

Freedom of Expression in Belarus after the 2020 Election

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aufferre, trucidare, rapere, falsis nominibus imperium, atque, ubi solitudinem faciunt, pacem appellant

(To ravage, to slaughter, to usurp under false titles, they call empire, and where they make a desert, they call it peace.)

—Tacitus, *Agricola*

Despite having a democratic constitution, Belarus has never been a democratic country, before or after the 2020 presidential elections. This has not stopped the authorities stating otherwise.

Alyaksandr Lukashenka came to power amid post-Soviet nostalgia and maintained the rhetoric of a ‘welfare state’, insisting that prosperity is more important than respect for civil rights. Continuity with the Belarusian Soviet Socialist Republic became a part of the official discourse. After coming to power in 1994, he initiated the restoration of Soviet symbols as the official symbols of the Republic of Belarus—they replaced the historic white-red-white flag and the ‘Pahonya’ coat of arms, which have been state symbols since 1991.¹ Soviet-style administrative and ideological structures, including the KGB, continue to function in the country.

A period of press freedom began following the breakup of the Soviet Union in 1991, but it ended in late 1994 when Lukashenka, who had just come to power, began to interfere in the work of the media. At that time, a lot of newspapers printed blank spaces instead of the report of MP Siarhei Antonchyk on corruption in the circles of the new president. The presidential administration banned the report’s publication in state-owned media, which had previously enjoyed fairly major editorial freedom.² Since then, the government has aimed

at limiting press freedom, constantly tightening legal restrictions on the activities of journalists and the media. The Belarusian Association of Journalists (BAJ) appeared in 1995 to address precisely these government actions, since the Soviet-tradition Belarusian Union of Journalists was unable to defend independent media representatives.

Belarus is sometimes called a ‘reservation of socialism’, and there is still evidence of this in its media. Denationalisation and privatisation of the media have not taken place in the country. The state system of Soviet-style propaganda has been preserved, which is designed to spread ‘state ideology’. The Ministry of Information can block websites and shut down media outlets to ensure that few alternatives to the state propaganda can be heard.³ The media sphere in Belarus can be divided into two sectors: state-run and independent. Media outlets in the independent camp are either privately owned or funded from abroad.

Throughout Alyaksandr Lukashenka’s presidency, the authorities have demonstrated all the attributes of ‘decorative democracy’. There were periodical ‘warmings’ of relations with democratic countries, so-called ‘liberalisation’ efforts, which were followed by periods of tightening repression against the opposition and human rights defenders, who were generally associated with election campaigns. Belarus, to one degree or another, interacted with the UN and the OSCE human rights mechanisms, and engaged in dialogue on human rights with the EU. While it was criticised for human rights violations, the government usually complied with domestic law as well as with ‘national traditions’. Laws were formally respected. There were certain ‘rules of the game’ in interaction with political opponents. Mere dissent was not criminalised.

We cannot speak of the rule of law in Belarus, or of full observance of human rights, as such notions are commonly understood. The

1 Stephen M Norris, ‘History, Memory, and the Art of Protest in Belarus’ (*Origins*) <<https://origins.osu.edu/article/history-memory-and-art-protest-belarus/page/0/0>>.

2 ‘Lukashenka Was Sitting At Tribune And Really Crying’ (*Charter 97%*)

<<https://charter97.org/en/news/2019/2/4/322376/>>.

3 ‘On Mass Media’ (*The Law of the Republic of Belarus*)

<<https://pravo.by/document/?guid=3871&p0=h10800427>>.

law was believed to be written domestic legal acts. These acts were adopted by the puppet parliament in a form pleasing to the presidential administration. One could hope for compliance with some laws, even if these did not always correspond to the internationally accepted principles of law and human rights.

