campaign of disinformation they presented to the public, and the steps taken by the authorities to deny access to the domestic media by alternative points of view.

Instead of any proper debate on the crucial and fundamental issues at stake, the referendum campaign polarized into a crude and one-sided battle between the President and the Supreme Soviet. The media in effect became a weapon in this political battle, instead of a forum in which the debate could be carried out in order to inform the electorate about the issues on which they were to vote.

There is little doubt that President Lukashenko continues to enjoy popular support, particularly outside Minsk and the main towns and in the rural areas. But the flagrant bias of the campaign and the use of the state-owned media to conduct propaganda on behalf of the presidential proposals and to discredit those of the Supreme Soviet raises strong doubts as to what the extent of that support would be if the population had access to more balanced information and a chance to consider alternative views.

⁵⁸ According to the quantitative survey carried out by the European Institute for the Media, just under 50% of the Russian TV coverage was neutral and just over 50% was in favour of the Supreme Soviet's proposals; at no point did these channels give favourable coverage to the presidential proposals.

RECOMMENDATIONS⁵⁹

- During the period preceding an election or referendum, state-financed media have a duty to inform the public about the parties, candidates, issues, voting processes and other matters relevant to the election. As an extension of the state's obligation to ensure conditions for freedom of expression and information and genuine elections, they should be accurate, balanced and impartial in their current affairs and news coverage on any issues relating to the election.
- An impartial body independent of the government should be authorized to monitor and regulate the state-financed media at election times. This body could be an established independent broadcasting authority, or independent electoral commission, or a special committee of broadcasters and political parties, operating in full independence from the government. A mechanism should be established giving the contending parties an effective opportunity to appeal to this independent and impartial body against any coverage (or lack of coverage), perceived bias or imbalance, or refusal by the state-financed media to allocate airtime. The body should examine complaints, reach its decisions, and grant redress urgently in order to minimize the effect of any such unfair practices on the conduct of the election.

... /...

⁵⁹. For a more comprehensive set of recommendations, see ARTICLE 19: *Guidelines for Election Broadcasting in Transitional Democracies* (Aug. 1994).

- The state-financed media should allocate airtime to all parties in the election or referendum on a fair and non-discriminatory basis. There should be an effective and immediate independent complaints mechanism to ensure full compliance with this obligation.
- Non-state media should not be prevented in any way from granting airtime to any parties in an election or referendum or penalized in any way for doing so. The government should create conditions enabling the non-state media as a whole to fairly reflect a plurality of views and information from a variety of sources. It should issue a clear statement to the public and all media that the media are encouraged to broadcast or publish election-related material. Any perceived imbalance in coverage by non-state media, individually or collectively, should not be used to attempt to justify any compensating imbalance in state-financed media.
- Voter education programmes should be genuinely impartial, making no implicit or explicit assumptions about the way the public will vote.

12 RESTRICTIONS ON FREEDOM OF ASSEMBLY — BEATING, ARREST AND DETENTION OF DEMONSTRATORS

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

International Covenant on Civil and Political Rights, Article 21

One of the few remaining means of political expression in Belarus is public demonstrations. But the right of assembly is restricted both in law and in practice. The 1994 Constitution provides for the freedom of assembly "so long as this does not violate the legal order [and] the rights of others". But the legal and other restrictions applied to demonstrations are much wider than those permissible under Article 21 of the International Covenant on Civil and Political Rights which allows only such restrictions as are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. In short, the restrictions placed on the right to assembly are so stringent that people are prevented from being able to exercise it effectively.

Demonstrations and rallies are allowed to be held only with official authorization, which must be sought well in advance. When, as often happens, this is not given, the demonstration is regarded as unauthorized, which leaves the organizers and participants liable to prosecution. Participants in demonstrations have been beaten and detained by the police, and fined — and in some cases imprisoned — by the courts for public order offences. In some cases bystanders taking no part in demonstrations have been swept up in these arrests.

Since 1991, shortly after the dissolution of the Soviet Union, the regulation of marches, demonstrations and rallies fell under the authority of regional executive committees (and, in the case of Minsk, the city authorities). These local regulations were, in substance, broadly similar to the earlier Soviet legislation, in that such meetings could be held only with official permission, with provision for penalties to be imposed in the case of meetings held in contravention of the regulations. However, the local regulations did not themselves make direct provision for penalties — if people were prosecuted for infringing the regulations, the offence would be related to other legal provisions. Many of those detained at or in the vicinity of demonstrations were charged under Article 156 of the Administrative Code, dealing with "petty hooliganism", which provides for up to 15 days' administrative arrest.

