

Belarus

Suppressing the last voices of peaceful dissent

Introduction

Amnesty International is concerned that the Belarusian authorities have become intolerant of any public criticism or dissent. The rights to freedom of expression, association and assembly are enshrined in various international human rights treaties, in particular the International Covenant on Civil and Political Rights (ICCPR) to which Belarus is a party, and is bound to uphold and observe. Yet it is with growing concern that Amnesty International has observed that action based on peaceful political beliefs has become near to impossible. The Belarusian authorities are increasingly employing harassment, intimidation, excessive force, mass detentions and long-term imprisonment as methods to quash any civil or political dissent.

Vocal critics of the Belarusian regime risk long-term imprisonment, after unfair trials due to a flawed criminal justice system. This has been illustrated in the course of a number of highly politicized trials of critics, such as politician Mikhail Marinich and academic Yury Bandazhevsky, who are serving long-term prison sentences after trials widely believed to have been unfair.

Amnesty International considers Mikhail Marinich and Yury Bandazhevsky, as well as the leaders of the national strike committee Valery Levonevsky and Alyaksandr Vasiliev, and scores of short-term imprisoned peaceful demonstrators to be prisoners of conscience. An additional concern is the increasing lack of respect for the physical integrity of those held in detention, including of those arbitrarily detained, witnessed most recently 25 March 2005 following demonstrations marking Freedom Day.

The Belarusian government widely uses controversial legislation to restrict the possibilities for non-governmental organizations, political parties, trade unions, journalists and individuals to express their peaceful opinion. For example, the use of official warnings in combination with a bureaucratic system of registration and a controversial set of guidelines has decimated the number of human rights organizations and equally stifles press freedom in Belarus. Criminal insult and slander against the President of Belarus are an increasingly used criminal charge, which can result in long-term imprisonment.

Since the elections and referendum in October 2004, which lifted restrictions on his term of office, President Lukashenka appears to be asserting his control over civil society and clamping down on peaceful opposition with renewed confidence. Although Belarus has come under increasing international criticism for its poor human rights record, most recently at the United Nations Commission on Human Rights (UNCHR)¹, this criticism is met with defiance by the regime.

¹ UN Doc. *Situation of human rights in Belarus* (E/CN.4/2005/L.32), 12 April 2005.

1. Right to freedom of expression

The right to freedom of expression in Belarus is guaranteed by Article 33 of the Belarusian Constitution, and by international treaties Belarus has ratified and therefore is legally bound to observe. Amnesty International considers that the use of the Belarusian Criminal Code to curb the legitimate exercise of the right to freedom of expression violates the government's international human rights obligations, particularly under Article 19 of the ICCPR. Amnesty International recognizes that Article 19 of the ICCPR specifies that certain restrictions on the right to freedom of expression may be imposed if they are necessary to respect the rights or reputations of others, or for the protection of national security or public order. However, Article 19 also recognizes wide latitude for robust criticism of government and other public officials. Criminal law should therefore not be used in such a way as to stifle criticism of state authorities' policies or measures or to intimidate those who voice legitimate concerns about the actions of state authorities.

Amnesty International is concerned that a number of Articles of the Belarusian Criminal Code are being used by the Belarusian authorities for these very purposes. Belarus retains criminal defamation provisions in its Criminal Code in Article 188 (defamation), Article 189 (insult), Article 367 (defamation in relation to the President), Article 368 (insult of the President) and Article 369 (insult of a government official). Defamation and insult contained in media sources can be prosecuted under Articles 188 and 189, which carry a sentence of up to two years' imprisonment. Defamation of the President (Article 367) can result in up to five years in prison.

According to the international organization Article 19², the Articles 367, 368 and 369 are clearly contrary to international standards of freedom of expression, according to which public figures should tolerate a *higher* degree of criticism than ordinary citizens. The Organization for Security and Cooperation in Europe (OSCE) reiterated this concern in March 2005: "*Belarus has harsh libel and insult legislation, which it regularly applies. It is the only country in the OSCE region where two people are serving prison sentences for insulting the dignity of the Head of State. The authorities should be encouraged to liberalize their libel legislation and repeal the insult laws.*"³

Although the Belarusian prosecution authorities rarely used criminal charges for insult and slander until recently, they now seem to be bring such charges on a more frequent basis and not only against journalists. In recent months the authorities have begun to bring such charges in an attempt to silence other critics, including lawyers and opposition politicians.

² Article 19 report: *Pressure, Politics and the Press* (October 2003), p. 111.

³ OSCE, The Representative on Freedom of the Media, Miklos Haraszti, *Visit to Belarus, Observations and Recommendations*, 10 March 2005, p. 4.

Imprisoned for publishing a satirical poem: Valery Levonevsky and Alyaksandr Vasiliev

On 7 September 2004 Valery Levonevsky, the president of the national strike committee of market traders, and Alyaksandr Vasiliev, the deputy president, were sentenced to two years in prison by the Leninsky District Court in Hrodna for publicly insulting the President under Article 368(2) of the Criminal Code. The judge ruled that a leaflet which they had distributed prior to demonstrations on 1 May 2004 contained a public insult to the President. It called on people to take part in 1 May demonstrations "to come and say that you are against 'somebody' going on holiday skiing in Austria and having a good time at your expense". Alyaksandr Lukashenka is known to have spent his holidays in Austria. The other side of the leaflet contained an anonymous satirical poem about the cost of living in Belarus entitled "The Utilities Bill or 'the good life'". In addition Alyaksandr Vasiliev was convicted of disturbing public order by organizing demonstrations on 1 May in Hrodna. The judge also decreed that computers and other equipment that had earlier been taken from Valery Levonevsky and Alyaksandr Vasiliev would be confiscated "in the interests of the state" and both men were ordered to pay fines of 643,278 Belarusian roubles (300 USD) each.