However, the situation surrounding the most recent presidential elections, in August 2020, led to disastrous consequences. In the three days following election day, the Belarusian people faced brutal violence from the security forces, including torture and the use of weapons. This was followed by massive outrages violating fundamental rights and freedoms, which continue to this day. Since the elections, human rights defenders have stated that the country has defaulted on its laws. Crimes are not investigated and laws are generally not observed, at all levels of the state apparatus. Tens of thousands of peaceful protesters have been arrested and unfairly convicted. Hundreds have been imprisoned and deemed political prisoners.⁴

During the last session of the UN Human Rights Council, High Commissioner for Human Rights Michelle Bachelet described the post-election situation in Belarus as a 'human rights crisis of unprecedented dimension'.⁵

The status of the rule of law in post-election Belarus is most clearly reflected in Lukashenka's statement at a meeting in the General Prosecutor's Office.

I don't urge you to save the state in violation of the law. However, when 'practically impudent intervention', as I call it, is being carried out from the outside, and it is being roused from the inside and directed from the outside: you know, sometimes there is no time for laws.⁶

The government asserted that the existing legal framework was too liberal. After the elections, it actively transformed the legislation. In particular, the laws of responsibility for participation in unauthorised demonstrations were significantly tightened.⁷

To protect themselves, the authorities are trying to ban the symbols of protest—recall the white-red-white flag—and completely eradicate any manifestation of dissent, on the pretext of countering extremism and fascist propaganda. Parliament Speaker Vladimir Andreichenko has said:

The priority task today is to maintain security and protect citizens from destructive forces striving to split the Belarusian society and throw the country many decades back in its development. Indeed, we have withstood unprecedented pressure. However, as it turned out, unlike in many countries, our legislation is too liberal to allow symmetrical responses to new forms of extremism and information aggression.⁸

4 (Viasna) <<https://prisoners.spring96.org/en>>.

5 'UN's top human rights forum passes resolutions on Belarus, Myanmar' (UN News) <<https://news.un.org/en/story/2021/03/1088202#:~:text=The%20UN's%20top%20rights%20forum,rights%20situation%20in%20both%20countries.&text=%F0%9F%94%B4The%2046th%20session%20of%20the%20Human%20Rights%20Council%20has%20concluded>>.

6 Лукашенко, 'прокурорам: Знаете, иногда не до законов' <<https://nn.by/?c=ar&i=258800&lang=ru>>.

7 'В Беларуси ужесточены наказания за участие в протестах' (DW) <<https://www.dw.com/ru/v-belarusi-uzhestocheny-nakazaniya-za-uchastie-v-protetah/a-56734374>>.

8 'Call to protect Belarusians from destructive forces' (Belta) <https://eng>

On the same day, the deputies voted to adopt amendments to the laws on large gatherings, on mass media, and on countering extremism. They also passed a bill ostensibly preventing the reemergence of Nazism. It is obvious that the government chose the path of repression and of the suppression of free thought.

Could this have been foreseen?

It was clear from the beginnings of Lukashenka's last election campaign that he had lost the people's confidence. For the first time, the authorities had to deal not with a small circle of 'official' oppositionists, but with massive popular protests, attended by those from all social classes. For the first time, potential presidential candidates have found themselves behind bars on trumped-up charges, without even being registered. There were peaceful protests, but these were followed by mass arrests, mass trials, and mass convictions.⁹ Social tension began to grow, even though not long beforehand no one could have imagined that these elections would differ from the previous. It was clear that the people's rejection of the regime was irreversible.

In the runup to the election, the rhetoric of the Belarusian authorities suggested that they were allegedly preparing for violent action against opponents of Lukashenka. The most popular rival candidates were imprisoned at the beginning of the election campaign, and the people prepared for a tough reaction to protests. At this time, the authorities did not cooperate with international organisations, blocking for example a mission from the OSCE's Office for Democratic Institutions and Human Rights intending to observe the presidential election.

In the media sphere, the Belarusian Foreign Ministry 'ignored' accreditation applications from about 100 foreign journalists by simply not responding to them on time. As a result, the journalists could not work legally, because the Belarusian Law on Mass Media prohibits the activities of foreign journalists unless they are accredited. This happened for the first time in history at Lukashenka's reelection.

