



## **Belarus: Prosecution of journalists for “organising violations of public order” infringes upon international human rights standards and insults common sense**

**4 February 2021**

**ARTICLE 19 is deeply concerned about the criminal charges pursued in Belarus against Belsat TV journalists Ekaterina Bakhvalova and Daria Chultsova. Both journalists were covering the peaceful protests taking place on 15 November 2020 that demanded a change of the ruling government and of the president, and accountability for the tortures and killings of protesters like Roman Bondarenka. Journalists are now facing criminal charges for organising actions that grossly violate public order, and active participation in them. ARTICLE 19 argues that journalists are simply prosecuted for carrying out their role – gathering and sharing important information about protests and ensuring accountability of public bodies for their actions. We call on the Belarussian courts to immediately and unconditionally drop these charges and refrain from bringing similar charges in the future.**

### **Facts of the case**

Mass protests have been continuing in Minsk and other Belarusian cities since the contested Presidential elections in August 2020. One of the protests took place in Minsk on 15 November 2020. The major reason for this particular protest was the death of Roman Bondarenka on 12 November 2020. On 11 November 2020, Roman Bondarenka, a 31-year-old Minsk resident, confronted a group of persons removing white-red-white ribbons (colours of the alternative Belarus flag and protest symbol - *ndlr*) from the fence in the courtyard and was beaten by them (the group allegedly included Roman Baskov, a prominent businessman and Chairman of the Belarus Ice Hockey Federation). Roman was then taken to the local police station, and from there – to the hospital. He was admitted to the hospital in an unconscious state, underwent a surgery and died not regaining consciousness.

Numerous media reports about the ongoing protests in Belarus, including coverage of the protest on 15 November 2020 produced by two journalists, testify to the peaceful conduct of the assembly (in the Belsat TV reporting one can hear special references to the peaceful opposition of the protesters on several occasions) and its political character. Protesters interviewed in the streets demanded a change of the ruling government and of the president, and accountability for the tortures and killings of the protesters like Roman Bondarenka.

One of the places where the protests took place on 15 November 2020 was the so-called “Change Square” – the courtyard where Roman Bondarenka had been beaten. The Belsat TV channel was covering the protest action in a live television broadcast on the same day. The duration of the whole broadcast was 7 hours. The coverage was partially provided by the journalists in the studio and partially by the journalists directly reporting from Change Square. Journalists Ekaterina Bakhvalova (correspondent, known as “Ekaterina Andreeva”) and Daria

Chultsova (operator) arrived at Change Square in advance and settled in one of the neighbouring apartments. From that apartment, they periodically went live on air and broadcasted online. The full version of a seven-hour broadcast is currently available [here](#).

Following the protests, journalists Ekaterina Bakhvalova and Daria Chultsova - were detained and accused of the “*organization of actions that grossly violate public order, and active participation therein*” according to part 1, Article 342 of the Criminal Code of the Republic of Belarus. The respective legal provision reads:

*Article 342. Organization and preparation of actions that grossly violate public order, or active participation therein.*

*1. Organization of group actions that grossly violate public order and are associated with explicit disobedience to the legal requirements of government officials or entail disruption of the work of transport, enterprises, institutions or organizations, or active participation in such actions in the absence of elements of a more significant offence - are punished with a fine, or arrest, or restraint of liberty for a term of up to three years, or imprisonment for the same term.* The case is currently being reviewed by this Court.

## **Applicable international human rights standards**

### ***The right to freedom of expression***

This case is directly related to the aforementioned protests of the Belarusian people and ability of the journalists and media to cover protest events.

The right of freedom of expression is one of the bedrock principles of democracy and human rights. Under international and regional human rights standards, in particular Article 19 of the International Covenant on Civil and Political Rights (ICCPR), freedom of expression is strongly protected. The General Comment 34 of the UN Human Rights Committee (HR Committee) sets out the authoritative view of the Committee on Article 19 of the ICCPR.<sup>1</sup>

International human rights bodies have repeatedly emphasised the essential function the press fulfils in a democratic society. In General Comment 34, the HR Committee has also stated the importance of the media in the promotion of freedom of expression. The Committee and other human rights bodies have emphasised that they discharge this function by ensuring the public are informed, educated and aware of events of public interest or that should be open to public scrutiny.<sup>2</sup> Not only does the press have the task of imparting information and ideas of public interest, the public also has a right to receive such information and ideas.<sup>3</sup> Measures that are capable of discouraging the participation of the press in public debate on matters of public concern must be subject to “careful scrutiny.”<sup>4</sup>

Media coverage of protests is aimed at facilitating effective fulfilment of this right as well as monitoring any human rights violations which may potentially occur during protests.

