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## Belarus Government Hinders Freedom of Expression

by Tom Lynch\*

Freedom of expression has been the focal point for many of the most important human rights advances of modern history. The English poet John Milton stated, "(g)ive me the liberty to know, to utter, and to argue freely according to conscience, above all liberties," and struggles over freedom of expression led to such historic agreements as the English Bill of Rights in 1688 and the U.S. Bill of Rights in 1791. More recently, the UN General Assembly supported the continued need to protect free expression when it passed Resolution 59(I) in 1946. Resolution 59(I) holds, in part, that the freedom to "gather, transmit and publish" information is "a fundamental human right and . . . the touchstone of all the freedoms to which the United Nations is consecrated."

Although freedom of expression is often regarded as the most fundamental human right, it may also be the most contested. This struggle is exemplified in the former Soviet state of Belarus. The rights of the citizens of Belarus have long been abridged, first by Nazi totalitarianism, then by Soviet rule. Belarus finally attained independence in 1991, only to have the possibility of democracy eroded by the 1994 election of President Alyaksandr Lukashenka. Lukashenka has assumed total governmental control and has resorted to ruling by decree in many situations. In particular, Lukashenka has greatly restricted the rights to freedom of expression. He has promulgated these policies despite Belarus's international obligations to protect freedom of speech.

### International Instruments Protecting Freedom of Expression

Although many individual nations previously recognized and honored freedom of expression in their respective national laws, it was not until the 1940s that the international community concentrated on encouraging all nations to respect freedom of expression. In 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR), which is considered today to be binding as a matter of customary international law. According to Article 19 of the UDHR, "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." As customary international law, this fundamental tenet of human rights binds Belarus.

In an effort to strengthen the UDHR, the UN Commission on Human Rights drafted the International Covenant on Civil and Political Rights (ICCPR) in 1953, which entered into force in 1976. Article 19 of the ICCPR pertains to freedom of expression and uses protective language similar to that in the UDHR. Belarus signed the ICCPR without reservation in 1973. The ICCPR language removes any doubt that international law protects freedom of expression, and Belarus, as a signatory, is obliged to comply.

Regional instruments of international law similarly oblige their signatories to respect the right to free expression. In 1950, the Council of Europe, inspired by the UDHR, drafted the European Convention on Human Rights (ECHR). The ECHR came into force in 1953. Section 10(1), also using language similar to the UDHR's, mandates that "everyone has the right to . . . hold opinions and to receive and impart information and ideas." The ECHR, like the ICCPR, is legally binding on its signatories, and it is enforced through the European Commission of Human Rights and the European Court of Human Rights. Belarus applied for membership and

received guest status with the Council of Europe in 1993. Although its application process stalled in 1997 when the Council of Europe suspended it for failure to achieve, among other things, stable democracy and respect for human rights, Belarus has strong incentives to comply with the ECHR in order to advance its cause for full Council membership.

The Organization on Security and Cooperation in Europe (OSCE) also made a regional declaration outlining its commitments to human rights, including freedom of expression, through the Helsinki Final Act of 1973 and subsequent documents. For example, the Concluding Document of the 1989 OSCE Vienna Meeting confirmed its Member States' "commitments concerning seeking, receiving and imparting information of all kinds, [to] ensure that individuals can freely choose their sources of information." The OSCE's commitments are not legally binding, but their political impact is strong due to their widespread dissemination to the public. In addition, Belarus is a participating state of the OSCE and has agreed to abide by the Helsinki Final Act. As a result of this and the previously mentioned agreements, Belarus is clearly obliged under international law to protect, not hinder, freedom of expression.

### Protected Versus Non-Protected Speech

These international human rights instruments allow for the two-way flow of information, consisting of both the rights to receive and to impart news and ideas. However, the ICCPR and the ECHR, which, as noted, bind or influence Belarus to varying degrees, permit states to limit the right of free expression, in essence clarifying that this right is not absolute. Article 19(3) of the ICCPR declares that a state may restrict freedom of expression to protect the rights and reputations of others, safeguard national security and public order, and protect public health or morals. ECHR Article 10(2) permits a broader range of restrictions, such as allowing states to protect their territorial integrity, prevent the disclosure of confidential data, and secure the judiciary's integrity. States are not bound to impose either ICCPR or ECHR restrictions; they are merely available for the state to employ.

Although limitations on free expression are allowed under international law, they are simply exceptions to the universal right of free expression. For example, the European Commission on Human Rights, in *Handyside v. United Kingdom*, qualified the restriction clause of ECHR Article 10(2) as that of a mere exception to the general rule of free speech. Furthermore, these restrictions can only limit freedom of expression to the extent outlined in the applicable treaty or covenant.

