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Belarus: Expert briefing: Threat to expression intensifies against journalists with possible liquidation of the Belarusian Association of Journalists

If the government succeeds with liquidation of the Belarusian Association of Journalists (BAJ) - one of Belarus' leading NGOs uniting independent journalists and media of the country – rights to expression will deteriorate even further.

ARTICLE 19 is deeply concerned that bogus accusations of legal infringements against BAJ are the result of an unfair application of the national legislation which runs counter to international standards and good practices. There is strong evidence to suggest that the BAJ is being persecuted by the authorities for supporting independent journalism and media in Belarus. Liquidation of BAJ would amount to violation of freedom of expression not only of the organization itself but also of all of its members and Belarusian public more generally.

We call on the Belarussian courts to immediately dismiss the case against BAJ.

A. Facts of the case

BAJ is a voluntary, nongovernmental, nonpartisan association which unites more than 1,300 media professionals from across Belarus. BAJ supports its members in their professional journalistic and media activities. Throughout 25 years of its existence, BAJ has been a civil society leader in promoting freedom of expression and defending media rights in the country.

Independent media organizations and journalists in Belarus have faced unprecedented state persecution since the disputed 2020 presidential election. BAJ documented more than 500 detentions, hundreds of arrests and fines, and dozens of criminal cases and prison sentences directed against reporters, editors and media managers. Almost every independent news and socio-political outlet both at the local and the national level has experienced police pressure, searches and confiscation of their professional equipment. Many were forced to seize their operations or to flee the country to continue working from exile. In this regard, over the past year, BAJ activities focused on defending and assisting its members whose human rights and professional freedom were infringed upon by the state authorities.

In July 2021, Belarusian government launched a new wave of repressions against independent media outlets and organizations in the country. Over ten days, security forces carried out more than 70 searches of editorial offices and private homes of employees of the national and regional media. Consequently, dozens of journalists, editors and media managers joined in detention their already imprisoned colleagues.

Belarusian authorities also began an official process of liquidating BAJ.

On June 9, the Ministry of Justice launched a major audit of BAJ's activities. On June 21, BAJ received an official request to immediately submit thousands of administrative and financial

documents on its activities, including membership lists, covering the last three years of its work. The Ministry of Justice later extended the deadline for documents submission till July 1. Despite the short time frame, BAJ submitted all the requested documents with the exception of those which were seized from the BAJ office by the security forces during the search in February 2021.

On July 14, in the absence of BAJ representatives, security forces raided, searched and sealed BAJ's office. On the next day, BAJ received an official warning from the Ministry of Justice on the pretext that BAJ's regional branches in Brest and Maladzechna had allegedly carried out their activities without possessing "legal addresses". That accusation, however, was not true. Nevertheless, the Ministry of Justice concluded that BAJ violated national legislation and its own charter and demanded that the alleged violations would be rectified by the next day.

On July 16, BAJ informed the Ministry of Justice that the organization's office had been sealed by the state authorities and as a result, it had no access to its official documentation. BAJ asked for additional time to fulfil the Ministry's demands after regaining access to its premises.

On July 21, the Ministry of Justice announced that it had filed a case for BAJ's liquidation with the Supreme Court due to the organization's failure to rectify the alleged legal violations and respond to the official warning. The formal reason for the liquidation of BAJ stated in the case is "failure to correct violations revealed by the Ministry of Justice during the inspection in June 2021". BAJ leadership strongly opposes these civil charges.

B. Applicable international human rights standards

The right to freedom of expression

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.¹

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice. The UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States' compliance with the ICCPR, has affirmed that the scope of the right extends to the expression of opinions and ideas that others may find deeply offensive.²

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR, provided that the limitation meets a "three-part test". This requires that the limitation must be:

- **Provided for by law**, any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly – *requirement of legality*;

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

² *Ibid.*, para 11.

- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (ordre public), or of public health or morals – *requirement of legitimacy*;
- **Necessary in a democratic society**, requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat³ – *requirement of necessity*.

Additionally, Article 20(2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law.