Valery Levonevsky had been arrested on 1 May 2004 in Hrodna and sentenced on 3 May 15 days' detention for distributing leaflets calling for an unauthorized May Day rally. His son Vladimir was sentenced to 13 days for the same offence. Valery Levonevsky's detention was extended on 18 May and he was formally charged on 19 May with publicly insulting the president. Previously on 29 April his three children, Dmitry, Vladimir and Ekaterina, had been briefly detained for distributing leaflets at a market in Hrodna.

Amnesty International considers both men to be prisoners of conscience. In March 2005 the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media stated that he would "continue a dialogue in order to liberalize their legislation [Belarus] on libel and insult. He will also continue appealing to the authorities to free Valery Levonevsky and Alyaksandr Vasiliev, who are serving a prison sentence."⁴

In April it was reported that Alyaksandr Vasiliev had been transferred from penal colony no. 8 in Orsha (Vitebsk region) to a prison hospital in Minsk in order to establish if his health would allow him to perform the heavy workload assigned to him. The head of the OSCE mission in Minsk was allowed to visit him there on 13 April.

The vulnerability of those detained in administrative detention was also stressed by the criminal investigation initiated against the leader of independent entrepreneurs, Anatoli Shumchenko. On 1 March 2005 he had been sentenced to 10 days' administrative imprisonment under Article 167(1) of the Code of Administrative Infringements for organizing an unsanctioned meeting to protest against the introduction of value added taxes (VAT) on trade between Russia and Belarus. On the day of his release he was charged with

⁴ OSCE, The Representative on Freedom of the Media, Miklos Haraszti, *Visit to Belarus, Observations and Recommendations*, 10 March 2005, p. 5.

“hooliganism” under Article 339(1) of the Criminal Code for allegedly attacking his cell mate and was immediately moved to a pre-trial detention centre. He denied the allegations. If convicted he could have been sentenced to up to two years’ imprisonment. Anatoli Shumchenko was released 31 March and the charges against him were dropped, reportedly due to the “insignificance” of the crime and his good behaviour in detention. His release was seen as a gesture to the UN Working Group on Arbitrary Detention, which had expressed concern that: “Allegations were received that administrative detention is also being used in certain cases to obtain information from witnesses in pending cases or from persons who may be charged at a later stage. The Working Group is concerned that information thus obtained could be used against the persons when investigators open a case.”⁵

Human rights lawyer Hary Poganiaila under threat

On 30 November 2004 the vice-chair of the Belarusian Helsinki Committee (BHC), Hary Poganiaila, discovered that the Minsk City Prosecutor’s Office had charged him with a violation under Article 367(2) of the Criminal Code for slander of the President. The charges were based on an interview Hary Poganiaila gave to the Swedish television channel *TV-4* in August 2004. As a legal representative of families of “disappeared” members of the opposition he expressed his suspicion about the complicity of high-ranking Belarusian government officials, including President Lukashenka, in the “disappearances” and possible murder. Belarusian customs officers had confiscated the video-tape with the interview, when the *TV-4* journalist was leaving the country.

Although the Prosecutor's Office prolonged the investigation on 23 February for another month, on 28 February Hary Poganiaila was informed that the criminal investigation had been closed due to lack of evidence. It is widely believed that the threat of criminal action against such a prominent member of the human rights community in Belarus is as a signal to civil society that the Belarusian authorities will not tolerate any public dissent.

In recent years Amnesty International has also repeatedly expressed concern about the imprisonment and subsequent convictions of high profile political opponents of President Alyaksandr Lukashenka.⁶

Imprisoned for his political beliefs - Mikhail Marinich

Mikhail Marinich, a former Minister for External Economic Relations, resigned in July 2001 from the position of Ambassador to Latvia, Finland and Estonia. He had put himself forward as a candidate in the September 2001 presidential elections, reportedly saying, “I do not find

⁵ UN Doc. E/CN.4/2005/6/Add.3 (25 November 2004)

⁶ See for example *Belarus: Dissent and Impunity* (AI Index: EUR 49/014/2000), *In the Spotlight of the State: Human Rights Defenders in Belarus* (AI Index: EUR 49/005/2001) and *Belarus: Four Years On - Prisoner of Conscience Andrey Klimov* (AI Index: EUR 49/001/2002).

it possible to tolerate the system of dictatorship, economic degradation, abduction of politicians and constant violation of civil rights and freedoms."

On 30 December 2004, then 64-year-old Mikhail Marinich was sentenced to five years' imprisonment in a hard labour colony with confiscation of property. In addition he was prohibited from assuming any managerial function linked to "material valuables" for the first three years after his release. The court convicted him of embezzling computers which had been loaned by the US embassy to the NGO *Delovaia Initsiativa*, which was chaired by Mikhail Marinich. The US embassy had submitted documents to the court to say that it had no complaint and reportedly members of *Delovaia Initsiativa* had given evidence that they had agreed that Mikhail Marinich should store the computers on his property.