---

<sup>1</sup> UN Human Rights Committee (HRC), [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102<sup>nd</sup> session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 11.

<sup>2</sup> See e.g. European Court of Human Rights (European Court), *Bladet Tromsø and Stensaas v. Norway*, App. No. 21980/93, para 59.

<sup>3</sup> See e.g. European Court, *The Sunday Times v. the UK (no. 1)*, App. No. 6538/74, para 65.

<sup>4</sup> See e.g. European Court, *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, para 26.

In order for the press to perform its “public watchdog” role, it must not only be free to *impart* information and ideas of public interest, but it must also be free to *gather, collect* and *assess* such information and ideas. International human rights bodies have recognised that “*the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom.*”<sup>5</sup>

The need to protect newsgathering in order to protect press freedom is reflected in the UN Special Rapporteur’s definition of journalism. In his report to the UN Human Rights Council in 2012, he noted that individuals carrying out a journalistic function “*observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole*”.<sup>6</sup> The fundamental importance of newsgathering to the exercise of the right to freedom of expression has also been recognised in the jurisprudence of a number of courts around the world, including in the United Kingdom,<sup>7</sup> Canada,<sup>8</sup> South Africa,<sup>9</sup> Colombia<sup>10</sup> and Japan.<sup>11</sup> Therefore, any measure that interferes with the newsgathering activities of individuals carrying out a “public watchdog” role will inevitably interfere with the right to freedom of expression.

Democratic governments should enable the free flow of information about the protests, via all types of media, before, during and after the protest action.<sup>12</sup> The role of journalists and others involved in monitoring or reporting on assemblies is of special importance to the full enjoyment of the right to peaceful assembly.<sup>13</sup> States should allow and even actively facilitate reporting on protests by all media without imposing undue limitations on their activities and without official hindrance.<sup>14</sup> Circulation of information about protests should not be restricted on any communication platform<sup>15</sup> and journalists must not face reprisals or harassment for their coverage of the protest action.<sup>16</sup>

### ***The right to peaceful assembly***

The right to peaceful assembly is recognised in the major human rights treaties, such as in Article 21 of the ICCPR. This right constitutes an indispensable element of every functional democratic society and any limitations imposed over it should be prescribed by law and strictly necessary in a *democratic* society, hence the requirement of necessity here is further reinforced with the reference to the exigencies of a democratic order.

---

<sup>5</sup> See e.g. European Court, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, App. No. 931/13, para 128.

<sup>6</sup> UN Special Rapporteur on Freedom of Opinion and Expression, *Report of the UN Special Rapporteur, Frank La Rue, to the Human Rights Council*, UNDoc. A/HRC/20/17, paras 3 to 4.

<sup>7</sup> See e.g. UK House of Lords, *R v. Shayler*, [2002] UKHL 11 (21 March 2002), para. 21; UK House of Lords, *Reynolds v. Times Newspapers Ltd*, [2001] 2 AC 127 (28 October 1999), para. 205 (per Lord Nicholls).

<sup>8</sup> See, e.g. Supreme Court of Canada, *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41 (22 October 2010), para 56.

<sup>9</sup> See e.g. South African Constitutional Court, *South African Broadcasting Corporation Limited v. National Director of Public Prosecutions and Others*, [2006] ZACC 15 (21 September 2006), para 96.

<sup>10</sup> See, e.g. Colombia Constitutional Court, *Radio Cadena Nacional S.A. - RCN v. Consejo de Estado*, Sentencia T-391/07 (22 May 2007), para 4.1.1.

<sup>11</sup> See e.g. Supreme Court of Japan, *Kaneko v. Japan*, Sup. Ct. Keishu 23-11-1490 (26 November 1969).

