

ANNUAL REPORT 1999

Belarus [1]

IHF Focus:

Freedom of expression and the media; freedom of association; peaceful assembly; independence of the judiciary; fair trial and defendants' rights; ill-treatment and misconduct by law enforcement officials; death penalty; freedom of movement; right to privacy; ethnicity.

In November 1997 the UN Human Rights Committee considered the fourth periodic report by the Belarusian government on its compliance with the UN Covenant on Civil and Political Rights. The Committee, among other things, expressed its concern about the significant deterioration of the human rights situation in Belarus since the third periodic report of 1992. It pointed to serious violations of UN standards in numerous fields of civil and political rights, including freedom of expression, independence of the judiciary, the right to fair trial, the death penalty, registration of NGOs, and peaceful assembly.

On 23 June the Belarus National Assembly held a hearing on the observance of human rights in that country. However, the UN Committee's recommendations were not even distributed to the participants of the hearing.

The Belarusian government failed to take any measures to implement the recommendations of the UN Human Rights Committee – in the course of 1998 the human rights situation deteriorated. The government continued its struggle against the independent press, NGOs, political opposition, private businesses, and independent trade unions. Both national legislation and international law were largely disregarded, leaving individuals vulnerable to arbitrary acts by the executive.

In November a Presidential Headquarter for Overcoming the Economic Crisis was set up and vested with governmental powers. At its 19 November session, President Lukashenka declared all branches of power to be under his control.

Freedom of Expression and the Media

The 1996 "constitution"[2] guaranteed freedom of speech, press and access to information. These freedoms were also set forth in the Law on the Press and Other

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Mass Media, which also stipulated the public's right to obtain accurate information about the activities of governmental bodies, public associations and political, economic, international, and environmental issues (article 32). The law also guaranteed journalists the right to carry out their duties and access to information.

In practice, however, the Belarusian government suppressed free expression and cracked down on the independent media. Most publishing houses and radio and television stations were state-owned, and chief editors of state-owned newspapers were state employees, both facts placing the mass media under strong political pressure. Journalists were intimidated and harassed, and the political opposition was refused access to radio and television stations. In addition, international exchange of information was seriously restricted.

Journalists were often hindered from covering rallies and demonstrations. On many occasions, militia and unidentified persons in plain clothes beat them, confiscated video and audio tapes, and smashed their equipment. In 1997-1998 at least 53 journalists were detained under the pretext of checking their identity – even though they could produce their IDs – and issued administrative penalties such as fines and administrative detention. As the Belarusian Association of Journalists (BAJ) requested the authorities to take measures against such misconduct by the militia, the Minsk Procurator's Office replied that "it has not been possible to establish each fact of physical injury as the persons who inflicted them have not been identified." On appeal, the Procurator General's Office on two occasions stated that the militia had acted "within the powers granted to them" while "suppressing anti-social activities."

Since 1997 correspondents of Russian television channels had not been allowed to use the transmission system of the Belarusian TV and Radio Company.

- In March the Grodno Regional Court upheld the sentences for Pavel Sheremet and Dmitry Zavadsky of Russian Public Television (ORT) who had received suspended sentences of two and one-and -half years in prison, respectively, for illegally crossing the border and "damaging state interests." They remained under supervision and were allowed to leave Minsk only on permission. A militia officer visited them regularly. If Sheremet and Zavadsky commit three additional offences, criminal proceedings may again be resumed against them. In November Sheremet was not allowed to leave the country to receive

an award from the
International Committee to Protect of Journalists.

The editorial offices of the newspapers Pagonya, Nasha Niva, Zdravy Smysl, and Vybor were searched and raided.

Amendments made to the Law on the Press introduced non-judicial sanctions and forms of censorship and provided for new obstacles for the registration of the mass media. For example, a local government had to approve the establishment of a media company. Article 9 of the Law on the Press stipulated that registration of a media outlet could be postponed for a month if the authorities needed "additional information." Article 11 stated that a mass media company should be re-registered if "its operation has been suspended twice within one year." Article 16 allowed the registration body to suspend the operation of a mass media company for three months if it had "violated existing legislation." The law also prohibited the distribution, import or export of materials which were deemed to "discredit the honor and dignity of the heads of governmental organs" (articles 5 and 25).