In *Klass v. Federal Republic of Germany*, the European Court of Human Rights ruled that restrictions placed on a guaranteed freedom are to be strictly construed and must follow a two step process. First, the state must offer proof to show that the restriction is permissible under the treaty, and, second, the state must show that the exception is necessary for the preservation of a democratic society. For example, ECHR Article 10(2) permits restrictions on speech that is blasphemous. This restriction does not imply, however, that governments may restrict all blasphemous speech, only such speech that threatens democratic society. The state must assume this burden of proof.

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International law also considers a person's situation in society when restricting freedom of expression. The "duties and responsibilities" of a person, as called for in ICCPR Article 19(3), may differ from person to person. A person's right to protection against defamatory or slanderous speech, therefore, must be analyzed in relation to his societal duties. For example, in *Lingens v. Austria*, the European Court of Human Rights held that a government official accused of holding an "accommodating attitude" towards the Nazis had to endure more criticism as a result of his public position. The Court ruled that public figures must endure more criticism than private persons in order for political debate, essential in democracy, to properly function. Defamation laws must honor this distinction. In conclusion, as an ICCPR signatory and a potential member of the Council of Europe, Belarus has the right to restrict speech in approved situations but must abide by the limitations that *Handyside*, *Klass*, and *Lingens* place on this doctrine.

### Crackdown on the Independent Media in Belarus

Since his election, Lukashenka has used restrictions on the press to assume more power and shield his administration from opposition. In 1996, his government pushed through an illegitimate amendment to the 1994 constitution which, among other objectives, allowed Lukashenka to crack down on the independent media. In March 1998, using this amendment, Lukashenka authorized an internal government instruction entitled "On Strengthening Countermeasures Against Articles in the Opposition Press." This order outlines three strategies to counter anti-government media coverage. First, it prohibits ministries, state committees, and other branches of the government from sharing any official documents with the non-state media. As a result, the independent media in Belarus can no longer obtain official information relating to the government. One example of the consequences of this provision became apparent when the Belarusian Ministry of Emergency Situations used this directive to refuse the independent media access to government documents pertaining to cleanup efforts following the Chernobyl nuclear accident, thus denying Belarusians important public health information. Second, the 1998 order prohibits state officials from discussing government documents with non-state media sources, thus further withholding potentially important information from the public. Third, it forbids state enterprises from advertising in the independent media. Because these businesses constitute the majority of independent media advertisers, this order severely limits the financial resources of these media outlets.

Under a different government decree, promulgated in January 1998, non-state media outlets are required to obtain governmental approval before distributing legal information, such as law texts and governmental decrees. Consequently, for an independent media outlet to publish such information, it must first hire a government-approved specialist who can apply for the information license. This painstaking process cripples many non-state media outlets that are financially burdened and do not have access to these specialists. The government also retains the power of suspending a media outlet's license for breaching government regulations. This suspension policy clearly aims to undermine the independent media because it does not apply to state media outlets.

These presidential orders denying the independent media access to legal documents and governmental information vio-

late the media's protected right to disseminate information and inform citizens about the state of the government. ICCPR Article 19(2) states that freedom of expression includes the right not only to impart information, but also to "seek and receive" information as well. To achieve this end, the government must allow the public necessary tools, such as independent newspapers, and not inhibit the two-way flow of information unless a valid reason for restrictions exists. However, the Council of Ministers, the legislative body that Lukashenka created to replace the legitimate parliament he disbanded in 1996, failed to offer proof that these restrictions were necessary, as *Klass* requires. Similarly, the government-imposed licensing requirements and restrictions on government information contradict the OSCE's 1989 Concluding Document, which specifically mandates that "individuals can freely choose their sources of information." By requiring all media outlets to obtain government licenses and prohibiting dissemination of government information by independent sources, the government denies individuals access to many independent sources of information.

Despite the hardships the government has imposed, there remains a strong core of resistance to speech restriction policies among the independent newspapers of Belarus. The government has used numerous methods to silence these critics. For example, in November 1997 the government closed the newspaper *Svaboda*, the most widely read independent newspaper in the country, for publishing articles alleged to "incite discord in society as well as between the citizens and the government." The government has also exiled several other independent publications from Belarus. Although some of these organizations have begun to publish in neighboring Lithuania and distribute across the border in Belarus, these resistance techniques, which involve high publication and transport costs, are economically burdensome.

### Restrictions on Public Debate

In addition to creating hardships for the independent press, the Belarusian government also has passed a collection of legislative changes tightening control over public, pro-democratic debate. In particular, the government instituted new provisions limiting criticism of public figures. One provision restricts media criticism of the government by amending Article 5 of the Belarusian Law on Press and Other Mass Media. Another amendment to Article 5, adopted by both houses of the Belarusian National Assembly in January 1998, prohibits the media from publishing material "damaging the honor and dignity of government officials whose status has been established by the Constitution." In June 1998 the government went even further by amending Article 5 to include the prohibition of material explicitly "damaging the honor and dignity of the President." Violations of these amendments by a media outlet can lead to government warnings and even suspension.