Before the 2020 presidential elections, no one doubted that fraudulent count results would cause protests, and that these would be met with government aggression. However, the reality surpassed all expectations. Post-election events resulted in unprecedented violations of free speech, and of press freedom in particular.

The scale of the persecution faced by journalists in Belarus has historically depended on the electoral cycle and the level of protest activity. Violent dispersals of post-election protests occurred in 2006 and 2010. In 2017, protests against a so-called 'social parasites tax' imposed on citizens not in full-time employment were accompanied by restrictions on media freedom and by the harassment of journalists.¹⁰ Belarus is ranked 158th out of 180 countries on RSF's World Press Freedom Index, and the 2021 index shows that it is Europe's most dangerous country for journalists.¹¹

belta.by/society/view/call-to-protect-belarusians-from-destructive-forces-138728-2021/

9 'BELARUS AFTER ELECTION: Report on the human rights situation in Belarus in the post-election period' <https://baj.by/sites/default/files/analytcs/files/2020/2020_elections_tortures_en.pdf>; 'Amnesty International Report 2020/21: The State of the World's Human Rights' <<https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>>.

10 <<https://baj.by/en/analytcs/45>>.

11 'Belarus' (Reporters Without Borders) <<https://rsf.org/en/belarus>>.

The same thing happened in 2020. The protests during the presidential election campaign were of unprecedented scale, and so too was the repression of journalists. Since May 2020, media freedom has deteriorated dramatically, as the government has cracked down on journalists to stop them doing their job.

Harassment, violent attacks, mass arrests, unfair trials, and imprisonment have become routine for journalists working in Belarus.

According to data from the Belarusian Association of Journalists, Belarusian and foreign journalists were arrested more than 480 times in 2020 just for doing their job. In 62 cases, journalists, both male and female, reported that they had been subjected to violence as they carried out their work, during and after detention. In some cases, this violence included torture. In Minsk, the capital, there were at least three cases in which police injured journalists covering protests through use of firearms.¹² Journalists have a number of rights under Belarusian law, but they are nonetheless targeted by the police and special forces. When arrested, most journalists are wearing press jackets and carrying badges and press cards.

The harassment of journalists, along with other human rights violations, does not seem to be punishable by law in post-election Belarus. There are no investigations into the arbitrary detention of journalists. Not a single criminal case has been lodged in response to journalists' complaints about police violence.

Furthermore, journalistic reporting on protest rallies has resulted in mass prosecutions. In 2020, Belarusian judges sentenced journalists 97 times to short jail terms (3–15 days), mainly for alleged participation in unauthorised mass gatherings (Code of Administrative Offences art 23.34) or disobedience of police officers (art 23.4). These court rulings were based on the testimonies of police officers whose identities were usually classified, their faces hidden.

Currently, the most pressing challenges facing media freedom in Belarus are the criminal prosecution of journalists simply doing their job, and the ongoing adoption of harsh laws threatening the normal operation of the media.

17 journalists and media workers, including five Belarus Press Club staff members, are currently being held under criminal charges. Three journalists have already been convicted. The journalist Katsiaryna Barysevich, of influential online outfit *TUT.by*, was tried along with whistleblower doctor Artsyom Sarokin. Sarokin was given a fine and a suspended sentence of two years' imprisonment. Barysevich was sentenced to six months' imprisonment. In Barysevich's case, the reason given was alleged 'disclosure of confidential medical information causing grave consequences' under Criminal Code art 178(3). Barysevich had published information about the death of peaceful protester Raman Bandarenka, who had been severely beaten by masked individuals and driven to a police station in an unmarked van. He then died in hospital. Barysevich's publication of the story on *TUT.by* exposed an official cover-up of his killing. The other two journalists, Belsat TV journalists Katsiaryna Andreyeva and Daria Chultsova, have been sentenced to two years in prison for supposedly organising actions that grossly violate public order under

Criminal Code art 342(1).¹³ Andreyeva and Chultsova conducted a live broadcast of the violent dispersal of peaceful protesters paying tribute to Bandarenka in his neighbourhood.

Never before in Belarus have so many media workers been made political prisoners. 12 are being prosecuted for exercising their right to free speech.