On 26 March 1998 a confidential letter entitled "On Strengthening Counter-Propaganda Against Publications by the Oppositions Press" was distributed within ministries and other government agencies. The letter was signed by Boris Bolozhinsky, senior councilor of the government. The letter instructed authorities "not to hand out any official documents ... to any non-governmental mass media" and not even to comment on them.

Moreover, state enterprises and institutions were advised not to place advertisements in opposition newspapers, which was the main source of their revenue. As BAJ in May demanded that criminal proceedings be initiated against Boris Bolozhinsky for exceeding his authority or misuse of power, the Procurator's Office replied that BAJ was not authorized to exercise legal supervision over the activities of the government.

Bolozhinsky's instructions served as a signal for local authorities to establish an information blockade against the independent press also on the local level.

- In April the Department of the Economy and Market Relations of the Grodno city government refused to provide information to D. Kisel, correspondent of the Pagonya newspaper, on the subbotnik (collective

work imposed by the authorities on free days) held in the city.

- On 29 April journalists E. Tarletsky and T. Snitko were not allowed to enter the courtroom at the Central District Court, although the court hearing was open.

Severe censorship and pressure was applied to the state mass media. On 7 May the position of a "deputy chairman of the executive committee for public relations" was introduced at all executive levels. It is the task of holders of that post to censor the local press.

Various methods were used to close down publications, which were too outspoken. They included printing and rent hikes; refusals to register or re-register a publication, and warnings from the State Committee for the Press.

- The Pinsk city council refused to register Ploshcha, the only independent publication in the city because the newspaper journalists had criticized the local authorities.

- On 29 May the Belarusian State Committee on the Press issued a warning to the independent newspaper Nasha Niva for using the Belarusian spelling rules (tarashkevitsa) generally accepted in the 1920s and cancelled by Stalin in the spelling reform of 1933. Nasha Niva had allegedly violated article 6 of the Law on the Press and Other Mass Media, which stated that "it is forbidden [for the mass media] to deviate from the generally accepted form of the language used." On 22 December the Belarus Supreme Economic Court cancelled the formal warning of the State Committee on the Press. The court ruled that tarashkevitsa was a classic set of spelling rules, and was not a deviation from the generally approved form of language.[3] Having won the case, Nasha Niva was allowed to continue publishing in tarashkevitsa.

Customs officers arbitrarily confiscated materials on Belarusian borders.

- On the Ukrainian border customs officers confiscated 900 copies of the Bearuskiya

Vedomosty newspaper
and several hundred copies of an article entitled "Russia in Near Abroad," written by
leaders of the
Belarusian Popular Front.

On 1 December large state-controlled Minsk enterprises received an order forbidding
the distribution of leaflets and other information media that "give rise
to...unnecessary arguments and cause violations of internal routines."

- The Minsk Engine Plant forbade its employees to distribute virtually any sort of
notices or publications
without permission from the deputy general director of the company.

Freedom of Association

Throughout 1998 the Belarusian government infringed upon free association. The
developments culminated in the 18 September order by President Lukashenka
forbidding registration of NGOs. Deputy Head of the Presidential Administration Ivan
Pashkevich announced that there were plans to re-register all Belarusian
associations in the near future. A similar requirement in 1996 resulted in the
elimination of half of all Belarusian associations (400 out of 800), most of them
promoting democratic changes.

The persecution of NGOs took several forms. In addition to registration problems,
members of NGOs were placed under pressure in their work places or educational
institutions. NGOs no longer could hire premises or they were forced to pay
exceptionally high rents, and the state-run media disseminated distorted information
about their activities and goals.

- Local authorities in Mogilyov refused three times to register the Mogilyov Human
Rights Center and
postponed the registration of the Mogilyov branch of the Belarusian Association of
Journalists and the
Christian Youth Social Center. They also illegally evicted the local branch of the
Children of Chernobyl
Foundation from its office.

- In May the Brest city executive committee refused to rent premises for holding a

conference of the
association of legal counselors.