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.⁴ 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.⁵ 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.”⁶

Furthermore, it has been consistently recognised that NGOs perform an important public watchdog function equivalent to that of the press. For example, it was noted that campaign groups can play a legitimate and important role in stimulating public discussion.⁷ Organizations involved in the protection of the right to information could be characterised, like the press, as a social “watchdog”.⁸ The important role of civil society was acknowledged in holding governments to account in cases involving NGOs specializing in environmental issues,⁹ animal rights groups¹⁰ and NGOs working on ensuring respect for human rights, democracy and the rule of law.¹¹

The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, *freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association*.¹²

The right to freedom of association

The right to freedom of association is recognised in the major human rights treaties, such as in Article 22 of the ICCPR. This right constitutes an important element of every functional democratic society and any limitations imposed over it should be prescribed by law and strictly necessary in a *democratic* society in the interests of national security or public safety, public

³ *Ibid.*, paras 22 and 34.

⁴ See e.g. European Court of Human Rights (European Court), *Bladet Tromsø and Stensaas v. Norway*, App. No. 21980/93, para 59.

⁵ See e.g. European Court, *The Sunday Times v. the UK (no. 1)*, App. No. 6538/74, para 65.

⁶ See e.g. European Court, *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, para 26.

⁷ See e.g. European Court, *Steel and Morris v the UK*, App. No. 68416/01, 15 February 2005, para 95.

⁸ See e.g. European Court, *Társaság a Szabadságjogokért v Hungary*, App. No 37374/05, 14 April 2009, para 27.

⁹ See e.g. European Court, *Vides Aizsardzības Klubs v. Latvia*, App. No. 57829/00, 27 May 2004, para 42.

¹⁰ See e.g. European Court, *Animal Defenders International v the UK* [GC], App. No. 48876/08, 22 April 2013, para 103.

¹¹ See e.g. European Court, *Youth Justice Initiative for Human Rights v Serbia*, App. No. 48135/06, 25 June 2013.

¹² *UN Human Rights Committee (HRC)*, [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102nd session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 4.

order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. Hence the requirement of necessity where it concerns any limitations of the freedom of association is further reinforced with the reference to the exigencies of a democratic order.

While the exercise of freedom of association may involve a number of ICCPR rights, Article 22 has a particularly close relationship with rights to freedom of opinion and expression. Regional human rights mechanisms, such as the European Court of Human Rights, often assessed violations of freedom of association in light of freedom of expression and vice versa.¹³

C. ARTICLE 19's analysis of the case

ARTICLE 19 submits that the attempts to dissolve BAJ based on the bogus civil charges constitute an attack on the internationally recognised human rights standards. Liquidation of BAJ would amount to a severe violation of their right to freedom of expression as well as violation of the right to freedom of expression of their members and of the Belarusian public more generally. In this regard, ARTICLE 19 wishes to highlight the following points:

Freedom of Expression and Freedom of Association are closely interrelated rights which enforce each other's implementation

It is widely recognized by the international and regional human rights systems that the right to freedom of expression and the right to freedom of association are closely interrelated rights which mutually reinforce each other. Associations are normally established to protect the rights and interests of their members but also to give voice to their concerns and positions, including socio-political ones. Protection of personal opinions guaranteed by freedom of opinion and freedom of expression is also one of the purposes of the guarantee of freedom of association, and this protection can only be effectively secured through the guarantee of both a positive and a negative right to freedom of association.¹⁴

Even though freedom of association enjoys its autonomous role and particular sphere of application according to the major international human rights treaties, it must also be considered in the light of freedom of expression. Protection of opinions and the freedom to express them is one of the objectives of freedom of assembly and association, and in this connection, it must be borne in mind that freedom of expression provides for the extensive protection of political speech and debate on questions of public interest.¹⁵

Hence, in the present case, potential dissolution of BAJ ought to be considered not only as an infringement of the right to freedom of association but also as a severe restriction of freedom of expression. If BAJ is deprived of its formal status as a professional association, it will face significant barriers to the realisation of its right to raise the issues of public interest, to express its socio-political stance and/or to represent position of its members. Additionally, in the view of BAJ's media defence activities, liquidation of the association will have an aggravating effect over the already dire freedom of expression and freedom of the media situation in Belarus.

¹³ See e.g. European Court, *Hakim Aydın v. Turkey*, no. 4048/09, 26 May 2020, para 41; *Djavit An v. Turkey*, no. 20652/92, ECHR 2003-III, para 39.

¹⁴ See e.g. European Court, *Vörður Ólafsson v. Iceland*, no. 20161/06, ECHR 2010, para 46.