The government is also targeting media organisations. After the election, state-owned printers refused to print four of the most influential independent newspapers (Narodnaya Volya, Komsomolskaya Pravda (in its Belarus edition), Svobodnye Novosti Plus, and Belgazeta) as well as two regional newspapers. Their justifications were flimsy or non-existent. When two of the newspapers printed their issues abroad, the state-run postal service Belposhta and the newsstand monopoly Belsayuzdruk blocked their distribution.

On 16 February 2021, the police raided the apartments of BAJ deputy chairs Aleh Aheyev and Barys Haretski, along with at least six more BAJ members in different cities. They were investigating a criminal offence under Criminal Code art 342, 'organising and preparing activities that grossly violate public order, or actively participating in them'. The BAJ office was searched and then closed by the police for almost a month after.¹⁴

Despite this, the independent media continue to do their job, and are supported by the people of Belarus and other countries. Blocked news websites are accessed through 'mirrors', Telegram channels, and social networks. Print newspapers are published online. Journalists manage to work despite the extremely difficult conditions. The BAJ monitors violations of media freedom and helps at-risk journalists however it can.

Belarusian post-election protesters are very creative. Their creativity was first evident in street posters, made not by artists but by ordinary people.¹⁵ However, artists, actors, and musicians fast got involved in protest activities.

Protest art opposing the official artistic discourse was bound to appear in the environment of the authoritarian regime in Belarus.¹⁶ Like press freedom, the freedom of creativity has depended on the degree of 'liberalism' in the government's mood. In recent years, there were some private art spaces where alternative artworks of any kind could be displayed.

Maria Kalesnikava, one of the most prominent figures of the Belarusian protests, was the director of the Ok16 art space. She fought for a long time for free art, along with theatre producer Inna Kavalionak. However, because of their close cooperation

13 (*Viasna*) <<https://spring96.org/en/news/100613>>.

14 'The Belarusian Association of Journalists is under attack' (*European Federation of Journalists*) <<https://europeanjournalists.org/blog/2021/02/16/the-belarusian-association-of-journalists-is-under-attack/?fbclid=IwAR18PKz114Cw167D915vokXnNVRcvcsnZKV6Zpts1TcThEUQ43Td2D26nOo>>.

15 'Belarusian revolution in posters' <<https://en.newizv.ru/news/politics/25-08-2020/belarusian-revolution-in-posters>>; Сепрей Зеленко, 'Хронотоп протестного плаката: карнавал без диалога' <<https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbmVhYmltcGVyaW9wb3J0YXhcmNoaXZlZGd4OjVhMWMwJmNjdmYTFkNjUxZGM>>.

16 'Online-exhibition Belarusian Protest Art' <<https://www.forumfreerussia.org/projects/beloruskoe-iskusstvo-protesta>>.

12 'Repressions against journalists in Belarus, 2020' <<https://baj.by/enanalytics/repressions-against-journalists-belarus-2020-chart>>.

with potential presidential candidate Viktor Babaryka, they ended up behind bars.¹⁷

During the election-related protests, art of any kind has shown itself to be a vital element of civil society. Support for the protesters is expressed through various creative actions and public statements. 'Neighbourhood' solidarity has given birth to 'neighbourhood' concerts, performances, and lectures, where artists and scientists perform in front of local communities for free. Protest street art is widespread, though the authorities constantly fight against it, painting over graffiti and destroying other art objects.¹⁸

Like everyone in Belarus, creative people are subject to government repression. Concerts, performances, and exhibitions whose content the authorities consider dangerous to them, or those by disloyal artists, are systematically banned. One unusual incident took place in the western Belarusian city of Hrodna. A prosecutor de facto banned the premiere of a play dedicated to the suffering of Jews during the Second World War. Specifically, the play was set in a concentration camp. Since some consider today's Belarus to be like a concentration camp, the play's themes were undesirable for the authorities. The actors were summoned to the prosecutor's office and warned that, if the performance were to proceed, a criminal case could be lodged against them for the 'inciting of racial, national, religious, or other social hatred'.¹⁹ The authorities have already arrested and prosecuted oppositionist painter Ales Pushkin, accusing him of 'rehabilitation and justification of Nazism' through his work.²⁰ Many artists who have publicly condemned government violence have had to abandon their jobs, or have been fired from them, or have had to emigrate.