The state tried to hinder the development of independent trade unions. The presidential administration attempted to interfere in their internal affairs and appropriate their property. Social partnership was only of a formal nature; trade unions' comments on legislation and other issues that affected the interest of employees were ignored. Moreover, independent trade union activities were deemed as "propaganda for social enmity," which was prohibited by the 1996 "constitution," virtually outlawing free trade unions. Towards the end of 1998 the special services appeared to intensify control over their activities.

Peaceful Assembly

Serious limitations to peaceful assembly continued. Organizers of public assemblies had to apply for permissions 15 days in advance, but authorities often rejected them. Decree No.5 of 5 March 1997 introduced more restrictions, including rules of conduct for participants of demonstrations. It also prohibited the use of slogans, streamers and banners that would offend the honor and dignity of state officials, or "are aimed at causing damage to the state and public order, or the rights and the legitimate interests of the people."

Most provisions of the restrictive 5 March 1997 decree were included in the Law on Mass Actions and adopted by the National Assembly in June. Authorities used this law, along with the Code of Administrative Offences, to suppress peaceful assemblies and to prosecute their participants. According to the Belarusian Helsinki Committee, at least 2000 people (including 36 journalists who covered mass events) were affected by these provisions since their adoption, some of them several times. Moreover, militia officers frequently used physical force and special equipment to ill-treat detainees.

On 15 May the Minsk city council passed a resolution "On Law Enforcement in Minsk in Connection with the Holding of Mass Actions in the Period from March through 15 May 1998." It stated that in the spring of 1998 the militia had resorted to violations of law that included unjustified detentions of citizens, often without registering them, holding them for longer periods than they were authorized, and resorting to ill treatment.

Typically, authorities either forbade mass actions or transferred them to suburban places. For example, several picket lines of a free trade union were prohibited in Mogilyov, and the Belarusian Helsinki Committee pickets planned to be held, for example, in Mogilyov, Vitebsk, Bobruisk, Petrikov, Gomel, Pinsk, Grodno, Brest, Baranovich, and Minsk were prohibited, too.

- Gomel city authorities eight times refused to authorize public assemblies of the local branch of the Belarusian Helsinki Committee. On 19 October its chairman Evgeny Murashko was detained during an unsanctioned picket. In December, he was sentenced to ten days in administrative detention after selling posters that stated "a state that violates human rights is a criminal state" at city market even though he had a license for selling posters.

- On 5 November the Belarusian Free Trade Union (FTB) held a peaceful demonstration in Minsk to protest the declining living standard and to demand that President Lukashenka step down. Following the assembly, organizers Maria Aliyeva, Irina Zhihar, and Viktor Ivashkevich, accompanied by 350 people, brought a petition to the presidential administration and handed it over to the Deputy Head of Administration Ivan Pashkevich. This act was deemed a violation of the Law on Mass Actions, and an administrative offence. Nineteen people were detained and prosecuted. On 6 November and 6 December the three organizers were issued warnings. Several participants received the maximum sentence of administrative detention, i.e. 15 days, and were held under extremely hard conditions. Vadim Konopatsky, observer of the Human Rights Center Spring -96, was also sentenced to 15 days in custody though he had not even taken part in the march. According to the Belarusian Helsinki Committee, the defendants were put under moral and psychological pressure during the trials.

Independence of the Judiciary

In 1997 the UN Committee for Human Rights had expressed concern about the lack of independence in the appointment and dismissal of judges and of disciplinary measures against them. It paid particular attention to the absence of any legal guarantees against the dismissal of the members of the Constitutional Court by the president, and criticized the failure of the president to fulfil the decisions of the Constitutional Court and to comply with rule-of-law principles. The same practices continued in 1998.

The Belarusian Helsinki Committee received 29 complaints related to court rulings at various levels. Court proceedings violated both national and international law. Hearings were conducted in the absence of the accused, lawyers were denied access to their clients or to the courtroom, investigations included gross violations of law, judges exerted pressure on the accused, and the courts used fabricated evidence or evidence obtained through illegal means. Judges sometimes made phone calls during court proceedings to get "advice" from members of the executive, on whom they were materially dependent.

