



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media**

**LEGAL ANALYSIS OF THE DRAFT LAWS OF THE REPUBLIC OF BELARUS “ON
AMENDING LEGISLATION IN THE SPHERE OF MASS MEDIA” AND “ON
AMENDING THE LAW OF THE REPUBLIC OF BELARUS “ON MASS EVENTS IN
THE REPUBLIC OF BELARUS”**

Commissioned by the Office of the OSCE Representative on Freedom of the Media and prepared
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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Having analysed the draft laws of the Republic of Belarus “On amending legislation in the sphere of mass media” and “On amending the Law of the Republic of Belarus “On Mass Events in the Republic of Belarus” in the context of the provisions of the Constitution of the Republic of Belarus, as well as international standards on freedom of expression, the expert comes to the general conclusion that the draft laws contain the prevailing potential of excessive restrictions of the right to freedom of expression and the freedom of the mass media. The proposed regulation misses to provide sufficient balancing provisions to prevent the unjustified implementation of restrictive measures for the mass media.

While under review, the drafts were adopted by the Parliament of Belarus and became laws, No. 110-3 and No. 108-3, on 24 May 2021.

The draft laws have a few advantages. The expert considers positive the stated intention to preserve rules declaring integration of international law into national standards for the implementation of freedom of speech in the draft law of the Republic of Belarus “On amending legislation in the sphere of mass media.” The draft also introduces additional measures to protect the rights of the mass media to be indicated as a source of information, thereby raising the level of protection of the intellectual rights of the mass media. The draft law “On Mass Events in the Republic of Belarus” preserves the principle of balanced allocation of the duties and obligations of mass events participants and journalists working at such events, without imposing improper functions on the mass media.

However, the expert admits that the positive potential of the drafts is significantly overshadowed by their restrictive provisions:

- Some of the proposed measures introduce significant restrictions on freedom of expression and mass media. Once introduced these measures inevitably lead to narrowing of the space for freedom of information in the Republic of Belarus. Those include the recognition of violations of any legislative rules committed by journalists as the basis for the dismissal of journalists; the possibility of terminating the activities of the mass media in the course of administrative proceedings; bans on live media coverage of unsanctioned meetings and other mass actions.
- Most of the rules introduced have a restrictive potential for the media and journalists, and at the same time do not introduce new or strengthen existing tools to protect against abuse in the implementation of the law. In particular, the proposed restrictions on the establishment of new mass media are indiscriminate, contain the potential for objective imputation and do not provide opportunities for mass media owners to defend their rights in any effective ways
- Certain provisions of the draft laws introduce prohibitive measures in cases where restrictions may be either significantly less strong or absent at all

The main recommendations:

1. To abandon the numerous restrictive measures proposed by the draft laws in respect to the activities of the media, which create preconditions for disproportionate interference with freedom of expression.
2. To revise suspension and termination procedures: administrative measures in respect to the mass media, including those distributed via the Internet, should be excluded from the law, the imposition of the relevant restrictions based on a court decision should only be admissible in exceptional cases.
3. To amend the Law "On the Mass Media", namely, to update its article 52. Both editorial board and the journalist should not be found liable in case of dissemination of information

- previously published by another legally operating mass media outlet under condition of referring to the initial source of publication. The liability should not apply in cases when an Internet portal acting as mass media provides a hyperlink to the material of another online media without posting the publication itself. It is highly advised to include clauses providing enforceable protective measures keeping online mass media out of the unreasonable restriction of access to such media in Article 7 of the Law "On Mass Media".
4. The ban on the dissemination of the results of public opinion polls related to the political situation in the country, as well as on referenda and elections, in the absence of state accreditation of the pollsters, should be cancelled. To protect the rights of the audience, the mass media can only be instructed to characterize the surveys as prepared by an organization having status of state accreditation (or not having such status).
 5. The rules establishing general (not individual) restrictions on the establishment of new mass media outlets by persons who were previously founders of mass media / owners of Internet resources, that ceased activities based on a court or administrative decision, are advised to be withdrawn.
 6. The rules providing for the obligatory use of the same uniform title and domain name by the online mass media outlets are to be removed as they are containing unreasonable restrictions and creating risks for the freedom and stability of the internet media sector in the Republic of Belarus.
 7. The references to unspecified obligations of journalists that allow for their dismissal on the grounds of any violation of the legislation, providing in fact an indefinite variety of duties of journalists, should be removed.
 8. It is advised to remove the provisions establishing the formal normative grounds for termination of accreditation, while keeping as the only legitimate ground for termination a violation of the rules of accreditation. At the same time, it is necessary to introduce guarantees counteracting the possibility of abuse by the authority establishing the accreditation rules: such rules must comply with the law, cannot be discriminatory or lead to infringement of the freedom of the mass media.
 9. The law "On Mass Events in the Republic of Belarus" should provide for equal guarantees of the rights of journalists and the editorial boards to cover mass events, no matter whether they are sanctioned or not, while acting in accordance with the law on the mass media.