Various international and national observers⁷, who had followed the criminal proceedings and were present at the court hearing, observing the trial, cast considerable doubt on the fairness of the trial and the final court ruling. Mikhail Marinich was sentenced under Article 210(4) of the Criminal Code for embezzlement by means of abuse of his official position executed on a large scale. In recent years Amnesty International has repeatedly expressed concern about the detention and subsequent convictions of high profile political opponents of President Alyaksandr Lukashenka.⁸

Shortly after the conviction of Mikhail Marinich, a well-known local human rights lawyer and Vice-President of the Belarusian Helsinki Committee, Hary Poganiaila, reportedly stated that the case against Mikhail Marinich was not a criminal case but a civil dispute, since the owner (the US Embassy) of the allegedly embezzled goods had not made any claims and their opinion had not even been heard. "The question of whether or not goods were stolen is decided by its owner. In cases where the owner is unable to defend himself, the state has a duty to interfere, but first and foremost the owner has to be asked its opinion, and in this case the owner (the US Embassy) has clearly stated it makes no claims. .. Look at the cases of Andrei Klimov, Mikhail Chigir."⁹

Amnesty International believes the charges were brought against Mikhail Marinich intended solely to punish him for his opposition political activities and silence his open criticism of the state authorities, and considers him a prisoner of conscience. In August 2004 the UN Working Group on Arbitrary Detention was refused permission to visit him in pre-trial detention. His sentence of five years' imprisonment was reduced on appeal to three-and-a-half years in February 2005.

He was transferred to penal colony no. 8 in Orsha (Vitebsk region) at the beginning of March. During the transfer he complained of feeling unwell on 4 March, but was not allowed to take his medication, because the pre-trial detention facility in Minsk had not sent his

⁷ Including observers from the European Union (EU) and Organization for Security and Cooperation in Europe (OSCE), as well as local organizations such as the Belarusian Helsinki Committee.

⁸ See for example *Belarus: Dissent and Impunity* (AI Index: EUR 49/014/2000), *In the Spotlight of the State: Human Rights Defenders in Belarus* (AI Index: EUR 49/005/2001), *Belarus: Professor Yury Bandazhevsky – Prisoner of Conscience* (AI Index: EUR 49/008/2001) and *Belarus: Four Years On - Prisoner of Conscience Andrey Klimov* (AI Index: EUR 49/001/2002).

⁹ 3 January 2005, *Radio Free Europe/Radio Liberty*.

medical records with him. On 7 March an ambulance was called to the penal colony, as his condition had deteriorated, and the ambulance crew established that he had had a stroke. His lawyer and family were not informed, and only found out on 10 March, when a fellow-inmate who had just been released contacted a newspaper, which then called the family. Various international organizations, including the European Union and the OSCE, expressed their concern about his health condition. Although he was transferred to a Minsk prison hospital on 15 March, considerable concern remains about his access to adequate health care.

Flaws in the criminal justice system have contributed to the imprisonment and subsequent convictions of high profile political opponents of President Alyaksandr Lukashenka. These flaws include the lack of independent prosecution authorities and an independent judiciary, leading to unfair trials. Judges are not independent of the executive branch of government, since all important positions in the judiciary are appointed by President Lukashenka, including most senior city, regional and district court judges as well as judges to the Supreme Court and Supreme Economic Court. The appointment of judges at lower levels is very much dependent upon bodies higher up in the judiciary, which the executive is able to influence. The president also has the authority to appoint six of the 12 members of the Constitutional Court, including the chairperson, while the other six members are appointed by the Council of the Republic, a body of individuals who largely owe their positions to the president. The Human Rights Committee expressed concern about this as early as 1997¹⁰, reiterated by the UN Working Group on Arbitrary Detention after a visit in August 2004, which stated: "Moreover, the Working Group expresses its concern regarding the procedure for the appointment and dismissal of judges, which does not guarantee their independence from the executive branch."¹¹

Legislation and regulations controlling all media

Amnesty International also remains concerned about the overall precarious state of press freedom in Belarus. The Belarusian authorities have been successful not only in stifling free debate through its virtual monopolization of the press and tight control of domestic television and radio broadcasting but also in keeping the independent press in check through a campaign of harassment and intimidation. After his visit to Belarus in February 2005, the Representative on Freedom of the Media of the OSCE stated that: "Overall, the media situation has deteriorated in Belarus over the past couple of years. The number of independent media outlets has been declining; the number of administrative warnings and suspensions has been growing. The state media, speaking with one voice, overwhelmingly dominate the market. In the broadcast sector, all national TV channels are state-owned or controlled. In the print sector, the few independent media outlets are struggling to survive. Libel and insult laws

¹⁰UN Doc. CCPR/C/79/Add.86 (1997) - paragraph 13. "The Committee notes with concern that the procedures relating to tenure, disciplining and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary".

¹¹ UN Doc. E/CN.4/2005/6/Add.3 (25 November 2004)

and even prison sentences are effectively contributing to a lack of a free debate in the media.”¹²

The Ministry of Information regularly employs official warnings and suspensions to control independent media, similar to the system used by the Ministry of Justice regarding the functioning of NGOs. In 2003 and 2004 several independent newspapers, who were targeted by the authorities had to suspend their publication, while others were burdened by crippling defamation suits brought by state officials. Internet publications seem the next target of the authorities, as a new media law will reportedly be adopted in the near future, which includes several provisions to restrict internet publications in a similar way to other media. The proposed amendments have not been made public yet. In his report on his visit to Belarus the OSCE Special Rapporteur called on Belarus to liberalize its media law.¹³

Pressure on the independent newspaper *Birzha Informatsii* and its journalists

On 30 September 2004 the Leninsky District Court of Hrodna ordered Elena Rovbetskaia, the editor-in-chief of the independent weekly *Birzha Informatsii* to pay a fine amounting to 1.3 million Belarusian Rubles (appr. 600 USD). The court ruled that Elena Rovbetskaia had distributed false information through the media offending the President of Belarus' honour and dignity, in violation of Art. 172(1) of the Code of Administrative Infringements. She had written an article criticizing the referendum under the title "Treason in the Name of the People" on 9 September 2004 in *Birzha Informatsii*. The legal action was reportedly initiated on the basis of the following text in the article: "*The referendum announced by Mr. President (he can not get the third term without holding it) is a challenge to society. [To do this] One must not only have a lack of conscience, but also a "masterly" disrespect for the plebiscite, and the absolute certainty that the 'plebs' do not understand and decide anything.*" The court reportedly ruled that the article disseminated false information that did not reflect the legal background of the referendum, appointed in accordance with Article 85 of the Constitution, by calling the referendum "a challenge to the society" linked to a lack of conscience.

