

BRIEF

Update on new restrictive draft legislation in Belarus

MAY 2021

During the past six months, the parliament of Belarus adopted or is considering adopting a number of laws restricting basic human rights.¹ According to Belarus experts, these laws are designed to suppress protest activities and penalize any person who protested against the fraudulent results of the August 2020 presidential elections, during which Alyaksandr Lukashenko unlawfully claimed victory over Svetlana Tsikhanouskaya. New laws restrict protest activities and penalize participants of peaceful protests, journalists, workers who go on strike as a matter of political and social protest, and litigators who defend people protesting the fraudulent elections or support such individuals in court. At the same time, new laws allow state law enforcement bodies to use weapons and other force broadly against protestors and people supporting them, potentially releasing them from liability. Many provisions of these laws contradict international law and best practice.

Belarus expert organizations prepared a preliminary detailed overview and analysis of this legislation.² The purpose of this brief is to provide highlights of this restrictive legislation to inform a broad audience.

¹ Law of the Republic of Belarus on Amendments to Laws on Issues of Counteracting Extremism # 104-Z dated May 14, 2021 (Law on Extremism); Law of the Republic of Belarus on Prevention of Rehabilitation of Nazism # 103-Z dated May 14, 2021 (Law on Prevention of Rehabilitation of Nazism); Law of the Republic of Belarus on Changes to Laws on Issues of Provision of National Security to the Republic of Belarus # 106-Z dated May 17, 2021 (Changes to Laws on National Security); Law of the Republic of Belarus on Changes to Codes on Issues of Criminal Liability # 85-Z dated January 6, 2021 (the Criminal Code); Law of the Republic of Belarus on Changes to the Law of the Republic of Belarus on State Protection of Judges, officials of law enforcement and controlling (monitoring) bodies, employees of state guard bodies # 105-Z dated May 17 2021; Codes of the Republic of Belarus on Administrative Offenses and on Administrative Procedure for Administrative Offenses # 92-Z dated January 6, 2021 (Code of Administrative Offenses); Law of the Republic of Belarus on Changes to the Law of the Republic of Belarus on Mass Events in the Republic of Belarus # 108-Z dated May 24, 2021 (Changes to the Law on Mass Media); Law of the Republic of Belarus on Changes to Laws on Issues with Mass Media #110-Z dated May 24, 2021 (Changes to Law on Mass Media); **DRAFTS:** Law of the Republic of Belarus on Changes to Laws on Issues of Labor Relations (Draft Changes to Labor Code); Law of the Republic of Belarus on Changes to Laws of the Republic of Belarus on Issues of Activities of Litigators (Draft Changes to the Law on Activities of Litigators); (all draft laws are expected to be adopted in the next few months).

² In Russian: https://www.lawtrend.org/pdf-viewer?file=https://www.lawtrend.org/wp-content/uploads/2021/05/Novoe-zakonodatelnoe-regulirovanie_Belarus_2021_n.pdf;

Belarus is the signatory to the International Covenant on Civil and Political Rights (ICCPR) and as such is required to comply with its commitments. Additionally, almost every law of Belarus includes a provision prioritizing international law commitments over national law. However, the adopted laws include that many provisions clearly violate Belarus' international law obligations. A few examples include:

- labelling people who protested against the fraudulent results of the August 2020 presidential elections, and who support them, as extremists and “nazi collaborators” and setting harsh penalties, including prison time, for exercising the right to freedom of expression, such as singing songs about freedom of Belarus, posting information critical of the government, or just covering protests in Belarus, contrary to section 19 of the ICCPR;
- enforcing a pre-approval procedure for any peaceful assembly, contrary to section 21 of the ICCPR;
- rescinding licenses of independent litigators and only allowing litigators working in government-run consultation offices to represent clients in court, as well as allowing the government to access all of their documentation, in violation of lawyer-client confidentiality privilege, contrary to section 2.3 and section 14 of the ICCPR; and
- allowing law enforcement to access information on individuals' personal devices, and even confiscate them (for example, computers and mobile phones) without the owner's consent or a court order, contrary to section 17 of the ICCPR, among others.