Another June 1998 provision limiting free expression, entitled "About criminal liability for assault on the President," amends the Belarusian Criminal Code to sentence a person found guilty of insulting or slandering the president to up to four years imprisonment or two years of hard labor. In one widely publicized case, Belarusian poet Slavimir Adamovich was convicted under this law and released, after serving ten months of pretrial detention, for writing a satirical poem entitled "Kill the President."

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Convention is satisfied because Kosovo has a president, a prime minister, and government representatives living in many other countries, demonstrating the region's capacity to enter into diplomatic relations with other states.

The European Community (EC) adopted a common position on state recognition in the 1991 document, "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" (Guidelines). These criteria lay out political considerations for state recognition, and they set a precedent for the types of political criteria that may be applicable to Kosovo's claim because they were used previously to recognize similar claims by Bosnia-Herzegovina, Croatia, and Macedonia. The requirements for state recognition in the Guidelines are: (1) respect for the UN Charter; (2) guarantees for the rights of ethnic groups and minorities under the Final Act of Helsinki and the Charter of Paris; (3) acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation; (4) non-recognition for entities that are the result of aggression; (5) respect for the inviolability of all frontiers unless changed by peaceful means and by common agreement; (6) acceptance of the commitments for regional stability and security; and (7) commitment to settle peacefully all questions of state succession.

Kosovo took steps towards meeting these considerations when the ethnic Albanians of Kosovo, acting through representatives of their popularly elected government and the KLA, signed the Rambouillet Peace Agreement in France in

February 1999. The agreement's drafters were conscious of the EC guidelines, and the resulting peace agreement fulfilled the criteria set forth therein. An especially important guarantee that Kosovo made in signing the agreement is the implementation of policies to protect the estimated ten percent Serbian minority in Kosovo.

### Conclusion

Kosovo has a compelling case for secession. International legal criteria established through state practice support this outcome, which would allow Kosovars to exercise their right of self-determination. The Rambouillet compromise agreement would have granted Kosovo intermediate sovereignty and made secession unnecessary. In light of Milosević's unwillingness to sign the agreement, the ongoing NATO bombing, and the gross violations of human rights committed by Serb forces in Kosovo, however, the continued stance of Western states to promote intermediate sovereignty instead of independence for Kosovo is shortsighted. The tide may be turning, as some NATO countries have begun to express their support for Kosovo's independence. Kosovo has met the legal criteria necessary for secession under current state practice, and, therefore, the only remaining impediment to secession is the political will of the international community. ☉

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A third restrictive provision adopted by the Belarusian government amends the Administrative Code of Belarus to prohibit "the use in public places of placards, banners, and other items the content of which degrades the honor and dignity of the President." Convictions under this provision can lead to a fine of up to U.S.\$500 or 15 days imprisonment.

The limitations on free expression imposed by these three provisions have grave consequences for the citizens of Belarus. The press and individuals are prevented from offering legitimate criticism of state officials, a fundamental cornerstone of democracy that is supported by international law. In *Lingens v. Austria*, the European Court of Human Rights stated that "freedom of political debate is at the very core of the concept of a democratic society . . . . The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual." In addition, the U.S. State Department's 1998 country report on Belarus criticizes the government because its defamation law "makes no distinction between private and public persons for the purposes of lawsuits for defamation of character." By erasing the difference between public and private persons, the passage of these provisions by the Belarusian government hinders its citizens' ability to engage in meaningful political discourse.

Additionally, as noted, Article 19(3) of the ICCPR and Article 10(2) of the ECHR permit certain narrowly defined exceptions governing freedom of expression. *Klass*, however, clarified that these exceptions are allowed only when they are absolutely necessary for the preservation of a democratic society due to a specified national security concern or other clear exception. The amendments to Article 5 do not fall under these limited exceptions because they offer no

rationale for limiting expression other than to protect the "honor and dignity of government officials." Furthermore, the changes to the Belarusian criminal and administrative codes, which similarly limit free expression, also fail to justify such limitations for any legitimate government necessity.

### Conclusion

The Belarusian government has defended its actions as the natural consequence of a new and emerging democracy and as the outgrowth of Belarus's unique approach to representative government. In a June 1998 statement, Mikhail Myasnikov, a presidential advisor, asked his supporters to offer a "decisive rebuff to those who impose their views and notions of democracy, taking advantage of strength and international influence." The international community, however, has criticized the government's measures as anti-democratic. For example, in addition to the U.S. State Department country report, in November 1998 the Commission on Security and Cooperation in Europe (CSCE) published a report assessing the current situation in Belarus. The CSCE found that the Belarusian Government "continues to suppress [freedom of expression, association, and assembly] through restrictive presidential decrees, arbitrary arrests, detentions, fines (many excessive), beatings, threats and other forms of intimidation and harassment." The citizens of Belarus have recognized the unlawful practices of President Lukashenka's regime, but need more assistance in their efforts to reverse current restrictive policies on free expression. Only with these advances can Belarus effectively move towards democracy and protect the human rights of its citizens. ☉

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