- In March Valery Pavlichenko was dismissed from the position of deputy chairman of the governmental Council on Religions and Nationalities. Pavlichenko submitted a claim for his reinstatement first to the Minsk Moscow District Court, and then to the Minsk City Court. Both courts replied that according to the List of Personnel of the Head of State the government, on the approval of the president, was responsible for the assignment of that post, and therefore Pavlichenko's claim was not subject to consideration by a court of law. In May the Supreme Court ruled that the issue was beyond its jurisdiction and should be considered by higher authorities. In October the Panel of Judges on Civil Cases of the Minsk Region Court rejected the complainant's claim.

Fair Trial and Defendants' Rights

Due to the general disregard of law and due process standards, individuals were

arrested without a warrant, refused access to a lawyer, and held detained without informing their families about their whereabouts. Pre-trial detention could exceed 18 months, and it could be extended by the sole order of a procurator. Political opponents frequently ended up in prison for political reasons:

On 23 December the IHF sent an open letter to President Lukashenka to appeal for Vasili Starovoitov, a 75-year-old man who was kept in custody in the city of Kirovsk after being accused of stealing property from a state farm. Since it was well known that Starovoitov was a political opponent there was reason to believe that the charges against him were politically motivated. Moreover, Starovoitov was severely ill and doctors feared for his life if he was to remain under the inhumane conditions to which he had been subjected since the beginning of his trial on 30 November. [4]

The right to a lawyer of one's own choosing was dramatically restricted. A presidential decree of May 1997, incorporated into the Law on the Bar on 6 July 1998, virtually put an end to the free operation of private defense lawyers.

The new provisions vested the Ministry of Justice with the power of issuing licenses to lawyers, and required that lawyers be members of a centralized collegium (or bar), controlled by the ministry. To get a license to practice law, lawyers had to pass a qualifying examination before a committee established by the ministry. After passing, they had to pay an amount equaling ten monthly wages for a five-year license. After this period, the ministry determines whether to renew a license.

At least 150 lawyers were denied licenses after failing the qualifying exams, while at least 20 others lost their jobs and remained unemployed for political reasons, and others were warned of possible exclusion.

- In June 1998 Garry Pogonyailo, who had defended numerous government critics, was stripped of his license to practice law because he had quit the Minsk bar and joined a Russian one, a perfectly legal act under CIS agreements.

- In October the Minsk City Collegium of Lawyers warned Vera Stremkouskaya that she might be disbarred if she continued to disseminate information about human rights violations to international organizations.

- Mecheslav Gryb, a member of the Belarusan Helsinki Committee, was not granted a license though he had successfully passed the needed examination.

The ministry had the right to revoke decisions taken by a bar association, receive various information from its members, annul its decisions, exercise other powers relating to the administration of the lawyers, and to receive information on lawyers' compliance with the law on legal professions. It could also submit proposals for disciplinary measures against lawyers and to revoke their licenses.

The law also set out that lawyers who refused to give free legal assistance to people or who raised their service charges were subjected to administrative prosecution. As a punishment for such "misconduct" the bar had the right to deduct up to 40 percent of the lawyer's earnings for six months.

As a result of the law - out of fear to lose their licenses - virtually no lawyer in Belarus was willing to defend individuals accused of dissent or crimes related to their political activities.

- On 31 July Alexey Ivanovich Filipchenka, a lawyer who had defended many prominent human rights activists, committed suicide. He set himself at fire and died of his injuries. He had just lost a case defending a client in Novopolatsk against an illegal eviction by local authorities. He had learned about plans of the militia to arrest him and did not want to be subjected to further harassment in detention. [5]

III-treatment and Misconduct by Law Enforcement Officials

Law enforcement officials beat and otherwise ill-treated numerous arrestees. According to the Belarusan Helsinki Committee, 75 per cent of detainees were subjected to violent coercion or other abuse by the militia. In addition, many cases of inappropriate use of firearms by the militia and security services were reported. None of such abuses were known to have been investigated by an independent body, and only few officers were held responsible for abuse. One reason for abuses was the fact that militia officers were under strong pressure to "clarify" as many cases as possible.