This brief does not provide a detailed comparative law analysis of the laws under review. Some comparative analysis is already available in the analysis prepared by Belarus experts (see footnote 2). ICNL will prepare an additional comparative law analysis of specific laws in the near future.

The previously existing legislation was already extremely restrictive, but we do not cover the previous restrictions in this brief.

Law on Extremism³

The new Law on Extremism broadens the definition of and increases penalties⁴ for “extremism,” which allows the government to charge any individual or organization, local or foreign, for participation in an unapproved peaceful gathering, possessing or giving away any “extremist” merchandise, such as items containing the “pogonia”

In English: https://www.lawtrend.org/pdf-viewer?file=https://www.lawtrend.org/wp-content/uploads/2021/05/Law_Belarus-Eng_2021.pdf.

³ Translation of the Law on Extremism into English is available upon request.

⁴ Referenced sanctions are in the Criminal Code and in the Code of Administrative Offenses.

national symbol, provision of any support to people participating in unapproved protests, calls to resist the regime, actions such as singing songs about free Belarus, or posting “knowingly false” information about the situation in Belarus, even in foreign media, among others. These activities are now considered an administrative offense or crime. The administrative penalties for violating these restrictions result in a fine of up to 2,000 Euros, and/or up to 30 days in detention, and/or a prohibition on conducting professional activity for up to one year.

Criminal penalties apply, for example, for:

- financing, assisting with, undergoing training or other preparation for extremist activity, which is punishable with a prison term of up to eight years;
- discrediting (vaguely defined) the Republic of Belarus, including, for example, distributing false information about the social or economic condition of Belarus, or the legal status of Belarus citizens, posted in mass media or disseminated in other ways, “intended to substantially harm state and public interests” (undefined), which is punishable by a prison term of up to four years with or without a financial penalty.

Law on Prevention of Rehabilitation of Nazism⁵

The main novelty of this law is to identify Nazi criminals and their “collaborators,” and prohibit and penalize their activities. The term “collaborator” is important, as it is defined in such a way to tie Belarus protesters’ symbols (the “pogonia” symbol and white-red-white flag) to Nazi collaborators. While during the Second World War, these symbols were used by some Belarussian Nazi collaborators, these are historic symbols of independent Belarus (including independence from the Soviet Union, unlawful dictatorship). The law connects all protesters using these symbols and flag to Nazis. According to Belarus experts, the main purpose of this law is to raise divisions among the people and limit their engagement in protests under these symbols, as many Belarussians still remember the damage from the Second World War and Nazis. Under this law, the use of a white-red-white flag makes one not only an extremist, but also someone who supports collaborators with Nazi criminals. The law is tidily connected to the Law on Extremism, with administrative and criminal penalties applicable to extremist activities, such as those of Nazi criminals and their “collaborators.”

⁵ Translation of the Law on Prevention of Rehabilitation of Nazism into English is available upon request.

Changes to Laws on National Security

The law changes a number of laws regulating the legal status of various government agencies including law enforcement (police), state border guard, internal military forces, state guard forces, state security service (KGB), and others. All these state bodies are authorized to use weapons and other force depending on “established circumstances” (undefined), nature of the crime or administrative offense, and personality of a person violating the law. The law states that such an official using weapons or other force is not liable for damage caused by the use of such force if he/she did so in compliance with the law. The requirements in the law, however, are not strict and allow employees of authorized bodies to use weapons essentially at their discretion.

Changes to the Law on Mass Events

The law replaces the notification procedure for organizing and holding mass events with a prior approval procedure. In truth, the previous notification procedure, was also, de facto, a prior approval procedure, but much simpler than the procedure in the amended law.

The law prohibits collecting funds and providing support to individuals for the purpose of paying penalties for violating rules on organizing mass events.

Journalists present at a mass event are subject to the same public order requirements that apply to organizers and participants. At the same time, the law prohibits live mass media and online coverage (livestreaming) of mass events which violate the established procedure for their organization or conduct.