Belarus' lack of respect for the freedom of expression, along with other fundamental rights and freedoms, has been in the spotlight of the international community. Democratic countries and international human rights organisations do a lot to encourage democracy in Belarus. After the brutal suppression of peaceful post-election protests, they took a stand. They refused to recognise the election results, they imposed sanctions, and they protected supporters of democracy in Belarus. The Human Rights Council adopted two resolutions concerning human rights in Belarus before and after the 2020 presidential election.²¹ Prompted by 17 states participating in OSCE, the OSCE Rapporteur Professor Wolfgang Benedek prepared a 'Report under the Moscow Mechanism on Alleged Human Rights Violations'. The Report concerned the Belarusian presidential elections of 9 August 2020, and was released in late October 2020.²²

The United Kingdom paid particular attention to the issue of media freedom in Belarus. Last November, during the Global Conference for Media Freedom 2020, the BAJ won the first Canada–United

Kingdom Media Freedom Award, for its ongoing commitment to journalistic ethics and principles and for its perseverance and self-sacrifice in the face of an emerging crackdown on media in Belarus.²³ On 4 December 2020, during the Human Rights Council's Interactive Dialogue on the High Commissioner's report on Belarus, 42 states supported the Joint Statement on Media Freedom in Belarus proposed by the UK.²⁴

It is hoped that democratic countries will be consistent in their support for democracy in Belarus, and respond to human rights violations proportionally and by any available means. This would prevent further escalation of the human rights crisis that has followed the 2020 presidential election. In particular, they are expected to take all necessary steps to facilitate a dialogue between the relevant actors in Belarus. The ideal results of such a dialogue would be a new presidential election, monitored internationally, and the establishment of an independent international body for investigating human rights violations. This body would assist individuals and civil society organisations promoting and protecting human rights.

After the elections, the space for the realisation of democratic freedoms narrowed, but the importance of society increased. Government bodies can still impose their will on the people, but they have lost their credibility in society. The prevailing opinion is that the current government is unjust.

The Belarusian election protests were not a direct result of opposition activities. They are a social movement. Their leader has not been a politician, but an ordinary woman, Svetlana Tikhanovskaya. Belarusian society 'outgrew' the Lukashenka regime, a survival from the Soviet period. This is partly a result of the steadily growing Internet access in Belarus, and also of generational change.²⁵ The younger generation does not accept the irrelevant official ideology.

One of the important new characteristics of the protest movement has been an unprecedented self-organisation of society. For example, special online tools for community-building and solidarity have been made by volunteers outside Belarus. The most famous are #BY_help and BY_SOL. These tools provide a stable way to collect and distribute donations, and they give protesting Belarusians confidence that, if they face reprisals by the authorities, they will have support and a livelihood.²⁶

Of course, many Belarusians fear for themselves and their loved ones, but they do not fear totally for the future. Many have been, and are still being, harassed. However, there is a feeling in society that the demise of the current regime is a foregone conclusion. People imagine that their future will be without fear and violence. There is empathy in society, uniting people regardless of their political

17 (*Viasna*) <<https://spring96.org/en/news/99460>>.

Note that Inna Kavalionak is now free.

18 Raman Vasiukovich, 'Paint It Again: Minsk Opposition Mural Becomes Flash Point' <<https://www.rferl.org/a/belarus-minsk-opposition-mural-flash-point-tsoi/30844323.html>>.

19 'В Гродно не состоится спектакль, осуждающий фашизм. Актеров вызвали в прокуратуру' (*TUT.by*) <<https://news.tut.by/culture/723175.html>>.

20 'Arrested artist Ales Pushkin recognised as political prisoner' <<https://belsat.eu/en/news/06-04-2021-arrested-artist-ales-pushkin-recognised-as-political-prisoner/>>.