Presidential Decree No. 5, issued at the beginning of March 1997, formally established central government control over matters relating to demonstrations, rallies and meetings, vesting responsibility for its implementation in the National Security Council. It sets out a wide-ranging definition of the types of demonstrations, rallies and meetings falling within its scope. It prohibits such events being held in the vicinity of a wide range of official and government buildings, and requires organizers to apply to the authorities for authorization at least 15 days in advance of a planned demonstration. Organizers are not permitted to announce, advertise or otherwise

prepare for such events until they have received authorization. The decree states that the authorities should make a decision on this at least five days prior to the planned date.

The decree sets out a range of broadly defined prohibited activities, including using posters or by other means "humiliating the dignity and honour of the executive persons of state bodies". This provision, like parallel provisions in other legislation or regulations, breaches the principle, which is well established in international human rights law, that special provisions for protecting the reputation of public officials are an unjustifiable infringement of the right to freedom of expression.⁶⁰ The decree also prohibits "using flags and pennants which are not registered in accordance with the established procedure". This effectively makes it illegal for any participants in a demonstration to carry the traditional national flag of Belarus, even if the demonstration itself may have been authorized by the authorities. There is no justification under international human rights standards for such a restriction.

The decree makes direct provision for the imposition of penalties for organizing or participating in unauthorized demonstrations or meetings and for other violations of its provisions. The penalties range from a formal warning to a fine equivalent to \$750 or 15 days' detention (for a second offence the fine can be as high as \$1,500). Fines of several hundred dollars are frequently imposed. Such fines can be ruinous when the average salary is in the region of \$50 a month, and where many of the people so affected are not employed, in many cases having been dismissed or forced to resign from their jobs because of their refusal to conform with the demands of the authorities.

During 1996 and 1997, with heightening political tensions over the plans for strengthening links with Russia and the intense dispute over the constitutional changes, together with the clamp-down on other forms of freedom of expression, political opposition has sought expression in political demonstrations. Many such demonstrations have been unauthorized, and participants and organizers have been arrested and charged with public order offences. On some occasions the police have used an alarming degree of violence against demonstrators.

Those who have participated in or been present at demonstrations have alleged that intimidatory action by police has heightened tension and sometimes provoked violence by demonstrators. Some have alleged also that plain clothes personnel from police and security forces have mingled with the demonstrators and actively attempted to incite them to acts of violence. But, while in some cases there has been violence

⁶⁰ See Section 3.5.

on both sides, and whether or not such action by demonstrators has in any way been provoked by police action, deliberately or otherwise, it is clear that police violence against demonstrators has in many cases been entirely unprovoked and has been out of all proportion to any threat posed by demonstrators or to the requirements of crowd control. Some people who have been detained at demonstrations have also stated that they observed other detainees being beaten after being taken into police custody.

Unprovoked or disproportionate use of force by law enforcement officials in such circumstances is a breach of international law enforcement standards, such as those set out in Article 3 of the UN Code of Conduct for Law Enforcement Officials,⁶¹ which states that

Law enforcement officials may use force only where strictly necessary and to the extent required for the performance of their duty.

This standard has been elaborated in the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials⁶² which states, among other things, that

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

(...)

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

In particular,

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where

⁶¹ Adopted by the UN General Assembly, Res. 34/169 (17 Dec. 1979).

⁶² Adopted at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 Aug. to 7 Sept. 1990.

that is not practicable, shall restrict such force to the minimum extent necessary.

(On this last point it should be noted that provisions of Decree No. 5, under which many demonstrations in Belarus are unauthorized or deemed to be unlawful, violate Belarus's international human rights obligations on freedom of expression and of peaceful assembly.)

The authorities have at times accused the media, particularly the Russian television channels, of provocative reporting of demonstrations. This appears to have been one of the main reasons for the measures taken against the Russian broadcasters, as well as for the obstruction and intimidation of journalists generally — particularly video- and photojournalists — attempting to cover demonstrations. For their part, the state-owned media have apparently, at least at times, played down such events.

At the end of April 1996, during police dispersal of an unauthorized demonstration in Minsk on the tenth anniversary of the Chernobyl disaster, large numbers of people were beaten and over 200 reported detained, including around 20 leaders of the Belarusian Popular Front. About half of the detainees were released within two or three days. The remainder were brought to court, and many were sentenced to prison terms ranging from a few days to a month for alleged public order offences. Two leaders of the Belarusian Popular Front were held pending trial on more serious charges, but after going on hunger strike (as a result of which one of them had to be hospitalized) and sustained protests, in Belarus and internationally, on their behalf, they were conditionally released on medical grounds.