On 5 May V. Zhagun, who had taken part in an opposition meeting, was hit on the road by a car while trying to escape from unidentified plain clothed persons. He was brought to the Minsk Central District Militia Department and detained. Although Zhagun had a head injury and was bleeding heavily, he had to wait for an hour to get medical treatment. Later a court ruled that the militia's conduct was lawful.

Conditions in Prisons and Detention Facilities

Valery Shchukin, deputy of the last legally elected Supreme Soviet (parliament), was detained in various facilities for 20 days in the summer of 1998 for involvement in political activities. He gave detailed information on conditions in the Minsk Special Detention and Distribution Center, where arrested participants of mass demonstrations were usually held.

According to Shchukin, the conditions remained similar to the system of administrative arrests created in 1956, with the aim of intentionally destroying human dignity. There were no chairs and tables in the cells, and inmates had to eat their meals directly from metal plates without other tableware. Only once in three days were the inmates given a full ratio of food.

Hygienic conditions were disastrous. There were mice in the cells, and all inmates had to use the same cup to drink water, a fact that facilitated the spread of diseases. The lavatory pan, the washbasin and the drinking water tap were connected to form a single structure, and everyone using the lavatory had to do it in plain sight of other inmates. There was no toilet paper or soap and the detainees were not allowed to use their own toiletries, or change clothes. Parcels brought for inmates by relatives were accepted very seldom. Cells were heavily overcrowded and without ventilation. Detainees were not allowed to have TV sets, radios, make phone calls to their relatives, write, draw, read, play any kinds of games, or study.

Detainees had to sleep in beds made of roughly cut planks, 50 cm wide, and sit there all day as, due to overcrowding, it was impossible to walk. Authorities carried out illegal searches and confiscated personal possessions.

Such condition often resulted in inmates falling ill.

- Andrei Klimov, deputy of the last Supreme Soviet, was arrested on 11 November

1997 without a prosecutor's warrant (and, theoretically, enjoying immunity as a deputy). He had been subjected to continuing harassment since the 1996 referendum. Klimov had repeatedly criticized President Lukashenko's policy and lobbied for his impeachment. Following his arrest, Klimov immediately went on dry hunger-strike. His relatives learned about his arrest only accidentally two days later. Klimov lodged a complaint with the Minsk Moscow District Court, requesting that he be released and punished without detention to allow him to take care of his handicapped mother and three small children at home. As of March 1999, Klimov still remained imprisoned in extremely poor conditions although he had suffered a heart attack and his health was generally deteriorating.

Places of confinement were under the control of the Procurator's Office, and there were no independent bodies authorized to receive and investigate prisoner's complaints.

Death Penalty

The criminal code still included the death penalty, which could be handed down for a wide range of crimes. Presidential Decree No. 1 of 21 October 1997 increased the list of capital crimes. The Belarusian Helsinki committee expressed its concern about the secrecy surrounding death penalty proceedings at all levels of justice. In the first six months of 1998, 33 death sentences were handed down. No one on death row was pardoned. This was all the more worrisome considering the fact that there was no independent judiciary and well-functioning judicial system that would have respected national and international law. As a result, individuals were sentenced to death on the basis of circumstantial evidence, without due process.

- Valentin Pantus (24) was sentenced to death for being an accomplice to murder despite the fact that he was mentally ill. Furthermore, according to the Belarusian Helsinki Committee, his case involved many irregularities. For example, investigations were unable to determine the victim's

cause of death, and many witnesses were not interrogated. The court refused to authorize the exhumation of the corpse. As a result of the Belarusian Helsinki Committee's intervention, the chairman of the Supreme Court returned the case to further investigation and, eventually, Pantus' sentence was changed to a 15-year- prison sentence.

Freedom of Movement

The internal residence permit system (propiska) remained in force in Belarus. Without a residence permit, a person had no right to medical assistance, employment, pension, or school education. According to media reports, local authorities in some rural areas refused to delete the residence registration of individuals who wished to move to towns, with prospects for a better future. This was allegedly done to force them to continue to work on collective farms for a minimum salary. For this reason, buying residence registrations, and entering pro forma marriages was a wide spread practice.