Pavel Mazheika, head of the Hrodna branch of the Belarusian Association of Journalists, was sentenced to seven days' detention on 1 November 2004 for a picket that he organized to protest against the conviction of Elena Rovbetskaia. He was sentenced for violating Article 167(1) of the Code of Administrative Infringements for active participation in an unauthorized demonstration.

On 24 November 2004 the independent weekly, *Birzha Informatsii*, was forced by order of the Ministry of Information to close for three months based on a warning issued on the same day. The warning related to the publication of the article "Treason in the name of the people", although its journalist Elena Rovbetskaia had already been fined for its publication. In March 2005 the Belarusian Association of Journalists expressed its concern in an open

¹² OSCE, The Representative on Freedom of the Media, Miklos Haraszti, *Visit to Belarus, Observations and Recommendations*, 10 March 2005, p. 1.2.

¹³ *ibid*, p. 3.

letter to Minister of Information Vladimir Rusakevich about the closure and subsequent inability of the paper to find a printing house. The letter stated that: "The Ministry's decision on suspending "Birzha Informacyi" from publishing for a three-month term might have been aimed at complete termination of the newspaper's activity." At the end of March the publication was still not available in print, but continued its publication online.¹⁴

On 10 March 2005 the OSCE representative on Freedom of the Media, Miklos Haraszti, recommended in his report on his visit to Belarus: "*The current Media Law allows the Government to be highly intrusive in the media field. The Ministry of Information has broad powers to sanction and it has been using these powers exceedingly in the past two years. The Ministry of Information should immediately cease the practice of issuing warnings and suspending newspapers.*"¹⁵

Journalists are hampered in various ways in executing their professional activities, including, as indicated above, through the imposition of fines. They also face the risk of imprisonment, not only through to the use of criminal libel against journalists, but recent cases show links to regulations regarding the organization of and participation in demonstrations.

Andrei Pochobut – short term detention for covering and unauthorized demonstration

Journalist Andrei Pochobut was detained on 3 March, after reportedly having received a request to give evidence about a car accident, at the Leninsky District Department of Internal Affairs in Hrodna. Instead he was detained and charged under Article 167(1) of the Code of Administrative Infringements for active participation in an unauthorized demonstration. He had been covering a demonstration of small business entrepreneurs in Hrodna on 3 March as a photojournalist. On 4 March he was sentenced to 10 days' administrative detention, reportedly despite footage showing him taking pictures. The judge presiding over the case reportedly said, after looking at footage, that Andrei Pochobut should have covered it from "outside of the crowd".

Domestic and international organizations viewed the sentence as a sign of continuing deterioration of press freedom. Reporters without Borders¹⁶ stated: "We are outraged by this sentence, especially as Pochobut produced evidence proving that he was working as a journalist when he was arrested, and because it violates articles 39 (on the right to cover public meetings as a journalist) and article 48 (on the freedom to inform the public) of Belarus' press law."

Andrei Pochobut works for the closed newspaper *Pahonia*, now only published online, and an independent weekly *Den*. Two of his colleagues from *Pahonia*, Nikolai

¹⁴ <http://www.gazeta.grodno.by/368/>

¹⁵ *ibid*, p. 12.

¹⁶ http://www.rsf.org/article.php3?id_article=12835

Markevich and Pavel Mozheiko, served prison sentences for slander of the President of Belarus.¹⁷

On 4 March three other people were sentenced to administrative detention for participating in an unauthorized demonstration. These included a representative of the human rights organization Spring'96, who came to the police station to check on the number of detainees being held after the demonstration.

2. Right to freedom of assembly

Legislation and regulation of public protests

Amnesty International considers that the detention of people solely as a consequence of the peaceful exercise of their fundamental right to freedom of assembly is arbitrary detention. The right to freedom of assembly is enshrined in Article 22 of the ICCPR, as well as in Article 35 of the Belarusian Constitution. The arbitrary detention of peaceful opponents of the government in Belarus has been commonplace since the dissolution of the 13th Supreme Soviet in November 1996. Belarus' opposition staged a series of large-scale peaceful demonstrations, as well as numerous smaller protest actions, throughout the country protesting against President Alyaksandr Lukashenka's dissolution of the former parliament and the rapid deterioration of the human rights situation. Amnesty International condemned the arrests of demonstrators for peacefully exercising their right to freedom of assembly, and considered them prisoners of conscience. Many cases of arbitrary detention have been documented in past Amnesty International reports.¹⁸

The organization of any public protest or meeting in Belarus is controlled by restrictive laws and regulations, including the Law on Mass Events¹⁹, which was amended removing terms, such as "public", in the definition of a meeting. The Code of Administrative Infringements is widely used to detain peaceful protesters. Up until recently the only public form of unsanctioned picket or demonstration, for which people were not at risk of arrest, was on the basis of a 2003 Supreme Court decision, which allowed people to form a line, standing next to each other holding portraits. This kind of action was not considered a picket, although recent arrests around the commemoration of the death of Gennadi Karpenko, a prominent opposition politician, indicate this might change. After its visit in August 2004 the UN Working Group on Administrative Detention recommended that the authorities: "Ensure that

¹⁷*Belarus: As long as there are journalists – there will be prison cells* (AI Index: EUR 49/007/2002), May 2002.