21 <<https://undocs.org/en/A/HRC/RES/45/1>>.

22 'OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus' <<https://www.osce.org/odihr/469539>>.

23 'United Kingdom and Canada announce recipient of first Media Freedom Award' <<https://www.gov.uk/government/news/united-kingdom-and-canada-announce-recipient-of-first-media-freedom-award>>.

24 'Human Rights Council Interactive Dialogue on Belarus: Joint Statement on Media Freedom in Belarus' <<https://www.gov.uk/government/speeches/human-rights-council-interactive-dialogue-on-belarus-joint-statement-on-media-freedom-in-belarus>>.

25 For more on this issue, see Vol'ha Sjachovič, 'Geknebelt von der groben Macht Pressefreiheit und Medien in Belarus' (2020) 10–1 *Osteuropa* 241.

26 In-depth treatment: Максим Руст, 'Как интернет (почти) победил режим' <<https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbm9mYm93b3J0YXVxhcmNoaXZlZG40JjYxYzBmZjk4ZTRhYzRmMzE>>

preference, social status, educational level, or anything else, in support of those repressed.

In the post-election period, 'neighbourhood' and sectoral solidarity emerged. Local community associations resist government pressure. Among the athletes, artists, and other professionals forced to flee the country, some have set up funds to support their persecuted fellows in Belarus.

While many are frustrated by the lack of a quick victory, there is not a sense of total futility. There is an understanding that the active protests were not in vain. The Belarusians who voted against Lukashenka have a feeling of belonging to the majority, and this feeling cannot be erased. People feel that a transfer of power is inevitable, though they do not feel it will happen soon, or painlessly.

What is the power of the written word in modern Belarus? Is the pen mightier than the sword?

If you consider the written word to be the word of truth, then its power is too great to be suppressed. It is the word in the press, the word on Telegram, the word on Facebook, and so on.

This is essentially admitted by the authorities. The authorities sought to plunge Belarus into an information vacuum by shutting down the Internet for three days after the election. Since then, access to more than 70 independent information websites has been blocked by the Ministry of Information.

The events that followed the presidential elections in 2020 revealed that the Belarusian government considers the free flow of information via independent media and Telegram channels to be a threat. All repression of independent journalists and media outlets is the admission of the power of the written word.

It is obvious that the authorities are trying to silence the press. They constantly increase their pressure, grossly violating their citizens' right to information, and no one can predict when this will end. The official discourse constantly references an 'information war' being waged against the state. The state's response to this is to wage war on the truth. Every day brings new challenges to the independent media community.

On 16 April 2021, a package of draconian laws was adopted, including amendments to the Law on Mass Media. It consolidated the emergency measures being applied in relation to protest manifestations of any kind, being officially called 'extremist activities'. As he presented the bill, Belarusian Information Minister Igor Lutsy said:

The information being spread over the Internet does not always contribute to the development of the society and the state. Internet [sic] has become a tool of information wars aimed at destroying societal foundations and moral values and at times entire countries.²⁷

Despite extremely difficult and dangerous working conditions, independent journalists continue to fulfil their professional duties by telling the truth about what is happening in the country. The

support independent media enjoy from society, and the huge growth in the audience of Telegram protest channels, show that there is a public demand for non-government information.

Chatham House conducted an opinion poll, released in February 2021, asking Belarusians: "To what extent do you trust or distrust the institutions listed below?"²⁸ Belarusians ranked independent media as the most trustworthy. This shows that the state is not winning the 'information war'.

Is there still a long time to wait before democracy comes to Belarus? No one today can answer this question, just as no one could foresee the collapse of the Soviet Union, even a year before it occurred.

²⁷ 'Concern over Internet impact on Belarusian population' (*Belta*) <<https://eng.belta.by/society/view/concern-over-internet-impact-on-belarusian-population-138750-2021/>>.

²⁸ Chatham House, 'Belarusians' views on the political crisis' <<https://drive.google.com/file/d/1f48Bx2sa11VpWDhSGPdqnfrqhddrw6x/view>>.