In order to travel abroad, one had to get permission from the Visa Registration Department. Article 5 of the law On the Rules for Departure from and Entry to the Republic of Belarus of the Citizens of the Republic of Belarus introduced a considerable number of poorly defined restrictions with respect to the freedom to leave the country, paving way for arbitrary decisions. These restrictions involved information on state secrets, evasion of the performance of duties, and conduct of civil proceedings.

Right to Privacy

In its December 1997 recommendations, the UN Committee expressed concern about reports on arbitrary invasions of privacy, in particular the tapping of telephone conversations and illegal home searches. It also criticized the fact that, under article 20 of the Law On Investigation Procedures, making decisions on the legality of such acts fell within the jurisdiction of the general procurator and was not subject to judicial control.

On 9 October the Belarusian Helsinki Committee held an international workshop on the "Activities of Special Services in a Democratic Legal State: International Experience and Belarus" in Minsk. The workshop, which was attended by representatives of the Institute of National Security of Belarus, the KGB and the militia, lawyers, human right activists, journalists, and judges, pointed out the lack of supervision over the activities of the special services. There was neither control on the part of the procurator, nor any parliamentary supervision.

- On 28 July the Minsk City Court found A. Samankov, Director of the Belarusian First Investment Fund, guilty under article 15(2) and article 170(1), and sentenced him to six years in a colony with strict regime.

According to the Belarusian Helsinki Committee, the conviction was based on false evidence that the KGB had obtained in an illegal manner. At the time of the arrest, the KGB officials did not identify themselves or inform Samankov of his right to make a voluntary statement, which, under article 170(3) of the criminal code would have excluded criminal responsibility. The first interrogation was conducted in the absence of an attorney. Materials on the case were fabricated or distorted, and some were not presented in court.

Recorded telephone conversations were tampered with. The Belarusian Helsinki Committee concluded that the Samankov's case was fabricated and the court judgement ill-founded.

Ethnicity [6]

According to the 1989 census, 77.9 percent of the individuals living in Belarus regarded themselves as ethnic Belarusians. The same census showed that 74.5 percent of the citizens named Belarusian as their native language. Despite such an absolute majority, the government took increasing measures to restrict the use of the Belarusian language and the promotion of Belarusian culture. Instead, Russian was strongly promoted.

Since President Lukashenka took office, the status of the Belarusian language has dramatically changed to the worse in all sectors of life. Language use became a political issue. In 1998 high-ranking authorities no longer used Belarusian at all, and it

was nearly vanished from all levels of the administration. Very few books were published in Belarusian.

Around 500 Belarusian schools have been closed since 1994.

- As a part of their policy of "Russification," the Belarusian authorities took steps to merge the only Belarusian-language high-school in the capital Minsk, Belarusian Humanitarian Lyceum, with a Russian-language school.

The school building was first to become part of the presidential business administration and later of the Belarusian State University.

There were no Belarusian-language radio programs after the only independent Belarusian-language radio station, Radio 101.2, was closed by the authorities. The Belarusian-language press was also vanishing.[7]

It was no longer "appropriate" to use the Belarusian language even in private discussions. Several individuals were beaten and arrested by the police for speaking Belarusian in the street. Belarusian names were no longer used in the residents' registries and in new passports. Even concerts of rock-groups using the Belarusian language were disrupted and denounced, and many local authorities refused to rent concert halls and premises to these musicians.

FOOTNOTES:

1. Unless otherwise noted, based on the report On Execution of Comments by the UN Human Rights Committee, Belarusian Helsinki Committee, 30 November 1998.
2. In November 1996 a constitution was adopted in a referendum that violated international standards and Belarusian law.
3. "Positive Court Ruling for Independent Newspaper," Article 19/IFEX, 24 December 1998.
4. See letter from the IHF to President Lukashenka, 23 December 1998.
5. The Right of Freedom, No. 15-16, August 1998, Human Rights Center "Spring – 96."
6. Based on Human Rights Violations in Belarus, April-July 1998, Belarusian Helsinki Committee.
7. See the case of Nasha Niva, Freedom of Expression and Media.