¹⁸See for example *Belarus: Dissent and Impunity* (AI Index: EUR 49/014/00), *Belarus: Briefing for the UN Committee against Torture* (AI Index: EUR 49/002/2001), *Trodden underfoot: Peaceful protest in Belarus* (AI Index: EUR 49/008/2002) and News release: *Belarus: Independence Day marred by new detentions* (AI Index: EUR 49/002/2003).

¹⁹Current version adopted on 7 August 2003 (previous 30 December 1997, amended in 2002 and November 2003).

administrative detention is not used to repress peaceful demonstrations, the dissemination of information or the exercise of freedom of opinion and expression.”²⁰

The general elections and referendum of 17 October 2004

After the elections and referendum held on 17 October 2004, which lifted restrictions on the President’s term of office, the regime of President Lukashenka intensified its control over civil society and clampdown of opposition activities with renewed confidence. National and international organizations widely considered the elections not to be fair or free.

Opposition activists, who held peaceful demonstrations for several days to protest against the outcome of the elections and elections and referendum, were subjected to arbitrary arrest and ill-treatment by the police. According to a lawyer from Spring’96, the judicial proceedings against demonstrators were flawed, in which judges handed down sentences solely on the basis of written police protocols and did not allow the defendants to have access to adequate legal representation. The OSCE reported it was denied contact with those who were detained on 19 October.²¹ At least one member of the youth opposition movement “Zubr” (see also p. 12) was reported to have been expelled from university and a political activist was reportedly fired from his job upon release from detention.

Between 18-25 October reportedly at least 60 people were arrested, mainly in Minsk, but also in regional towns, such as Hrodna. In Minsk, 37 people were charged with participation in or organization of unsanctioned public demonstrations and 21 people were sentenced to up to 15 days’ imprisonment. Others received heavy fines. Those demonstrators who were identified as members of the youth opposition movement “Zubr” were reportedly questioned by KGB officers, who had special rooms allocated to them at the police stations where the demonstrators were held. Excessive use of force by Special Forces (*OMON*) dispersing and arresting demonstrators resulted in serious injuries. On 19 October Anatoly Lebedko, leader of the United Civil Party, suffered concussion, broken ribs and possible kidney damage as a result of beatings. According to witnesses he was chased up the stairs of a restaurant in the centre of Minsk, thrown to the ground and kicked, and beaten on his face and head. “The *OMON* beat me until I lost consciousness,” he reportedly stated later. “A group of seven or eight *OMON* members dragged me along the floor, lifted me by my arms, so I was hanging, one of them hit me in the face several times.”

Anatoli Lebedko filed a complaint against the ill-treatment by law enforcement officials, but although a number of witnesses were questioned at the end of October 2004 the Office of the Minsk City Procuracy did not open a criminal investigation.

²⁰ UN Doc. E/CN.4/2005/6/Add.3 (25 November 2004)

²¹ www.oscepa.org, *Uta Zapf condemns state authorities' attacks on Belarusian opposition*, 25 October 2004

On 21 October it was reported that the Main Department for Internal Affairs of Minsk had initiated a criminal investigation on charges related to Article 342, for organizing group actions violating public order, in relation to the demonstrations of 18-20 October. Upon their release all those who were initially arrested during the demonstrations were informed that they were witnesses in the criminal investigation. The opening of this criminal investigation allowed investigators to summon them to give evidence at police stations and search their homes. In early 2005 members of youth opposition movement “Zubr” were apparently concerned that this step by the authorities had “instilled fear into the minds of many ordinary people, but also those that were active before, who would think twice to now join opposition demonstrations”. On 22 March individual charges under Article 342 were brought against Pavel Severinets (a leader of *Youth Front*), who had been sentenced to 15 days’ administrative detention on 19 October. That same day Nikolai Statkevich (a leader of the Belarusian Social Democrats), who had been sentenced to 10 days’ administrative detention was also charged under Article 342. If convicted both men could face up to three years imprisonment.

Nikita Sasim – “Zubr” member under pressure

Nikita Sasim, a 20-year-old “Zubr” member and former economy student of the Baranovich state college for light industry, has been active in politics since 2003, standing as a candidate for the local council. His activities did not go unnoticed by the college administration and he was asked to stand as candidate for secretary of the Belarusian Republican Union of Young People. He accepted and was elected in September 2003. As he felt more and more pressure from the Belarusian government on the organization’s activities, in particular to show loyalty to President Lukashenka, he decided in protest that to propose all its members join the youth opposition movement “Zubr” instead. This proposal was accepted on 2 March 2004. The college administration’s reaction to this was to invite Nikita Sasim to at least 10 “educational talks” during the following week. In addition, on 8 March Nikita Sasim together with two other “Zubr” members, Andrei Chish and 17-year-old Katya Bankevich, were arrested and accused of “petty hooliganism” under Article 156 of the Code of Administrative Infringements, for distributing leaflets at the college. The City Court of Baranovich sentenced him to 10 days’ administrative detention and Andrei Chish to 7 days. Katya Bankevich was provisionally excluded from the college. On 30 June 2004 the college refused to allow Nikita Sasim to take his exams and excluded him for lack of attendance.