Changes to Laws on Mass Media

The law establishes new requirements for media outlets and also applies the same requirements for mass media editorial offices to the owners of internet resources and online publications. Among other issues, the law:

- expands the list of reasons for refusal of state registration of mass media, which may now include, for example, instances where the name of the media coincides with or is confusingly similar to the name of a publication which was previously terminated;
- expands the list of reasons for suspending the publication of mass media to include the issuance of two or more written warnings for any violation of legal requirements within a year, as well as the adoption of a decision by the Interdepartmental Commission on Security in the Information Sphere (ICSIS) identifying the presence of messages or materials in media products, the dissemination of which could threaten national security;

- establishes new reasons why relevant government agencies will be able to restrict access to internet resources and online publications. Access to an internet resource may be restricted, for example, for the publication of prohibited information; issuance of two or more notifications to the internet site's owner within a year; failure by the site's owner to comply with the requirements of the authorized government body; or decision of the ICSIS on the presence of content on an internet site which could threaten national security;
- prohibits mass media and internet sites from publishing the results of public opinion polls concerning the socio-political situation in the country, republican referenda, and elections, when such polls are conducted without appropriate accreditation;
- establishes new requirements for journalists, for example, to inform the editor-in-chief of the media outlet about possible lawsuits and other legal requirements in connection with the distribution of material they are preparing, and to observe restrictions established by electoral legislation; and
- prohibits journalists from using their rights and position for the purpose of concealing or falsifying information, spreading false information under the guise of reliable reports, collecting information in favor of a third party or organization that is not a media outlet, as well as spreading information in order to defame someone on the grounds of profession, place of residence or work, in connection with political beliefs, or discredit government agencies and other organizations.

Failure to comply with these requirements is equivalent to gross violations of labor duties, and the journalist in violation may be fired under labor law. Additionally, a journalist can be deprived of accreditation if he/she or the editorial office of the media outlet violated the accreditation procedure or disseminated information that "does not correspond to reality and discredits the business reputation of the organization that accredited the journalist, or committed a deliberate illegal act in the course of carrying out professional activities."

Draft Changes to the Law on Activities of Litigators

Previously, litigators risked losing their licenses when they defend protestors, and some did lose their licenses. Now there are more restrictions.

The draft law would cancel all private (independent) litigator organizations and licenses. The only way to continue working as a litigator (to be able to represent clients in court) would be through territorial consultations offices, which are controlled by the Ministry of Justice (MoJ). The MoJ approves procedures for managing such

consultations offices and audits their activities, i.e., has power to influence appointment of managers and access all client documentation held by litigators, potentially eliminating lawyer-client confidentiality. Additionally, granting and rescinding licenses to work as litigators also depends on the MoJ.

As a result of this law, only litigators representing (Lukashenko) government interests, rather than those of the actual clients, will keep their licenses and be able to continue working. People unlawfully accused of violating the law and charged with administrative and criminal charges will not have legal defense in court.

Draft Changes to Labor Code

The draft law expands the employer's power to fire an employee if an employee missed work due to punishment for participating in unapproved mass events or another administrative offense, calling on other employees to participate in a strike or otherwise not to do their jobs, participating in an unauthorized strike, or not doing their job without a justification valid from the employer's perspective. Such termination of a labor agreement does not require approval from a local labor union (just a notification the same day the decision on firing an employee is issued).

New reasons for one-sided termination of a labor agreement are added: violating the rules for personal data protection; and making political demands during a strike.

The new law allows employers to fire any employee who participates in an unsanctioned strike (and it is literally impossible to get approval), declares political demands during a strike, or participates in peaceful protests and faces administrative/criminal penalties.

The adopted and draft laws described above continue the trend of repressive actions taken by Belarus authorities to restrict protest activities and freedom of expression, and penalize citizens for participating in, sharing information about, or otherwise supporting protests in response to the August 2020 elections. ICNL suggests that concerned parties highlight the laws and draft laws' inconsistencies with international best practice and Belarus' international legal obligations. ICNL also suggests that governments directly address the Government of Belarus, expressing their concern about these restrictive measures.