<sup>12</sup> ARTICLE 19, [The Right to Protest: Principles on the protection of human rights in protests](#) (2016), Principle 18.1.

<sup>13</sup> UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly](#) (article 21), adopted by the Committee at its 129th session (29 June–24 July 2020), para 30.

<sup>14</sup> The Right to Protest, *op.cit.*, Principle 19.2.

<sup>15</sup> *Ibid.*, Principle 18.3.

<sup>16</sup> HRC, [General Comment No. 37 \(2020\) on the right of peaceful assembly](#) (article 21), adopted by the Committee at its 129th session (29 June–24 July 2020), UNDoc. CCPR/C/GC/37, para 30.

General Comment 37 on the right of peaceful assembly of the UN Human Rights Committee states that the full protection of this right is only possible when other, related rights, such as freedom of expression and freedom of the media are duly implemented.<sup>17</sup> It also underlines that similarly to the enhanced protection afforded to political speech, assemblies which carry political messages should enjoy heightened accommodation and protection.<sup>18</sup> Restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system.<sup>19</sup>

### **ARTICLE 19's analysis of the case**

ARTICLE 19 submits that the charges of alleged *organization of violation of public order* against two journalists, Ekaterina Bakhvalova and Daria Chultsova, are contrary to the recognised international human rights standards. Their prosecution amounts to a violation of their right to freedom of expression. ARTICLE 19 wishes to highlight to following concerns:

#### ***Journalists are being prevented from carrying out their role of gathering information during public protests***

The function performed by journalists in collecting and gathering information is particularly valuable in relation to events such as protests or demonstrations, even more so in circumstances where the authorities adopt measures in response to such events. A vital element of the exercise of journalistic functions is the ability to obtain first-hand and direct knowledge based on personal experience of events and the context in which the authorities handle such events.<sup>20</sup> We note that the “public watchdog” role of the media in covering protests assumes particular importance as their presence is a guarantee that the authorities can be held to account for their conduct.”<sup>21</sup> It is clear in this case, that two journalists are being prosecuted for merely providing media coverage of the peaceful protest action by others. There is nothing in those journalists’ reporting or actions on 15 November 2020 that could be reasonably understood as “violation of public order” or as “organization” of such a violation.

We reiterate that it is of vital importance that journalists and the media must have the ability to gather information about demonstrations and protests. Hence, the charges against two journalists should be dropped.

#### ***Protests that journalists covered were peaceful and there was no violation of public order***

Even if it was true that journalists organised the protests that they covered, the charges amount to violation of their right to freedom of expression and assembly as the restrictions do not meet the requirements of the international human rights law.

Numerous media reports about the ongoing protests in Belarus, including coverage of the protest action on 15 November 2020 produced by the accused journalists, testify to the peaceful conduct of the assembly (in the Belsat TV reporting we hear special references to the peaceful

---

<sup>17</sup> General Comment 37, *op.cit.*, para 9.

<sup>18</sup> *Ibid.*, para 32.

<sup>19</sup> *Ibid.*, para 49.

<sup>20</sup> See e.g. European Court, *Selmani and Others v. the former Yugoslav Republic of Macedonia*, App. No. 67259/14, para 84.

<sup>21</sup> See e.g. European Court, *Pentikäinen v. Finland*, App. No. 11882/10, para 89.

opposition of the protesters on several occasions) and its political character (protesters interviewed in the streets demand change of the ruling government and of the president, and accountability for the tortures and killings of the protesters like Roman Bondarenko). Therefore, we can conclude that the *peaceful political* protest action in Minsk on 15 November 2020 merited the highest degree of protection as should be afforded in a democratic society and forced dispersal of it by the authorities does not meet the requirement of necessity.

ARTICLE 19 also recalls that in similar circumstances – during the EuroMaidan protests in Ukraine in 2013-2014 when protesters were mistreated by law enforcement - the European Court of Human Rights found that “[t]he increasingly violent dispersal of the series of protests ... and the adoption of the repressive measures examined in this and the other Maidan cases clearly had the serious potential, if not as regards some parts of law enforcement, the aim, to deter the protesters and the public at large from taking part in the protests and more generally *from participating in open political debate*” [emphasis added].<sup>22</sup> We have been observing a similar situation unfolding in Belarus where violent treatment, of the protesters by law enforcement as well as persecution of independent media covering the protests by the authorities, is being employed strategically to preclude the public from freely expressing its political stance and to forcefully suppress opposition to the incumbent government.