On 19 October 1996 a protest demonstration was held in Minsk as an alternative event to the All-Belarusian Congress, an *ad hoc* assembly convened by the President to demonstrate support for his proposed constitutional changes. The demonstration itself was reportedly peaceful, but several participants were reported to have been detained later, after it had dispersed.

In mid-February 1997 the youth wing of the Belarusian Popular Front held an unauthorized march in Minsk under the slogan "Belarus into Europe", during which they delivered appeals to several embassies. Tear gas was used to disperse the marchers and, according to press reports, over 20 people were taken into custody by the police (some estimates indicated that the number detained was considerably higher). In one case, a person was detained for four days, on the grounds, according to the court decision, that he had "taken part in an unauthorized march, formed part of a column of marchers, and carried a blue flag with twelve yellow stars on it [the flag of the European Union]".

From March 1997 onwards there was a large number of demonstrations and marches protesting against the proposed second union treaty with Russia as well as against the 1996 constitutional changes. Some of these demonstrations were authorized, and some not; in some cases the organizers were given partial authorization, for example to hold a rally at a specific place, but not to process through the streets.

Several leaders of these events, many of them senior political figures and members of the Supreme Soviet, have been placed under surveillance and arrested at their homes for allegedly violating Presidential Decree No. 5 or other provisions. In many cases brought to trial to date, the penalties have been heavy fines, although in a number of cases custodial penalties have been imposed. For example, Lyavon Barschevsky, a leader of the Belarusian Popular Front, was sentenced *in absentia* to five days' administrative arrest for his alleged part in a demonstration in January. In mid-May Semyon Sharetsky, who had been chairman of the Supreme Soviet at the time of the November 1996 referendum, was fined round \$200 for his part in leading a demonstration of around 10,000 people in Minsk on Constitution Day, in mid-March. Some weeks earlier Myacheslav Gryb, who preceded him as Chairman of the Supreme Soviet, and who had taken part in the same demonstration, was fined over \$800 for allegedly insulting the state flag and calling for the overthrow of the existing constitutional order, in violation of Decree No. 5. Commenting afterwards on the court's judgment, he told journalists, "This is the beginning of a reprisal against the opposition Supreme Soviet ... at the hands of judges and prosecutors. One should not expect our courts to be fair, because all decisions are predetermined and the judges follow the orders they receive from above."

At such events the security forces act in a way that suggests they detain people indiscriminately. For example, according to an eyewitness statement, a woman walking with her 11-year-old daughter in the unauthorized procession on 23 March 1997 had a Belarusian national flag snatched out of her hand by riot police (commonly known as "black berets") who attempted to manhandle mother and daughter into a police car. They resisted with the assistance of bystanders, and the girl was tugged one way and another between the police and bystanders until eventually the police desisted. This episode is consistent with accounts by other people detained on demonstrations, who have said that on these occasions the police appear to be aiming to round up enough people to fill the police van, then drive off and deliver them to the police station where they are detained and charged. On the day of this particular protest, involving about 10,000 people, around 70 were reported to have been detained, although some estimates of the number of detainees were considerably higher.

Quite often, as happened in April 1996 in the case of Vladimir Dzuba, described in Section 8, passers-by who have not themselves taken part in a demonstration are caught up in the wave of detentions. For example, a student who was arrested in this way was detained together with a friend on the way home from classes in the early evening of 14 March 1997 in the vicinity of where a demonstration had taken place. The young men were talking and smiling between themselves when the police called to them through a loud-hailer; the police appeared to become annoyed with them and pushed them into a police minibus. An elderly bystander attempted to remonstrate with the police, whereupon they pushed her, too, into the minibus. The police waited until they had rounded up more people to fill the seating capacity of the bus, then drove to the police station.

At the police station the police drew up a document for each detainee stating the offences for which they were held and the applicable legal norms. According to one of the detainees, the documents appeared to be drawn up in a standard way, with a police officer preparing a sample for one case, to be followed for the others. During this time the detainees were permitted to make one telephone call home. Around midnight the detainees, including some middle-aged and elderly women, were taken to the cells. Thirteen men were held in a cell about four metres by five metres, with a communal sleeping platform, a toilet bowl and single tap which had to be used for flushing the toilet and for drinking water. During the three days they were held there they were given only two meals.