Between March 2004 and the beginning of 2005 Nikita Sasim was arrested at least 25 times, including for distributing copies of a critical Council of Europe report on “disappearances” in Belarus and hanging orange ribbons near the Ukrainian Embassy in Minsk in support of the Ukrainian opposition in December 2004. On 8 January 2005 Nikita Sasim was arrested on suspicion of having sprayed graffiti “Free Marinich” on buildings on Prospekt Skaryna and Volodarski Street in Minsk. He was held for two nights, charged with “deliberate destruction or damage of property” under Article 218(2) of the Criminal Code, which carries a sentence of up to two years’ imprisonment. On 4

April the Leninsky Department of Internal Affairs in Minsk informed him that the charges had been dropped, reportedly due to the insignificant amount of permanent damage.

On 22 March 2005, together with Charter'97 coordinator Dmitry Bondarenko, Nikita Sasim was arrested and charged with "petty hooliganism" and refusal to obey police instructions. They were both sentenced to 10 days' administrative detention. It is widely believed that their detention was a preventative measure to avoid their participation in the Freedom Day demonstrations on 25 March (see also below).

"Zubr"²² is a non-registered pro-democracy and human rights movement formed at the beginning of 2001 and is comprised of predominantly young Belarusians. At an inaugural meeting, held in a park in Minsk on 13 February 2001, the aims of the organization were described as follows: "The acts of evil by the dictatorship are well-known: disappearances, pressure on journalists, the elimination of the native language and culture of the people of Belarus, torture of prisoners. ... The organization has chosen "Zubr" as a symbol of power derived from nature, and will base its activities on non-violent resistance to dictatorship."²³ Since the formation of their movement "Zubr" members have been regularly subjected to harassment, ill-treatment and arbitrary detention due to their visible peaceful protest actions against the regime of President Lukashenka.

25 March – Freedom Day – arbitrary detention and ill-treatment

Freedom Day commemorates the creation on 25 March 1918 of the Belarusian People's Republic (BPR), considered a forerunner of independent Belarus. It was a short-lived entity, as the Bolsheviks on 1 January 1919 announced the establishment of the Belarusian Soviet Socialist Republic, which later became part of the Soviet Union. For intelligentsia and a number of opposition parties in Belarus, Freedom Day is a symbol of national pride, but the authorities do not recognize the date, reportedly claiming the BPR was created by German occupation forces. Since Belarus gained its independence in 1991 the date has seen mass-scale protests, which have in past years also resulted in large-scale detentions.²⁴

On 25 March 2005 a demonstration was initiated in Minsk by former POC and member of the disbanded 13th convocation of the Supreme Soviet, Andrei Klimov, in commemoration of Freedom Day, calling for President Lukashenka to step down. Despite reported preventative arrests in Minsk (see above) as well as outside Minsk of those participants wishing to travel from regional towns, and the expected violence on the part of law enforcement officials, according to opposition figures up to 2000 people gathered on October Square in the centre of Minsk. The demonstration lasted for approximately four hours, during which at least 30 people were arrested.

²² Zubr in Russian means bison.

²³ *Belarusskaia Delovaia Gazeta*, 14 February 2001.

²⁴ See for example *Trodden Underfoot: Peaceful Protest in Belarus* (AI Index: EUR 49/008/2002).

Reports indicate that a number of detainees were severely beaten, in particular in police vans on the way to pre-trial detention centres throughout Minsk. Local human rights lawyer Valentin Stefanovich reported that several detainees were tried in court, although they had severe head injuries. Sentences of administrative detention were handed down to at least 21 people, including “Zubr” activist Andrei Baranov, who was hospitalized after reportedly collapsing in the courtroom.

In the evening of 25 March the Main Department of Internal Affairs of Minsk announced it had initiated a criminal investigation on charges related to Article 342 of the Criminal Code, for organizing group actions violating public order, or active participation in such actions. All those detained were reported to be called as witnesses. It is feared that Andrei Klimov might be held responsible for organizing the demonstration. On 22 April he was arrested and it is feared he will be charged under Article 342 of the Criminal Code for organizing group actions violating public order, or active participation in such actions. At the end of December 2004, on the basis of a number of books he had published, Andrei Klimov was also charged with insulting and slandering of the President of Belarus under Article 367(2) and 368(1) of the Criminal Code, if sentenced for these charges he faces imprisonment of up to five years.

3. Right to freedom of association

Legislation / regulation of activities of civil society

In previous years Amnesty International has expressed its concern about obstacles facing those involved in civil society, in particular human rights defenders in Belarus. Many of these obstacles are bureaucratic and apparently quite arbitrary, hampering them in exercising the rights to freedom of association and assembly.²⁵ This is contrary to Article 36 of the Constitution of Belarus, as well as Article 2 of the Law on Public Association (1994)²⁶, which provide every citizen the rights to freedom of association and assembly. Human rights organizations, as well as trade unions, like all other non-governmental organizations (NGOs), must register with the Belarusian authorities and receive official approval to lawfully function once they fulfil the requirements as set out in Presidential Decree No.2 (1999).²⁷ After being officially registered NGOs, including human rights organizations, are subjected to a set of strict guidelines which include an official system whereby an organization can be closed down after it receives more than two "warnings" in any one-year period. Article 22 of the Law on Public Associations states that public associations can only represent and defend the rights and legal interests of its members and not third parties. A guideline was introduced in June

²⁵ *Belarus: silencing the promotion of human rights* (AI Index: EUR 49/004/2004), March 2004.

²⁶ Law on Public Associations (4 October 1994, amended in 1995, 1999, 2001 and 2003).

²⁷ Presidential Decree No.2 “*About several measures on regulating the activities of political parties, trade unions and other public associations*”, January 1999.

2003²⁸, which enables a court to close down a public organization immediately if it has breached legislation with regards to public meetings, such as demonstrations or pickets.