As for the restrictions on freedom of expression on the basis of protection of public order, we note that: Under international human rights treaties, public order could constitute a legitimate ground for limitations of freedom of expression and freedom of peaceful assembly. However, application of this limitation ground will be properly justified only if the definition of “public order” is precise and narrowly construed, and relevant implementation practice pursues a genuine goal of ensuring the well-being of society and is necessary for achieving such goal. As stated in the General Comment 37 of the UN Human Rights Committee, “public order” refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly.<sup>23</sup> Vague definitions of “public order” which can result in overbroad restrictions on the right of peaceful assembly would not be acceptable.<sup>24</sup> In fact, exercising the right to protest should be considered an essential characteristic of public order and not as a threat to it even where the protest causes inconvenience or disruption.<sup>25</sup>

Akin to the international standards governing application of public order as a rights limitation ground, the Johannesburg Principles offer a useful guidance where it concerns interrelationship between freedom of expression and national security. Based on these Principles, expression may be restricted as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>26</sup> Advocacy of non-violent change of the government or its policies, criticism of the government and its officials, information about alleged violations of international human rights standards or international humanitarian law shall not constitute threat to national security.<sup>27</sup> Any restriction sought to be justified on the ground of national security will not be legitimate if its real purpose or demonstrable effect is to protect interests unrelated to national

---

<sup>22</sup> See e.g. European Court. *Shmorgunov and Others v. Ukraine*, App. Nos. 15367/14 and 13 others, 21 January 2021, para 520.

<sup>23</sup> General Comment 37, *op.cit.*, para 44.

<sup>24</sup> *Ibid.*

<sup>25</sup> The Right to Protest, *op.cit.*, Principle 4.2.

<sup>26</sup> ARTICLE 19, [The Johannesburg Principles on National Security, Freedom of Expression and Access to Information](#) (November 1996), Principle 6.

<sup>27</sup> *Ibid.*, Principle 7.

security as for example, to shield a government from embarrassment or exposure of wrongdoing or to entrench a particular ideology, or to suppress industrial unrest.<sup>28</sup> Similar considerations could be applied to the limitations of freedom of expression based on the interests of public order.

In the present case, limitations of freedom of assembly, freedom of expression and freedom of the media sought on the ground of protection of public order do not genuinely intend to protect such an order. As a result, it will only be damaging to a democratic public order. The prosecution of journalists, in this case, seeks to suppress information about the protest movement in Belarus and silence the critical voices of the incumbent government. To suggest that the media coverage of a protest action could constitute “organization of violation of public order” is contradictory not only to the applicable international human rights law but also to the common sense as befit reasonable people.

### **Conclusions and recommendations**

Given the vital role performed by the media in collecting and disseminating information about events of public concern, such as protest, this Court must apply the strictest scrutiny to measures adopted against individuals performing this “public watchdog” function during protests or demonstrations.

ARTICLE 19 concludes that there is absolutely no evidence demonstrating that anything in the actions of two journalists - Ekaterina Bakhvalova and Daria Chultsova - could have constituted “organization of violation of public order”. Their prosecution violates international standards of freedom of expression and freedom of assembly as it does not genuinely seek to protect the interests of a democratic public order. Their sole intention is suppressing the legitimate protest movement, reporting on this movement and preserving political status quo.

ARTICLE 19, therefore, demands that Belarusian authorities:

- Immediately and unconditionally drop the criminal case against journalists Ekaterina Bakhvalova and Daria Chultsova and refrain from any similar charges against journalists covering protests in the future;
- Fully recognise, respect, fulfil and protect the right of peaceful assembly and the right to freedom of expression of the Belarusian people;
- Halt persecution and repressions of media workers, human rights defenders, civil society activists and regular protesters;
- Release political prisoners and engage in a genuine and constructive dialogue with the political opposition.

---

<sup>28</sup> Johannesburg Principles, *op.cit.*, Principle 2(b).