On the evening of the third day the student appeared in court. Anyone charged with an offence is formally entitled to a lawyer, but many choose not to make use of this entitlement because it is likely to cause delays in their being brought to trial, with their being detained in the meantime. Indeed, some have stated that they have been told this by the trial judge. It is also widely believed that those who insist on a lawyer and are then found guilty are liable to receive a heavier penalty than those who do not. Accordingly, many people brought to court on relatively minor charges, like this student, waive their right to a lawyer in order to get the process over as quickly as possible and in the hope of receiving a lighter sentence. This student's case exemplifies also another element which is often alleged by those who have been brought to court in such cases: that false testimony is given by police officers who did not in fact witness the alleged actions by the accused. Some people who have been found guilty by the courts on the basis of such evidence have reported that some individual police officers have appeared to be ill at ease about playing this role, and in some cases the evidence they have provided to the court is weak or inadequate; in

such cases the court may put the case on hold for more evidence to be supplied before they can conclude the case.

Although such cases are supposed to be held in open court, the young man's mother was initially denied access to the hearing. But eventually, after continuing to insist, she was allowed in. The witness was a young policeman whom the student had never seen before, and who was unable to give clear evidence in response to the judge's questions. The judge indicated that the evidence put forward by the police at that stage was not sufficient and adjourned the case for later consideration. But after about half an hour the student was called again before the judge and, with no additional police evidence having been presented, he was pronounced guilty of having taken part in an unauthorized meeting and having publicly condemned the political and social situation in the Republic of Belarus, in violation of Presidential Decree No. 5, and he received the minimum penalty of an official warning.

But while he received only the minimum judicial penalty, it had serious non-judicial consequences. His university was informed of his case, and university officials told him that they had the right to expel him on account of this, although they would be unlikely to take such action immediately. However, he was warned that as a result of this he would be likely to fail his next examination, which would result in his expulsion.

This account is consistent with other reports of victimization of students who have participated, or who have been accused of participating, in demonstrations and protests. For example, at the end of March 1997 it was reported that a student serving a ten-day prison sentence for his part in organizing a student protest rally some days earlier had been expelled from the Belarusian State University. It was also reported around the same time that in many higher educational establishments in Minsk the students were being required to sign an undertaking not to take part in unauthorized demonstrations, and that police and school authorities were searching students' rooms and removing national symbols from the walls. This is a clear violation of the right to free expression and free assembly under Articles 19 and 21 of the International Covenant on Civil and Political Rights and other international human rights standards.

RECOMMENDATIONS

- The right to peaceful assembly should be assured in law and in practice. No restrictions should be placed on the right of assembly other than those which are demonstrably necessary in a democratic society for the reasons permissible under international human rights law. No special permission should be required for a proposed demonstration to take place so long as it will comply with such administrative and practical conditions as are necessary to satisfy genuine requirements of public safety, public order and the rights and freedoms of others.
- No restrictions should be placed on the freedom of expression of participants in demonstrations other than those which are permissible under international human rights standards. In particular, provisions prohibiting the use of "unregistered" symbols or flags and "humiliating the dignity and honour of executive persons of state bodies" should be removed.
- Law enforcement officials engaged in policing demonstrations should be required at all times to act in compliance with international standards on law enforcement. In particular, they should not engage in unprovoked use of force. In the event of a need to control disorder, they should use physical force only when strictly necessary and should use restraint when doing so.
- No participants, organizers or leaders of demonstrations should be penalized, under the law or in any other way, for any actions which are within their internationally recognized rights on freedom of expression and peaceful assembly.

13 CONCLUSIONS

Media professionals and human rights activists in Belarus take the view that the situation for freedom of expression has deteriorated significantly since around the beginning of the 1990s. While the level of freedom of expression in that earlier period should not be exaggerated, and state controls were never entirely removed, there had been a significant relaxation in the mid and late 1980s in the Soviet Union. With the political developments surrounding the emergence of Belarus as an independent state in 1991, it was hoped that there would be a greater degree of respect for human rights in the future, and in particular a greater degree of freedom of expression.

But, as in other former Soviet states, the previous legal and political structures in Belarus have not been fully dismantled. For example, the media outlets formerly owned by the Communist Party were simply taken over by government structures, which are in many cases run by the same people who had formerly been running the Communist Party structures. The perpetuation of former structures and procedures, albeit in a different guise, and the persistence of attitudes from earlier years, have obstructed the development of plurality in the media and freedom of expression generally.