¹⁵ See e.g. European Court, *Öllinger v. Austria*, no. 76900/01, ECHR 2006-IX, para 38.

Closure of BAJ would amount to violation of freedom of expression

ARTICLE 19 further submits that liquidation of BAJ would amount to violation of freedom of expression: of the association itself, of its members as well as of the Belarusian public more generally. The limitation of freedom of expression in this case does not meet the requirements of legitimacy and necessity.

The European Court of Human Rights confirmed that *implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions*, the Court has also recognised that the protection of opinions and the freedom of expression is one of the objectives of the freedom of association [emphasis added].¹⁶ Logically, according to the BAJ's Charter,¹⁷ organization's main goal is to assist association members in realization of their rights, to promote their professional development as well as to create favourable conditions for freedom of expression, freedom of the media and free flow of information. As a registered professional media association, BAJ strived to realise its own freedom of expression, to support freedom of expression of its members and to promote media freedom and access to information in the country. With BAJ's official closure, all these aspects of freedom of expression will be significantly restricted.

Any legitimate limitation of freedom of expression should meet the requirements of legality (be prescribed by law), legitimacy (be in pursuit of a legitimate aim) and necessity (be necessary in a democratic society). In BAJ's case, the respective state authorities failed to meet the requirements of legitimacy and necessity. Firstly, potential BAJ's dissolution does not seek to protect any of the legitimate public interests as enshrined in Article 19 ICCPR, no such reasons are even adduced to the official court application. To the contrary: BAJ's closure will evidently undermine legitimate public interests such as, for instance, the right to freedom of expression of others. Secondly, liquidation of the association is not necessary in a democratic society: the respective state authorities could not demonstrate in a specific and individualised fashion the precise nature of the threat, the direct and immediate connection between BAJ's operations and this threat, and how the potential closure of BAJ would be necessary and proportionate to eliminate the threat. Therefore, if BAJ's liquidation is granted by the court, it will constitute a manifest violation of freedom of expression which due to BAJ's mission and activities extends not only to the organization and its members but also to the Belarusian public.

Furthermore, it is important to note that the case against BAJ falls within a broader pattern of persecution against independent journalists, media and civil society in Belarus with the overarching goal of suppressing legitimate political dissent and preserving political status quo. ARTICLE 19 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].¹⁸ We have been observing a similar situation unfolding in Belarus where violent treatment of the protesters and activists by law enforcement as well as persecution of independent media and civil society organizations are being employed strategically to preclude the public from freely expressing its political stance and

¹⁶ See e.g. European Court, *Gozelik and Others v. Poland* [GC], no. 44158/98, ECHR 2004-I, para 91.

¹⁷ See e.g. the [text of the BAJ Charter](#) as of July 2006.

¹⁸ See e.g. European Court, *Shmorgunov and Others v. Ukraine*, App. Nos. 15367/14 and 13 others, 21 January 2021, para 520.

to forcefully suppress opposition to the incumbent government. Forcible dissolution of BAJ would, thus, constitute one more attempt to silence dissenting voices of Belarusian people.

In the present case, limitation of freedom of expression as a consequence of limitation of freedom of association does not pursue any legitimate aim and clearly does not meet the requirement of being necessary in a democratic society. The persecution of BAJ as a professional media association seeks to suppress free flow of information and pluralistic public debate about the current political crisis in Belarus as well as to silence the critical voices to the incumbent government.

D. Conclusions and recommendations

Given the vital role performed by the civil society organizations, professional associations and media in collecting and disseminating information about events of public concern, such as protests and political crises, this Court must apply the strictest scrutiny to measures adopted against organizations performing this “public watchdog” function.

ARTICLE 19 concludes that the liquidation case against BAJ violates international standards of freedom of expression and freedom of association as it does not genuinely seek to protect legitimate interests of a democratic society e.g. it does not meet the requirements of legitimacy and necessity. The sole intention behind BAJ’s persecution is suppressing independent media and free flow of information and eliminating pluralistic public discourse in Belarus.

ARTICLE 19, therefore, demands that Belarusian authorities:

- Immediately and unconditionally drop the civil case seeking liquidation of BAJ and refrain from any similar attacks against Belarusian civil society and media in the future;
- Fully recognise, respect, fulfil and protect 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.

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Sarah Clarke
Head of Europe and Central Asia
ARTICLE 19