In March 2005 new rules regarding registration were introduced, which are expected to result in further closures. Political parties, trade unions and NGOs had reportedly been ordered to move all offices from residential premises by 1 February 2005. Failure to do so could result in an official warning by the Ministry of Justice. Most closures are expected on local and regional level as the rules seem to be linked to requirements in the Housing Code, which does not allow organizations to use residential premises. On 14 February the Belarusian Association of Journalists, for example, received such a warning as some of their regional offices were alleged to be located in a residential apartment. Finding public or business accommodation is particularly difficult for regional and small organizations²⁹, and the regulation is a clear signal that the authorities are looking for new ways to close independent organizations down.

In a report on observance of the right to freedom of association in Belarus that was communicated to the government in July 2004 the Commission of Inquiry of the International Labour Organization stated that trade unions in Belarus were subjected to “significant interference on the part of Government authorities”. It stated that the independence of trade unions was compromised and that the rights to freely seek and impart information and ideas through the media and to freedom of assembly had been violated.

Sergei Antonchik – arrested for attempting to set up a new NGO

On 5 October 2004 Sergei Antonchik was sentenced to 15 days’ administrative detention by the Partizansky District Court in Minsk for violating Article 167(2) of the Code of Administrative Infringements for holding an unsanctioned meeting. The meeting had been agreed with the Chair of the Free Trade Union of Belarus (*Svobodny Prafsayuz Belarusi* (SPB)). On 2 October Sergei Antonchik had called an organizational meeting on the premises of the union to set up a new NGO.

On 15 February 2005 more than 10 special police officers and people in plain clothes raided a privately-owned apartment rented by Sergei Antonchik. The police detained Sergei Antonchik, his wife Tamara and around 20 other people. All of the detained people were taken to the Sovietsky District Police Station for an “identity check”. Sergei Antonchik was charged with organizing an unauthorized meeting under Article 167(1) of the Code of Administrative Infringements and then released. On 24 February the Sovietsky District Court of Minsk sentenced him to a 1600 USD fine.

Sergei Antonchik called the court ruling unprecedented. He said, “A precedent has been made in Belarus. Now when people are getting together for weddings or funerals, police will be able to detain, arrest, imprison and punish anyone... .”

²⁸ Law of the Republic of Belarus No. 213-3, 26 June 2003.

²⁹ See for example *In the Spotlight of the State: Human Rights Defenders in Belarus* (AI Index: EUR 49/005/2001), p.41

In the course of their work human rights defenders in Belarus face a deliberate campaign by the Belarusian authorities to frustrate and undermine their activities, aimed at silencing them. In 2003 and the beginning of 2004 a disturbing number of non-governmental organizations (NGOs), directly and indirectly engaged in the promotion and defence of human rights in Belarus, have been closed by a judiciary whose independence has been repeatedly called into question by the international community (see *Belarus: stifling the promotion of human rights*, AI Index: EUR 49/004/2004).

The closure of Spring'96

On 28 October 2003 the Supreme Court ruled to close down *Spring-96*, one of Belarus' most prominent human rights organizations, as a further attempt to suppress what remained of the country's human rights community. Court proceedings had started against *Spring-96* in September 2003, when the organization received a court summons by the Supreme Court in which the organization was threatened with closure on the basis of charges filed by the Ministry of Justice.

As in the case of several other human rights NGOs, the court ruled that *Spring-96* had violated several provisions of a highly controversial law which tightly regulates the activities of civil society. In one instance, the court reportedly ruled that in rendering legal assistance to individuals who were not members of the human rights organization, *Spring-96* had violated the law.

Spring-96 informed Amnesty International in September 2003 that it was of the opinion that its persecution by the authorities was in connection with its public activities (monitoring of human rights, support to victims of political repression, monitoring during the elections). The organization considers the closure of human rights and other NGOs a planned campaign by the authorities, aimed at removal of active independent public organizations from civil society.

On 7 July 2004 the UN Committee on Human Rights accepted a complaint by *Spring'96* against its closure. The Belarusian authorities reportedly responded that it felt the closure of *Spring'96* was legitimate, in particular based on the allegation that the organization had falsified signatures during its registration. In January 2005 the head of *Spring'96*, Ales Bialiatskii issued a written response, refuting the allegations, and indicating that the organization had not violated any existing legislation at that time, and that the decision to close the organization down was politically motivated. He stated that members of the organization had been subjected to harassment, including arbitrary arrest, ill-treatment and loss of work because of their human rights activities.

The Special Representative on human rights defenders specifically mentions Belarus in her fifth report to the UN Commission on Human Rights, published in December 2004³⁰, when she mentions her concern about "the worrying trend noted last year of Governments' drafting and passing new restrictive legislation to regulate the creation and operation of NGOs,

³⁰ E/CN.4/2005/101

resulting in the criminalization of activities in the defence of human rights.” On 21 June 2004 the Special Representative issued a statement about her serious concern at the reported curtailment of the freedom of association in Belarus. She expressed “particular alarm with regard to the situation of the Belarusian Helsinki Committee (BHC), reportedly the last nationally operating human rights NGO, which is threatened with closure”.

BHC - registered human rights organization under threat

In January 2004 the tax inspection office of the Minsk Moskovskaia District accused BHC of using a grant, provided by the EU TACIS³¹ program, without registering the foreign humanitarian aid and not paying taxes in accordance with national legislation. A 1994 memorandum, agreed by the Belarusian authorities and the European Union, grants tax exemption to this program. In June 2004 BHC was cleared by the Minsk Economic Court of all charges for tax evasion, a decision which was upheld by the Appellate Court at the end of July 2004. The court decision confirmed that the organization’s activities were lawful and complied with all procedures as required by the Belarusian authorities.