With regard to the broadcast media, it is clear that at the government level expectations persist that the role of public sector broadcasters is to support and act as a mouthpiece of the government. This has been ensured by continuing political controls — albeit no longer formally acknowledged as censorship — within the state sector. Such a role is inconsistent with that of a public service broadcaster, which is to ensure the full representation of a plurality of views and balanced information from government and independent sources on matters of public concern. The expectation that public sector broadcasters have a duty to support the government is particularly dangerous in a situation where the state has a monopoly or near-monopoly of the broadcast media. Moreover, in Belarus the state has actively used its monopoly position to force off the air non-state broadcasters which have attempted to provide alternative information and views on matters of public concern. The result is that the only non-state domestic broadcasters able to function are those which carry light entertainment with no substantial material on matters of public interest.

But the events described in this report show that it is not simply the persistence of former structures and habits of thought which pose a threat to freedom of expression in Belarus. The authorities have actively suppressed freedom of expression and obstructed efforts that have been made, not only in the non-state sector, but also

by media professionals working in the state sector, to develop plurality in the media, particularly in the crucial broadcasting sector.

While the degree of control over the printed media is less complete, it cannot be said that the printed media operate freely. The harassment and intimidation described in this report is bound to lead to a degree of self-censorship, especially when the financial resources of the publications are so limited and their economic viability is threatened by these measures. In these circumstances, financial support to the media such as has been provided by the Belarusian Soros Foundation and other institutions is particularly important. The potential loss of such sources of financial support is likely to have a grave effect on the prospects for freedom of expression in the future and, together with the re-registration requirements and the amendments to the Law on Press recently proposed by the government, the implications are very disturbing.

These restrictions on the media are just one element of a broader context of tightening restrictions on freedom of expression generally, in the media, in the political sphere and for individuals, which have had consequential effects on other aspects of human rights. The restrictions on political demonstrations have not only undermined the right to free assembly, but also reveal deficiencies in protection against arbitrary arrest and ill-treatment and the right to fair trial. The restrictive provisions on the use of the telephone system have disturbing implications for the right to privacy. And the events surrounding the elections and referendums have shown how state monopolization of the media effectively deprives the population of their right to participate in genuine elections guaranteeing the free expression of the will of the electors.

The suppression of freedom of expression also has other disturbing consequential effects within the sphere of freedom of expression itself. One effect of it can be an increasing polarization, as any media which are relatively free of government control may attempt to redress the gross imbalances caused by the government's abuse of its near-monopoly position; this in turn induces the government to claim justification for further repressive measures. An example of this is what happened during the November 1996 referendum in the case of the Russian broadcasting media, which were the only audio-visual media to present an alternative point of view to the electorate: the authorities responded to what they perceived as partisan presentation by the Russian television channels, by citing it in justification of their own partisan use of the state media and of the measures they took to suppress or restrict the operation of the non-state domestic media.

The result is that the reality in Belarus with regard to freedom of expression falls far short of its human rights obligations under international law. While there are domestic constitutional and legal provisions which state that they provide for freedom of expression, these provisions are undermined by other, restrictive, provisions which contradict them. One very clear example of this is the Law on Press which contains some apparently fine statements of principle, but the parts of it which are applied in practice are its restrictive elements. Moreover those restrictive provisions are applied in a repressive and arbitrary manner, with no effective possibility of recourse to the courts to uphold constitutional or legal provisions on freedom of expression. The amendments to this law proposed in June 1997 indicate the authorities' apparent intention to crack down still further on the free operation of the media, and underscore the inescapable conclusion that the provisions in the Law on Press which supposedly provide for the legal protection of freedom of expression are in reality no more than cosmetic.

Moreover, in addition to the profoundly disturbing proposals for amendments to the Law on Press, other restrictive measures have been introduced in recent months, such as Presidential Decree No. 5 regulating demonstrations, the decree on border controls, and the revised telephone contract. Such initiatives raise the most serious doubts about the commitment of the authorities to protect human rights in the area of freedom of expression and information. In such a climate administrative measures such as the requirement for re-registration of the media can only be regarded as ominous.

But even if repressive legislation is removed and replaced by more positive provisions (which has not happened in Belarus), freedom of expression cannot be assured by legislation alone. It requires also the establishment of the procedures, mechanisms and processes necessary to ensure the implementation in practice of positive legislative provisions. This includes taking active steps to make the necessary changes in organizational structures and to ensure that those working within those structures, whether in the state sector of the media, in the judiciary, or in the administration of the government itself, are properly aware of, and carry out their duties in conformity with, relevant national legal and constitutional norms and with Belarus's international human rights obligations. This is essential to ensure the effective protection of freedom of expression and related rights which depend on it, and to ensure that the only limitations applied are in full conformity with international human rights law.