Despite this court decision a criminal investigation into the alleged tax evasion was ongoing against the chair of BHC, Tatiana Protsko, and BHC’s head accountant, Tatiana Rutkevich until the end of December 2004, when the charges against them were dropped. As part of the criminal investigation a separate audit of the BHC’s activities was announced, carried out by the Ministry for Taxes and Collections, which involved the Ministries of Economic Affairs, Foreign Affairs and Justice. The BHC interpreted these actions, as well as the pressure on its vice-chair Hary Poganiaila (see above) by the Belarusian authorities as deliberate steps aimed at curtailing its legitimate human rights work.

In January 2005 the board of BHC received a written warning by the Ministry of Justice. This was based on alleged violations by BHC’s Gomel and Brest offices. The Gomel Regional Department of Justice, based on the outcome of an audit of the activities of the Gomel offices of BHC, alleged that BHC had violated regulations regarding its membership procedure and their election observer activities in October 2004. This was allegedly in breach of Article 13 of the Electoral Code. The Ministry of Justice also alleged that BHC’s Brest office had had no legal address since 1 November 2003, as their lease with Brest City Organization of the Belarusian Social-Democratic Party, submitted to the Justice Department of the Brest Regional Executive Committee, had no legal force. If BHC receives another warning before January 2006, the organization might be closed down. In response to the warning BHC announced in February 2005 that it would close down all its regional and local offices.

³¹ European Union Technical Assistance to the Commonwealth of Independent States.

Conclusions and recommendations

On 14 April 2005 the Belarusian authorities fiercely rejected the adoption and recommendations of the third resolution in a row by the United Nations Commission on Human Rights, which amongst others “expresses deep concern ... (g) About persistent reports of harassment and closures of non-governmental organizations, national minority organizations, independent media outlets, opposition political parties, independent trade unions and religious organizations, and the harassment of individuals engaged in democratic activities, including independent media”.³² The Belarusian authorities immediately announced it would not extend an invitation to the Special Rapporteur, similar to their refusal in 2004. Minister of Foreign Affairs Sergei Martynov reportedly stated on 18 April 2005: “As regards the so-called special rapporteur for Belarus, we have earlier regarded his stay in Belarus undesirable in this capacity, and we continue to keep to the same opinion.”

The negative reaction of the authorities to international criticism does not come as a surprise in view of the cases in this report. In the past few years Amnesty International has repeatedly called upon the Belarusian authorities to uphold and protect the rights it has committed itself to, in particular the rights to freedom of expression, association and assembly. On a regular basis the organization has expressed its concern that a deliberate pattern of obstruction, harassment and intimidation of human rights defenders and other representatives of civil society remains in place.

Amnesty International is concerned that criminal law is now increasingly used against individuals in such a way as to stifle criticism of state authorities or to intimidate those who wish to voice their peaceful opposition, be it on the street, in the media or in political forums. The cases of Vladimir Levonevsky and Anatoli Shumchenko, in which the use of administrative detention was followed by criminal charges, as well as the criminal investigations initiated after the demonstrations in October 2004 and March 2005 show that the regime of President Lukashenka is willing to use extreme measures against those that publicly protest. The lack of an independent prosecution authority and judiciary has contributed to imprisonment and subsequent convictions of high profile political opponents of President Lukashenka.

In February 2005 representatives of human rights organizations expressed the fear that civil society “will be shut down”, through the closure of most human rights organizations and media outlets before the end of 2005. Amnesty International is concerned that their fear is grounded, looking at the apparent trend since the elections and referendum in October 2004, with examples of excessive control over civil society and clampdown on peaceful opposition occurring on an almost daily basis. This has been accompanied by an apparent lack of respect for the physical integrity of detainees, including of those arbitrarily detained. On 1 February 2005 amendments to the Law on Internal Forces of the Ministry of Internal Affairs³³ allowing

³² UN Doc. E/CN.4/2005/L.32, 12 April 2005.

³³ Law of the Republic Belarus, 25 November 2004, No. 343-3.

the use of fire arms, special measures, military and special equipment to be used “in other cases, determined by the President of Belarus” came into force. Human rights monitors have expressed their concern about these amendments, as they fear that they were introduced to enable additional force to be used to quash public demonstrations, in particular as more protests are expected this year, in the run-up to next year’s presidential elections.

Amnesty International calls on the Belarusian authorities to:

- refrain from the use of criminal law in such a way as to stifle criticism of state authorities or to intimidate those who voice their peaceful dissent;
- to ensure that peaceful demonstrators are not imprisoned, harassed or ill-treated by police simply for exercising their rights to freedom of expression, assembly and association;
- stop the deliberate pattern of obstruction, harassment and intimidation of human rights defenders, by closures, and threats thereof, of NGOs directly and indirectly engaged in the promotion and defence of human rights in Belarus;
- immediately review laws, regulations and administrative practices relating to the registration and activities of non-governmental organizations and independent media in order that their establishment and free operation may be facilitated in accordance with Articles 21 and 22 of the International Covenant on Civil and Political Rights;
- adhere to the principles of the UN Declaration on Human Rights Defenders (*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* adopted by the United Nations General Assembly, 9 December 1998);
- ensure the implementation of its international human rights obligations, including:
 - *No one shall be subjected to arbitrary arrest and detention (Article 9, Universal Declaration of Human Rights)*
 - *Everyone shall have the right to freedom of expression (Article 19, International Covenant on Civil and Political Rights)*
 - *The right of peaceful assembly shall be recognized (Article 21, International Covenant on Civil and Political Rights)*
 - *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests (Article 22, International Covenant on Civil and Political Rights).*